PUBLIC SAFETY
&
DOMESTIC SECURITY
POLICY COMMITTEE

TUESDAY, MARCH 16, 2010
8:00 A.M. – 10:00 A.M.
404 HOB

MEETING PACKET

Larry Cretul
Speaker

REVISED 2

Kevin C. Ambler
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Public Safety & Domestic Security Policy Committee

Start Date and Time: Tuesday, March 16, 2010 08:00 am

End Date and Time: Tuesday, March 16, 2010 10:00 am

Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 211 Juvenile Justice by Adams
HB 541 Expunging Criminal History Records by Thurston
HB 761 State Attorneys by Ray
HB 1289 Money Laundering by Grady
HB 1291 Domestic Violence Fatality Review Teams by Coley
HB 1359 Detention by Licensed Security Officers by Murzin

Consideration of the following proposed committee bill(s):

PCB PSDS 10-02 -- Department of Juvenile Justice
PCB PSDS 10-03 -- Handbill Distribution

NOTICE FINALIZED on 03/12/2010 16:16 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 16, 2010
8:00 A.M. – 10:00 AM
(404 HOB)

I. Opening remarks by Chair Ambler

II. Roll call by CAA

III. Consideration of the following bill(s):

- HB 211 Juvenile Justice by Adams
- HB 541 Expunging Criminal History Records by Thurston
- HB 761 State Attorneys by Ray
- HB 1289 Money Laundering by Grady
- HB 1291 Domestic Violence Fatality Review Teams by Coley
- HB 1359 Detention by Licensed Security Officers by Murzin

IV. Consideration of the following proposed committee bill(s):

- PCB PSDS 10-02 -- Department of Juvenile Justice
- PCB PSDS 10-03 -- Handbill Distribution

V. Closing Remarks

VI. Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 211 Juvenile Justice
SPONSOR(S): Adams
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill amends several statutes relating to the detention of juvenile offenders. The bill:

- Permits a child to be taken into custody for violating the conditions of preadjudicatory release set by the court.
- Permits the detention of a child that absconds from home or nonsecure detention care or otherwise violates the terms of release while awaiting placement in a residential facility, or commits a new law violation, or that intentionally fails to appear for trial.
- Requires that a child be placed in secure detention care upon intake if alleged to have absconded from home or nonsecure detention or otherwise violated the terms of postadjudication release.
- Provides that the preadjudication and postadjudication time limits for holding a child in detention care do not apply to a child held in secure detention for absconding from home or nonsecure detention, committing a new law violation, or otherwise violating the terms of release after adjudication while awaiting placement in a residential facility; escaping or absconding from certain residential, probation or other programs; being charged with certain acts specified in current law; or intentionally failing to make a court appearance.
- Increases the length of time a child awaiting placement in a low or moderate risk residential program can be held in secure detention care and provides that the only detention option for a child committed to a high risk or maximum risk residential program is secure detention.
- Makes the court primarily responsible for determining the appropriate restrictiveness level for a child committed to a residential program.
- Provides counties with the option to levy a mandatory court cost of up to $50 to fund local juvenile crime initiatives.
- Provides a statement of legislative intent.

The bill has an indeterminate fiscal impact on state and county governments.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill proposes numerous changes to state policy concerning the use and length of detention for juveniles. It covers all phases of the process, from custody and initial intake to adjudication, and to disposition through postcommitment placement.

The Legislature has defined "detention care"[1] to mean "the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order."[2] There are three types of detention care, as follows:

- "Secure detention" means temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.
- "Nonsecure detention" means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice (DJJ) pending adjudication, disposition, or placement.
- "Home detention" means temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the DJJ staff pending adjudication, disposition, or placement. For FY 2007-08, there were 19,929 youth admitted to home detention status.[3]

Most youth are not placed on detention care prior to adjudication, but are released to a parent or guardian.[4]

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[1] Statutory references to "detention" do not include postcommitment residential facilities even though being committed to a residential facility is a form of "detention." However, for purposes of state policy and, specifically, the changes in this bill, the two should not be confused.

[2] Section 985.03(18), F.S.

[3] 2007-08 Comprehensive Accountability Report, Florida Department of Juvenile Justice, p. 66.

[4] According to the Department of Juvenile Justice, for FY 2006-087, approximately 109,000 of the 146,000 referrals were releases. These included some youth charged with felonies.

The state and the counties, other than the fiscally constrained counties[5] in certain circumstances, jointly fund detention care.[6] In this context, "detention care" has been defined as limited to "secure detention."

Specifically, counties are required to pay for predisposition secure detention costs. The state pays for postdisposition secure detention costs. The counties' share of the overall cost of secure detention includes the number of predisposition youth in detention centers multiplied by their length of stay. As the percentage of predisposition youth and/or number of days increases, the counties' share of detention costs also increases.

PRE-ADJUDICATORY RELEASE

Current law permits a law enforcement officer to take a child into custody in four circumstances:

- pursuant to a custody order issued by a circuit judge,[7]
- for a delinquent act or violation of law,
- for failing to appear at a court hearing after being properly noticed, and
- when there is probable cause to believe the child has violated the conditions of probation, home detention, postcommitment probation or conditional release supervision, or has absconded or escaped from residential commitment.[8]

The bill permits a law enforcement officer to take a child into custody in an additional circumstance - when a child on release without any form of detention care violates the conditions of preadjudicatory release. The bill gives the court the authority to impose conditions for preadjudicatory release such as requiring the child to obey all laws, not possess or carry a weapon, abstain from using alcoholic beverages or illegal drugs, and attend school. The bill provides a child who is taken into custody for a violation of preadjudicatory release must appear before a judge within 24 hours.

USE OF DETENTION

Factors Affecting Detention

Current law requires the court to make certain findings before placing a child in secure, home, or nonsecure detention care.[9] These findings include whether the child: presents a substantial risk of not appearing at a subsequent hearing, presents a substantial risk of causing bodily harm to others, has a history of committing property offenses, has been found to be in contempt of court, or requests protection from imminent bodily harm.[10] Except when a child is charged with domestic violence, all determinations and court orders concerning placement of a child into detention care must be based on the risk assessment instrument that is prepared by the department prior to the detention hearing.[11]

The bill amends s. 985.24, F.S. to add another factor the court may use in determining whether the child should be placed on secure, nonsecure, or home detention care: whether the child has been adjudicated delinquent and committed to a residential facility, but is on home or nonsecure detention care awaiting placement and the child:

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[5] "Fiscally constrained county" means "a county within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than $5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1." Section 985.656(2)(b), F.S.

[6] Section 985.686, F.S.

[7] A custody order is the juvenile equivalent of an arrest warrant.

[8] Section 985.101(1)(d), F.S.

[9] Section 985.24, F.S.

[10] Id.

[11] Section 985.245(1), F.S.

- is alleged to have absconded from home or nonsecure detention care,
- violates the terms of postadjudication release, or
- commits a new law violation

Intake

Currently, the juvenile probation officer receives custody of a child who has been taken into custody by law enforcement and is required to review the facts in the law enforcement report or probable cause affidavit and make further inquiry as may be necessary to determine whether detention care is required.[12] From the time the child is taken into custody to the time the detention hearing is held, the initial placement decision is made by the juvenile probation officer.[13] The juvenile probation officer must base any decision to detain the child on an assessment of risk using the risk assessment instrument developed by the DJJ under s. 985.245, F.S.[14] A child must be placed into secure detention if the child is charged with possessing or discharging a firearm on school property.[15]

The bill amends s. 985.25, F.S. to add additional circumstances that require the child to be placed in secure detention after the child is taken into custody. The bill requires a child be placed in secure detention care upon intake if the child has been adjudicated delinquent and is awaiting placement in a residential facility in home or nonsecure detention care and the child:

- is alleged to have absconded from home or nonsecure detention care,
- violates the terms of post-adjudication release, or
- commits a new law violation

Continued Detention

Under certain circumstances, a court may continue to detain a child taken into custody and placed in home, nonsecure, or secure detention care prior to the detention hearing.[16] These circumstances include when the child is:

- an escapee from a residential treatment program;
- wanted in another jurisdiction for a felony;
- charged with a delinquent act and seeks protection from imminent bodily harm;
- charged with possession or discharge of a firearm on school grounds;
- charged with a capital felony;
- alleged to have violated probation or conditional release supervision; or
- detained for failure to appear when the child has previously willfully failed to appear for a hearing on the same case.

The bill amends s. 985.255, F.S. to provide two additional circumstances where the court may detain a child who is taken into custody prior to the detention hearing. The bill provides the court may detain the child if:

- the child is alleged to have absconded from home or nonsecure detention care or otherwise violates the terms of release after adjudication, but while awaiting placement to a residential facility.

[12] Section 985.25(1), F.S.
[13] Section 985.245(1), F.S.
[14] Section 985.25(1)(b), F.S.
[15] Id.
[16] Section 985.255(1), F.S.

- there is probable cause to believe the child has committed a new violation of law while on home or nonsecure detention care after adjudication, but while awaiting placement in a residential facility.

Secure detention care authorized for failure to appear for trial

All determinations and court orders regarding the use of secure, nonsecure, or home detention care must be based primarily upon findings (relevant to failure to appear) that the child presents a substantial risk of not appearing at a subsequent hearing; or has committed contempt of court by intentionally disrupting the administration of the court or intentionally disobeying a court order.[17] Determinations and orders placing a child in detention care must be based on a risk assessment.[18] The risk assessment instrument must take into consideration any prior history of failure to appear.

A child taken into custody and placed into nonsecure, home detention or secure detention care prior to a detention hearing may continue to be detained by the court if the child is charged with any second or third degree felony involving a violation of chapter 893 (i.e., illegal drugs) or any third degree felony that is not also a crime of violence; and the child has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure.[19]

The bill amends s. 985.255(3)(a), F.S. to permit the court to have the child held in secure detention care until the conclusion of the adjudicatory hearing if the child fails to appear in court, runs away, or otherwise intentionally avoids a court appearance. The bill provides the court may commit the child to secure detention care regardless of the results of the risk assessment instrument. The bill also permits the court to hold the parent or legal guardian in contempt of court for knowingly and willfully failing to bring or otherwise preventing the child from appearing for trial.

Secure detention care permitted for violation of probation

Section 985.255(1)(h), F.S. provides that when a child is taken into custody for a violation of probation, the child must be placed in a consequence unit, if available. A consequence unit is a secure facility specifically designated by DJJ for children who are taken into custody for a violation of probation. Current law does not contain specific alternatives to placement in a consequence unit.

The bill amends s. 985.255(1)(h), F.S. to permit a child to be held in secure detention if the child is taken into custody for a violation of probation and a consequence unit is not available.

LENGTH OF DETENTION

Current law provides a child may not be held in secure, nonsecure, or home detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.[20] However, upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.[21] The time limits do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child, the child's counsel, or the state. If the court grants a motion for continuance, the court must conduct a hearing at

[17] Section 985.24(1), F.S.
[18] Section 985.245(2)(b), F.S.
[19] Section 985.255(1)(g), F.S.
[20] Section 985.26(2) and (4), F.S.
[21] Id.

the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of the proceedings.[22]

The bill amends s. 985.26, F.S. to provide that the preadjudication and postadjudication time limits for holding a child in detention care do not apply to a child held in secure detention for absconding from home or nonsecure detention, committing a new law violation, or otherwise violating the terms of release after adjudication while awaiting placement in a residential facility; escaping or absconding from certain residential, probation or other programs; or being charged with certain acts specified in current law; or intentionally failing to make a court appearance.

DETENTION FROM DISPOSITION TO PLACEMENT

Currently, there are different time frames for holding a child in detention between adjudication where a residential commitment is ordered and placement in the residential program. If awaiting placement into a residential program:

- In a low-risk residential program, the child must be removed from detention care within five days, excluding Saturdays, Sundays, and legal holidays.[23] A child placed in home detention, nonsecure detention, or home or nonsecure detention care with electronic monitoring, may be held in secure detention care for an additional five days if the child violates the conditions of the home detention or the nonsecure detention care, or the electronic monitoring agreement.[24] For any subsequent violation, the court may impose an additional five days in secure detention care.[25]
- In a moderate-risk program, the child must be removed from detention care within five days, excluding Saturdays, Sundays, and legal holidays.[26] The court may order additional time in detention, not to exceed 15 days from the commitment order.[27] A child placed in home detention, nonsecure detention, or home or nonsecure detention care with electronic monitoring may be held in secure detention care for five days if the child violates the conditions of the home detention or nonsecure detention care, or the electronic monitoring agreement.[28] For any subsequent violation, the court may impose an additional five days in secure detention care.[29]
- In a high or maximum-risk program, the child must be held in detention until placed, but detention care may be home, nonsecure, or secure.

The bill amends s. 985.27(1)(a), F.S. to increase the length of time a child awaiting placement in a low or minimum risk residential program could be held in secure detention care following commitment at disposition, and requires that the detention options of a child committed to a high risk or maximum risk residential program be limited to secure detention care.

For a child awaiting placement in a low risk program, the bill amends s. 985.27(1)(a), F.S. to provide the child could be held in secure detention for 15 additional days for a second or subsequent violation of the conditions of home or nonsecure detention care, the terms of any release, or the conditions of any electronic monitoring agreement.

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[22] Id.
[23] Section 985.27(1)(a), F.S.
[24] Id.
[25] Id.
[26] Section 985.27(1)(b), F.S.
[27] Id.
[28] Id.
[29] Id.

For a child awaiting placement in a moderate risk program, the bill amends s. 985.27(1)(b) to provide the child could be held in secure detention for 15 days. The child is required to be held in secure detention if the child is alleged to have absconded from home or nonsecure detention care, violated the terms of release or electronic monitoring, or probable cause exists that the child committed a new law violation.

JUDICIAL ROLE IN RESIDENTIAL PLACEMENT DECISIONS

Currently, if the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the DJJ, such determination must be in writing or on the record of the hearing.[30] The determination must include a specific finding of the reasons for the decision to adjudicate the child delinquent and to commit the child to the DJJ. The juvenile probation officer then recommends the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child. The court must consider the juvenile probation officer's recommendation in making its commitment decision. The court may commit the child to the DJJ at the restrictiveness level identified by the juvenile placement officer, or may order placement at a different restrictiveness level. If the court orders placement at a restrictiveness level that is different from the recommendation of the juvenile probation officer, the court must make a special finding establishing its reasons for disregarding the recommendation by a preponderance of the evidence. Any party may appeal the court's findings resulting in a modified level of restrictiveness.

On January 30, 2009, the Supreme Court of Florida clarified the rationale the court must provide if the court decides to commit the child to a restrictiveness level different from that recommended by the juvenile probation officer.[31] The Supreme Court held that the court must:

- "articulate an understanding of the respective characteristics of the opposing restrictiveness levels...;" and
- "explain logically and persuasively explain why, in light of these differing characteristics, one level is better suited to serving the rehabilitative needs of the juvenile...and the ability of the State to protect the public."[32]

The Court held that reasons unconnected to the above analysis cannot be used to explain why one restrictiveness level is more appropriate than another.[33]

The bill includes the legislative finding that the court is in the best position to determine whether or not to commit a child to the DJJ and determine the most appropriate restrictiveness level. The bill also gives the court primary authority to determine the appropriate restrictiveness level for secure residential placement. As a result, the bill changes the juvenile probation officer's role into an advisory position.[34] Specifically, it would eliminate the requirement that the court make a specific finding by a preponderance of the evidence in order to have a child placed at a restrictiveness level different than that recommended by the juvenile probation officer.

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[30] Section 985.433(7), F.S.
[31] E.A.R. v. State, 4 So. 3d. 614, (January 30, 2009).
[32] Id.
[33] Id.
[34] In practice, this provision may produce a different result in a very limited number of cases. In an effort to examine judicial satisfaction with DJJ recommended restrictiveness levels, House staff recently asked the DJJ to identify, over the last three years, the percentage of cases in which judges agreed with the restrictiveness level recommended by the Department commitment manager. This data indicated that judges agreed with the recommendations of DJJ commitment managers in the overwhelming majority of cases, on average approximately 85 percent. However, there were several circuits, the 1st, 3rd, 8th and 17th, that had consistently and substantially lower rates of agreement. All but one of these circuits are in the North Region of the Department of Juvenile Justice. *Data provided to House Juvenile Justice Staff by the Department of Juvenile Justice, October 2007.*

COURT COST FOR COUNTIES FOR JUVENILE CRIME NEEDS

The bill creates s. 938.20, F.S. to provide counties with a new revenue source of a mandatory court cost of up to $50. Proceeds from this court cost can only be used to fund local juvenile crime prevention programs, the creation of consequence or suspension centers, truancy programs, and "other such areas of local concern relating to juvenile crime." The bill provides juvenile crime prevention funds may be administered by a nonprofit agency. The juvenile crime prevention fund must provide full accounting for all funds provided by the bill to the board of county commissioners on a yearly basis. The board of county commissioners in each county would have the option to levy the additional fee. The bill provides that the court may not assess this fee if a juvenile and the parents or legal guardian of a juvenile are found to be indigent. The bill provides the clerk of the circuit court must collect fees assessed by the bill and may withhold 3 percent of the fees collected for operations relating to the clerk of the circuit court.

LEGISLATIVE INTENT

The bill provides it is the intent of the Legislature to ensure public safety and to provide appropriate and effective treatment to address physical, social, and emotional needs of juveniles, including, but not limited to, substance abuse services, mental health services, family counseling, anger management, other behavioral services, and health care services.

B. SECTION DIRECTORY:

Section 1: Creates s. 985.031, F.S., relating to preadjudicatory release; circuit court authority.

Section 2: Amends s. 985.101, F.S., relating to taking a child into custody; preadjudicatory release conditions.

Section 3: Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 4: Amends s. 985.245, F.S., relating to risk assessment instrument.

Section 5: Amends s. 985.25, F.S., relating to detention intake.

Section 6: Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 7: Amends s. 985.26, F.S., relating to length of detention.

Section 8: Amends s. 985.265, F.S., relating to detention transfer and release; education; adult jails.

Section 9: Amends s. 985.27, F.S., relating to postcommitment detention while awaiting placement.

Section 10: Creates s. 985.28, F.S., relating to appearance in court; preadjudicatory detention; contempt.

Section 11: Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.

Section 12: Amends s. 985.43, F.S., relating to predisposition reports; other evaluations.

Section 13: Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.

Section 14: Amends s. 985.439, F.S., violation of probation or postcommitment probation.

Section 15: Creates s. 938.20, F.S., relating to county juvenile crime prevention fund.

Section 16: Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by a minor under 16; limitation; possession of firearms by a minor under 18 prohibited; penalties.

Section 17: Provides this act fulfills an important state interest.

Section 18: Providing legislative intent.

Section 19: 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:

   Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. See fiscal comments.

2. Expenditures:

   Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. See fiscal comments.

D. FISCAL COMMENTS:

An identical bill was filed during the 2009 legislative session. The fiscal comments from that bill are as follows:

The bill is expected to have an indeterminate recurring fiscal impact. A provision that could or would likely generate increased detention bed utilization relates to the requirements that a child be placed in secure detention care upon intake if alleged to have absconded from home or nonsecure detention or otherwise violated the terms of post-adjudication release. Though this could have a significant bed day impact, any estimation would be highly speculative due to the number of assumptions that would comprise the estimation. Factors preventing a determinable fiscal impact of this bill may include, but are not limited to, the number of children ultimately placed in secure detention; any additional number of secure detention bed days; judicial actions; and the continuing trends of declining secure detention bed days in general.

However, the bill provides counties with a new revenue source in the form of a mandatory court cost of up to $50 that can be used to fund, among other things, the creation of consequence or suspension centers, and "such other areas of local concern relating to juvenile crime." (It is unclear if this includes county detention costs such that it could be applied to offset any increase in detention costs incurred by counties as a result of this bill.) This new revenue source could generate annual recurring revenues of at least $1.8 million based on the current 49% collection rate for similar assessments, or $3.5 million with a 100% collection rate.

The Florida Association of Counties (FAC) has noted some fiscal concerns with this legislation, as the counties in some cases, may be required to spend more resources housing juveniles than under current law. FAC is also concerned that the bill does not clearly specify that the fee can be used for the costs associated with the bill, or if it would offset potential costs.

Due to a possible increase in the number of cases processed, the courts may experience increased costs of an indeterminate amount at least initially but, over time, may find any increased costs offset by a reduction in the number of referrals. The State Courts System has reported it cannot accurately determine the judicial workload associated with the provisions in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Several sections of the bill proposing changes to state policy relative to predisposition detention, both when it can be used and the length of detention, could have the effect of requiring counties to expend funds. As a result, the requirements of Article VII, Section 18(a) of the Florida Constitution may apply. This would include the requirement that the bill be approved by a 2/3rds vote of the membership of each house on final passage.

Assuming the bill requires counties to spend funds by increasing their share of total detention costs, the next step is to determine whether or not one of several possible exemptions apply. The two exemptions most relevant to this bill would be the exemption for a criminal law and the exemption due to an insignificant fiscal impact.

With regard to the criminal law exemption, on November 12, 2004, the Circuit Court for the 2nd Judicial Circuit declared s. 985.2155, F.S.,[35] unconstitutional because it violated the mandates provision of the Florida Constitution.[36] This section of law required counties to participate in funding the cost of juvenile detention. The court found that the law did not meet any of the constitutional exemptions or exceptions and, therefore, required a 2/3rds vote for passage. The court found that it was not a criminal law. The bill did not pass by the necessary vote. This decision was not appealed and the Legislature has not defined this term pursuant to the authority granted by Art. VII, Section 18(e).

With regard to the fiscal impact exemption, the impact will be considered "insignificant" if it does not exceed an amount equal to an average of $0.10 multiplied by the current state population, or

[35] Later transferred to s. 985.686, F.S.
[36] Alachua County, Florida, et. al v. Anthony Schembri, in his capacity as Secretary of the State of Florida, Department of Juvenile Justice, et. al, (Fla. 2nd Cir. Ct.)

approximately $1.9 million for FY 2007. While it can reasonably be expected to have a negative fiscal impact on counties, the amount of any impact is indeterminate.

If the bill does not fall within one of the exemptions, it can nonetheless bind counties if it the Legislature finds that it fulfills an important state interest and meets one of several criteria. The bill does include this finding. As for meeting other criteria, the most relevant would be that the Legislature has authorized counties to enact a funding source that can be used to generate an amount of funds sufficient to fund any required expenditures. This bill does provide counties with an additional revenue source in the form of a mandatory court cost of up to $50 that could generate up to $3.5 million, depending on the assumptions utilized, to fund, among other things, the creation of consequence or suspension centers, and "such other areas of local concern relating to juvenile crime." It is unclear if this includes county detention costs such that it could be applied to offset any increase in detention costs incurred by counties as a result of this bill. If so, this could be construed as providing the necessary offsetting revenue, although the extent to which it does so depends upon the extent of any negative fiscal impact on counties as a result of this bill. (See Fiscal Comments, Section II.D., of this Analysis.)

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 13 of the bill requires the juvenile probation officer to make a recommendation to the court concerning placement and a proposed treatment plan. The court is required to consider the DJJ recommendation. The court may commit the child at the restrictiveness level at the level recommended by the DJJ or a level determined by the court. The court is specifically allowed to consider the same factors considered by the department and reach a different conclusion than reached by the DJJ. The bill eliminates the requirement in current law that the court state reasons that establish by a preponderance of the evidence why the court is disregarding the DJJ recommendation and instead only requires the court to state reasons for the disposition imposed and requires the DJJ to identify the extent to which the courts agree with the DJJ recommendation.

However, the bill maintains the current law that permits any party to appeal "the court's findings resulting in a modified level of restrictiveness." It is unclear what grounds an appellate court would use to review an appeal where a party is arguing that the modified restrictiveness level should be overturned.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to juvenile justice; creating s. 985.031, F.S.; authorizing the court to set reasonable conditions of preadjudicatory release for children charged with specified acts or who have previously been charged with or committed delinquent acts; providing examples of such conditions; amending s. 985.101, F.S.; permitting a child to be taken into custody for violations of preadjudicatory release conditions; providing that a child taken into custody for a violation of preadjudicatory release conditions must appear before a judge within 24 hours; amending s. 985.24, F.S.; providing an additional finding to support the use of secure, nonsecure, or home detention care; amending s. 985.245, F.S.; providing that placement in detention care under a specified provision does not require a risk assessment; amending s. 985.25, F.S.; providing additional grounds for placement of a child in secure detention care; amending s. 985.255, F.S.; providing for continuing home or nonsecure or home detention care or secure detention care prior to a detention hearing in certain circumstances; amending s. 985.26, F.S.; requiring that children who have been released comply with preadjudicatory release conditions; providing that certain time limits do not apply to secure detention under specified provisions; amending s. 985.265, F.S.; specifying some changed circumstances that permit the Department of Juvenile Justice to transfer a child from nonsecure or home detention care to secure detention

care; amending s. 985.27, F.S.; specifying circumstances under which a child who is awaiting placement in a low-risk or minimum-risk residential program may be held in secure detention care; providing time limits on such detention care; providing for secure detention care for absconders from specified types of care; revising provisions for detention care of a child awaiting placement in a moderate-risk residential program; providing for secure detention care in specified circumstances; creating s. 985.28, F.S.; providing for secure detention of a child in specified circumstances; permitting a parent or legal guardian of a child to be held in contempt of court if he or she knowingly and willfully fails to bring or otherwise prevents the child from appearing for trial; amending s. 985.35, F.S.; conforming a cross-reference to changes made by the act; amending s. 985.43, F.S.; conforming a cross-reference to changes made by the act; providing a legislative declaration concerning the determination whether to commit a juvenile to the department and the most appropriate placement level if the juvenile is committed; amending s. 985.433, F.S.; revising provisions relating to recommendations by probation officers to the court concerning placement and any proposed treatment plan of juveniles; specifying that the court has the power to determine appropriate dispositions; requiring that reasons for a disposition be stated for the record; amending s. 985.439, F.S.; permitting a child to be detained in a

facility other than a consequence unit if one is not available for a violation of probation or postcommitment probation under specified provisions; creating s. 938.20, F.S.; permitting each county to create a juvenile crime prevention fund; providing for an additional court cost; providing that no juvenile shall be assessed the additional court cost if the juvenile and the juvenile's parents or other legal guardian are found to be indigent; providing for administration and use of funds; amending s. 790.22, F.S.; conforming a cross-reference; providing that the act fulfills an important state interest; providing legislative intent; providing an effective date.

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

Section 1. Section 985.031, Florida Statutes, is created to read:

985.031 Preadjudicatory release; circuit court authority.--The circuit court shall have the authority to set reasonable conditions of preadjudicatory release for a child charged with the commission of a delinquent act which constitutes a felony or when the child has previously been charged with or found to have committed, regardless of adjudication, a delinquent act. The child shall comply with all such preadjudicatory release conditions prior to an adjudicatory hearing. Reasonable conditions of preadjudicatory release may include, but are not limited to, the following:

(1) The child shall not engage in a violation of law.

(2) The child shall not possess or carry any weapon.

(3) The child shall not possess or use any alcoholic beverage or illegal drug or associate with those who are currently possessing or using any alcoholic beverage or illegal drug.

(4) The child shall obey all reasonable household rules.

(5) The child shall attend school regularly, including all classes.

(6) The child shall abide by the curfew set by his or her parents or guardians, or as set by the court.

(7) The child shall have no contact with any codefendants, an alleged victim, or the family of any alleged victim.

(8) The child shall not return to the scene of the alleged crime, unless approved by the court.

Section 2. Paragraph (d) of subsection (1) of section 985.101, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

985.101 Taking a child into custody; preadjudicatory release conditions.--

(1) A child may be taken into custody under the following circumstances:

(d) By a law enforcement officer who has probable cause to believe that the child is in violation of the conditions of the child's preadjudicatory release, conditions of the child's probation, home detention, postcommitment probation, or conditional release supervision; has absconded from nonresidential commitment; or has escaped from residential commitment.

Nothing in this subsection shall be construed to allow the detention of a child who does not meet the detention criteria in part V.

(5) If a child is taken into custody under paragraph (1)(d) for a violation of the conditions of preadjudicatory release, the child must appear before a judge within 24 hours.

Section 3. Subsection (1) of section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.--

(1) All determinations and court orders regarding the use of secure, nonsecure, or home detention care shall be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;

(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;

(c) Presents a history of committing a property offense prior to adjudication, disposition, or placement;

(d) Has been adjudicated delinquent and committed to the department in a residential facility, but is on home or nonsecure detention care while awaiting placement, and:

1. Absconds from home or nonsecure detention care or otherwise violates the terms of release; or

2. There is probable cause to believe that the child has committed a new violation of law;

(e) ~~(d)~~ Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(f) ~~(e)~~ Requests protection from imminent bodily harm.

Section 4. Subsection (1) of section 985.245, Florida Statutes, is amended to read:

985.245 Risk assessment instrument.--

(1) All determinations and court orders regarding placement of a child into detention care shall comply with all requirements and criteria provided in this part and shall be based on a risk assessment of the child, unless the child is placed into detention care as provided in s. 985.255(2) or s. 985.28.

Section 5. Paragraph (b) of subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.--

(1) The juvenile probation officer shall receive custody of a child who has been taken into custody from the law enforcement agency and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is required.

(b) The juvenile probation officer shall base the decision whether ~~or not~~ to place the child into secure detention care, home detention care, or nonsecure detention care on an

assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245. However, a child shall be placed in secure detention care if:

1. The child is charged with possessing or discharging a firearm on school property in violation of s. 790.115;

2. The child is alleged to have absconded from home or nonsecure detention care or the child otherwise violates the terms of release after adjudication and commitment to the department but before placement in a residential facility; or

3. There is probable cause to believe the child has committed a new violation of law while on home or nonsecure detention care after adjudication and commitment but before placement in a residential facility ~~shall be placed in secure detention care~~.

Under no circumstances shall the juvenile probation officer or the state attorney or law enforcement officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults, without an order of the court.

Section 6. Subsections (1) and (3) of section 985.255, Florida Statutes, are amended to read:

985.255 Detention criteria; detention hearing.--

(1) Subject to s. 985.25(1), a child taken into custody and placed into nonsecure or home detention care or detained in secure detention care prior to a detention hearing may continue to be detained by the court if:

(a) The child is alleged to have absconded from home or nonsecure detention care or otherwise violates the terms of release after adjudication and commitment but while awaiting placement in a residential facility.

(b) There is probable cause to believe the child has committed a new violation of law while on home or nonsecure detention care after adjudication and commitment but while awaiting placement in a residential facility.

(c) ~~(a)~~ The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(d) ~~(b)~~ The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(e) ~~(c)~~ The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(f) ~~(d)~~ The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(g) ~~(e)~~ The child is charged with possession or discharging a firearm on school property in violation of s. 790.115.

(h) ~~(f)~~ The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a

felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(i) ~~(g)~~ The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations prior to court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(j) ~~(h)~~ The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child may be placed in secure detention care, home detention care, or home detention care with electronic monitoring ~~shall be placed on home detention with electronic monitoring~~.

(k) ~~(i)~~ The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, for an adjudicatory hearing on the same case regardless of the results of the risk assessment

instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(1) ~~(j)~~ The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(3)(a) A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into custody. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(a), paragraph (1)(b), paragraph (1)(f) ~~(d)~~, or paragraph (1)(g) ~~(e)~~, the court shall use the results of the risk assessment performed by the juvenile

probation officer and, based on the criteria in subsection (1), shall determine the need for continued detention. A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court. A child detained under paragraph (1)(a) or paragraph (1)(b) may be placed into secure detention care pending placement in a residential facility.

(c) Except as provided in paragraph (1)(a), paragraph (1)(b), s. 790.22(8), or ~~in~~ s. 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4).

Section 7. Section 985.26, Florida Statutes, is amended to read:

985.26 Length of detention.--

(1) A child may not be placed into or held in secure, nonsecure, or home detention care for longer than 24 hours unless the court orders such detention care, and the order includes specific instructions that direct the release of the child from such detention care, in accordance with s. 985.255. The order shall be a final order, reviewable by appeal under s. 985.534 and the Florida Rules of Appellate Procedure. Appeals of such orders shall take precedence over other appeals and other pending matters.

(2) A child may not be held in secure, nonsecure, or home detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court. However, upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. For purposes of this subsection, if a child is released, the child must comply with all conditions of preadjudicatory release set by the circuit court.

(3) Except as provided in subsection (2), a child may not be held in secure, nonsecure, or home detention care for more than 15 days following the entry of an order of adjudication.

(4) The time limits in subsections (2) and (3) do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of proceedings for the child or the state.

(5) The time limits required under this section do not apply to children held in secure detention care pursuant to ss. 985.255(1)(a) and (b) and (3), 985.27(1)(a) and (b), and 985.28.

(6)~~(5)~~ A child who was not in secure detention care at the time of the adjudicatory hearing, but for whom residential commitment is anticipated or recommended, may be placed under a special detention order for a period not to exceed 72 hours, excluding weekends and legal holidays, for the purpose of conducting a comprehensive evaluation as provided in s. 985.185. Motions for the issuance of such special detention order may be made subsequent to a finding of delinquency. Upon said motion, the court shall conduct a hearing to determine the appropriateness of such special detention order and shall order the least restrictive level of detention care necessary to complete the comprehensive evaluation process that is consistent with public safety. Such special detention order may be extended for an additional 72 hours upon further order of the court.

(7)~~(6)~~ If a child is detained and a petition for delinquency is filed, the child shall be arraigned in accordance with the Florida Rules of Juvenile Procedure within 48 hours after the filing of the petition for delinquency.

Section 8. Subsection (1) of section 985.265, Florida Statutes, is amended to read:

985.265 Detention transfer and release; education; adult jails.--

(1) If a child is detained under this part, the department may transfer the child from nonsecure or home detention care to secure detention care only if significantly changed

circumstances warrant such transfer. Such circumstances include, but are not limited to:

(a) Where a child is alleged to have absconded from home or nonsecure detention care or otherwise violates the terms of release after adjudication and commitment but while awaiting placement in a residential facility; or

(b) Where probable cause exists that a child has committed a new violation of law while on home or nonsecure detention care after adjudication and commitment but while awaiting placement in a residential facility.

Section 9. Subsection (1) of section 985.27, Florida Statutes, is amended to read:

985.27 Postcommitment detention while awaiting placement.--

(1) The court must place all children who are adjudicated and awaiting placement in a commitment program in secure detention care, home detention care, or nonsecure detention care. Children who are in home detention care or nonsecure detention care may be placed on electronic monitoring.

(a) A child who is awaiting placement in a low-risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. A child who is placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, while awaiting placement in a minimum-risk or low-risk program, may be held in secure detention care for 5 days, if the child violates

the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 15 ~~5~~ days, excluding Saturdays, Sundays, and legal holidays, in secure detention care.

(b) 1. A child who is awaiting placement in a moderate-risk residential program must be placed in secure detention care, home detention care, or nonsecure detention care. Any child held in secure detention care must meet detention admission criteria under this part.

2. A child may not be held in secure detention care longer than 15 days, excluding Saturdays, Sundays, and legal holidays, while awaiting placement in a moderate-risk residential facility, except that any child shall be held in secure detention care until placed in a residential facility if:

a. The child is alleged to have absconded from home detention care or nonsecure detention care or otherwise violated the terms of release or electronic monitoring; or

b. Probable cause exists that a child committed a new violation of law while on home detention care, nonsecure detention care, or electronic monitoring and the child is awaiting placement in a residential program ~~A child who is awaiting placement in a moderate risk residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays~~. ~~Any child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time~~

~~necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in home detention care, nonsecure detention care, or home or nonsecure detention care with electronic monitoring, while awaiting placement in a moderate-risk program, may be held in secure detention care for 5 days, if the child violates the conditions of the home detention care, the nonsecure detention care, or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

(c) If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

(d) If the child is committed to a maximum-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.

Section 10. Section 985.28, Florida Statutes, is created to read:

985.28 Appearance in court; preadjudicatory detention; contempt.--

(1) A child may be held in secure detention care if, after proper notice, the child fails to appear in court because the child refuses to appear, runs away, or otherwise intentionally avoids his or her appearance. The court may hold the child in

secure detention care until the trial concludes, regardless of the results of the risk assessment instrument.

(2) A parent or legal guardian, after being properly noticed, who knowingly and willfully fails to bring or otherwise prevents a child from appearing for trial may be held in contempt of court.

Section 11. Subsection (1) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.--

(1) The adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations in s. 985.26(2) ~~and (3)~~ apply.

Section 12. Paragraph (c) of subsection (1) of section 985.43, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

985.43 Predisposition reports; other evaluations.--

(1) Upon a finding that the child has committed a delinquent act:

(c) A child who was not in secure detention at the time of the adjudicatory hearing, but for whom residential commitment is anticipated or recommended, may be placed under a special

detention order, as provided in s. 985.26(6) ~~(5)~~, for the purpose of conducting a comprehensive evaluation.

(4) The Legislature finds that the court is in the best position to weigh all facts and circumstances to determine whether or not to commit a juvenile to the department and to determine the most appropriate restrictiveness level for a juvenile committed to the department.

Section 13. Paragraphs (a) and (b) of subsection (7) of section 985.433, Florida Statutes, are amended to read:

985.433 Disposition hearings in delinquency cases.--When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(7) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding of the reasons for the decision to adjudicate and to commit the child to the department, including any determination that the child was a member of a criminal gang.

(a) The juvenile probation officer shall make a recommendation to the court concerning placement and any proposed treatment plan ~~recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level most appropriate for the child~~. If the court has determined that the child was a member of a criminal gang, that determination shall be given great

weight in identifying the most appropriate restrictiveness level for the child. The court shall consider the department's recommendation in making its commitment decision.

(b) The court may ~~shall~~ commit the child to the department at the restrictiveness level identified by the department, or the court may order placement at a different restrictiveness level. The court may determine the disposition on the same factors as the department considered in the department's predisposition report and placement recommendation even if the court reaches a different conclusion. The court may commit the child to a different restrictiveness level than recommended by the department. The court shall state for the record the reasons for the disposition imposed ~~that establish by a preponderance of the evidence why the court is disregarding the assessment of the child and the restrictiveness level recommended by the department~~. Any party may appeal the court's findings resulting in a modified level of restrictiveness under this paragraph. The department shall maintain data to identify the extent to which the courts agree with the department's recommendation.

Section 14. Subsection (2) of section 985.439, Florida Statutes, is amended to read:

985.439 Violation of probation or postcommitment probation.--

(2) A child taken into custody under s. 985.101 for violating the conditions of probation or postcommitment probation shall be held in a consequence unit if such a unit is available or may be detained under part V in a facility other than a consequence unit if one is not available. The child shall

be afforded a hearing within 24 hours after being taken into custody to determine the existence of probable cause that the child violated the conditions of probation or postcommitment probation. A consequence unit is a secure facility specifically designated by the department for children who are taken into custody under s. 985.101 for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation. If the violation involves a new charge of delinquency, the child may be detained under part V in a facility other than a consequence unit. If the child is not eligible for detention for the new charge of delinquency, the child may be held in the consequence unit pending a hearing and is subject to the time limitations specified in part V.

Section 15. Section 938.20, Florida Statutes, is created to read:

938.20 County juvenile crime prevention fund.--

(1) Notwithstanding s. 318.121, and in addition to ss. 938.19 and 939.185, in each county the board of county commissioners may adopt a mandatory court cost to be assessed in specific cases by incorporating by reference the provisions of this section in a county ordinance. Assessments collected by the clerk of the circuit court under this section shall be deposited into an account specifically for the administration of the county's juvenile crime prevention fund. The proceeds of the county's juvenile crime prevention fund shall only be used to fund local programs whose principal focus is the prevention of juvenile crime, the creation of consequence or suspension

centers, and truancy programs and such other areas of local concern relating to juvenile crime.

(2) A sum of up to $50 shall be assessed as a court cost in the circuit court in the county against each juvenile who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a delinquent act. A juvenile may not be assessed court costs under this section if the juvenile and the juvenile's parents or other legal guardian are found to be indigent.

(3) The assessment for court costs under this section shall be assessed in addition to any other cost or fee and may not be deducted from the proceeds of any other cost that is received by the county.

(4)(a) The clerk of the circuit court shall collect the assessments for court costs under this section and shall remit the assessments to the county's juvenile crime prevention fund monthly.

(b) The clerk of the circuit court shall withhold 3 percent of the assessments collected, which shall be retained as fee income of the office of the clerk of the circuit court.

(5) A county's juvenile crime prevention fund must account for all funds received and disbursed under this section in a written report to the board of county commissioners of that county. The report must be given to the commissioners by August 1 of each year unless a different date is required by the commissioners.

(6) A county's juvenile crime prevention fund may be administered by a nonprofit organization, a law enforcement

agency, the court administrator, the clerk of the circuit court, a county agency, or another similar agency authorized by the board of county commissioners of that county.

Section 16. Subsection (8) of section 790.22, Florida Statutes, is amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.--

(8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor under 18 years of age is charged with an offense that involves the use or possession of a firearm, as defined in s. 790.001, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 985.26(1)-(6) ~~(1)-(5)~~, if the court finds that the minor meets the criteria specified in s. 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection that states the period of detention and the relevant demographic information, including, but not limited to, the sex, age, and race of the minor; whether or not the minor was

represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge to be considered when determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department. The Department of Juvenile Justice must send the form, including a copy of any order, without client-identifying information, to the Office of Economic and Demographic Research.

Section 17. The Legislature determines and declares that this act fulfills an important state interest.

Section 18. It is the intent of the Legislature with this act to ensure public safety and to provide appropriate and effective treatment to address physical, social, and emotional needs of juveniles, including, but not limited to, substance abuse services, mental health services, family counseling, anger management, other behavioral services, and health care services.

Section 19. This act shall take effect July 1, 2010.

HB 541

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 541 Expunging Criminal History Records
SPONSOR(S): Thurston
TIED BILLS: **IDEN./SIM. BILLS:** SB 1214

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

SUMMARY ANALYSIS

When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Records that have been expunged are confidential and exempt from the public records law. Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except in specific instances.

Contrary to current law, HB 541 will allow multiple, automatic expunctions of criminal history records that will not require a certificate of eligibility from FDLE or a $75 processing fee.

A person is eligible for this type of expunction if they were found not guilty or acquitted by a judge or jury; or the indictment, information, or other charging document was:

- Not filed or issued in the case; or
- Filed and was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction.

If a person was adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity or delinquent act, the record does not qualify for the automatic expunction.

The bill creates cross-references in various statutes related to eligibility for expunction.

The bill has a significant negative fiscal impact on FDLE.

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Sealing and Expunction of Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The Florida Department of Law Enforcement (FDLE) can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.[1]

When a criminal history record is expunged, criminal justice agencies other than FDLE must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.[2]

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first-degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.[3]

A person who has had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their sealed or expunged record, except when they are applying for certain types of employment,[4] petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[5]

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[1] Section 943.0581, F.S.

[2] Section 943.0585(4), F.S.

[3] Section 943.0585(4)(c), F.S.

[4] These types of employment include: law enforcement, the Florida Bar, working with children, the developmentally disabled, or the elderly through the Department of Children and Families, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities, or a Florida seaport.

[5] Section 943.0585(4)(a), F.S.

In 1992, the Legislature amended the sealing and expunction statutes to require a person seeking a sealing or expunction to first obtain a certificate of eligibility (certificate) from FDLE. Before a person can petition the court to seal or expunge a criminal history record, they must receive a certificate of eligibility from FDLE. In order to receive a certificate, a person must:

(1) Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor that indicates an indictment, information, or other charging document was not filed or issued in the case or if filed and was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction. Charges related to the record the person wishes to expunge cannot have resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

Criminal history records relating to certain offenses[6] in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, *regardless of whether adjudication is withheld*,[7] may not be sealed or expunged.[8]

(2) Pay a $75 processing fee.

(3) Submit a certified copy of the disposition of the record they wish to have expunged.

(4) Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in 943.051(3)(b), F.S.,[9] prior to the date of their application for the certificate.[10]

(5) Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged.

(6) Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction. A record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.[11]

This requirement does not apply when a plea was not entered or all charges relating to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed prior to trial.[12]

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[6] These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

[7] A withhold of adjudication is a manner of disposition in which the court does not pronounce a formal judgment of conviction. http://www.flcourts.org/gen_public/pubs/bin/srsmanual/Glossary_2002.pdf (Last visited March 12, 2010).

[8] Sections 943.059 and 943.0585, F.S.

[9] These offenses include: assault, as defined in s. 784.011; battery, as defined in s. 784.03; carrying a concealed weapon, as defined in s. 790.01(1); unlawful use of destructive devices or bombs, as defined in s. 790.1615(1); negligent treatment of children, as defined in s. 827.05; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b); open carrying of a weapon, as defined in s. 790.053; exposure of sexual organs, as defined in s. 800.03; unlawful possession of a firearm, as defined in s. 790.22(5); petit theft, as defined in s. 812.014(3); cruelty to animals, as defined in s. 828.12(1); arson, as defined in s. 806.031(1); and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

[10] Section 943.0585(2)(d), F.S.

[11] Section 943.0585(2)(h), F.S.

[12] *Id.*

(7) No longer be under any court supervision related to the disposition of the record they wish to have expunged.

In addition to the certificate, the petitioner must also submit a sworn statement that they:

- have not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses;
- have not been adjudicated guilty or delinquent for any of the charges they are currently trying to have sealed or expunged;
- have not obtained a prior sealing or expunction; and
- are eligible to the best of their knowledge and has no other pending expunction or sealing petitions before the court.[13]

Any person knowingly providing false information on the sworn statement commits a felony of the third degree.[14]

If the person meets the statutory criteria based on FDLE's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.[15] It is then up to the court to decide whether the sealing or expunction is appropriate.[16]

FDLE currently processes about 1,000 court orders per month that meet the sealing and expunging criteria.[17]

Sealing and Expunging Juvenile Records

Juveniles have a few more options than adults do when choosing to have a record expunged. If a juvenile successfully completes a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor, he or she is eligible to have the arrest expunged providing there is no other past criminal history. This expunction does not prohibit the juvenile from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.[18]

Juvenile delinquency criminal history records maintained by the FDLE are also expunged automatically when the juvenile turns 24 years of age (if he or she is not a serious or habitual juvenile offender or committed to a juvenile prison) or 26 years of age (if he or she was a serious or habitual juvenile offender or was in a juvenile prison), as long as the juvenile is not arrested as an adult or adjudicated as an adult for a forcible felony.[19] This automatic expunction does not prohibit the juvenile from requesting a sealing or expunction under s. 943.0585 or s. 943.095, F.S., if he or she is otherwise eligible.

Criminal history records are public records under Florida law and must be disclosed unless they have been sealed or expunged or have otherwise been exempted or made confidential.[20] Fingerprints are exempt and are not disclosed by the FDLE. Juvenile criminal history information that has been compiled and maintained by the FDLE since July 1, 1996, is also considered by the department to be a public record, including felony and misdemeanor criminal history information.[21] However, an ongoing lawsuit was filed by the Public Defender's Office in the Eleventh Judicial Circuit Court in Miami-Dade

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[13] Section 943.0585(1)(b), F.S.

[14] Section 943.0585(1), F.S.

[15] Section 943.0585(2), F.S.

[16] Section 943.0585(3)(b), F.S.

[17] FDLE 2010 Analysis of HB 541.

[18] Section 943.0582, F.S.

[19] Section 943.0515(1) and (2), F.S.

[20] Section 119.07(1), F.S., s. 24(a), Art. I, State Constitution.

[21] Section 943.053(3)(a), F.S., ch. 96-388, L.O.F.

County, which challenges the department's position based upon the general confidentiality provisions for juvenile records in s. 985.04 (1), F.S.[22]

Effect of Proposed Changes

HB 541 allows for an automatic expunction of criminal history records if the person was found not guilty or acquitted by a judge or jury; or the indictment, information, or other charging document was:

- Not filed or issued in the case; or
- Filed and was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction.

If a person was adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity or delinquent act, the record does not qualify for expunction.

The petition a person would file for the automatic expunction of a criminal record only requires a certified copy of the disposition of the offense sought to be sealed. There is no requirement for a certificate of eligibility through FDLE or a sworn statement by the petitioner.

Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or adult who qualifies for the automatic expunction.

The petition will be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency. The appropriate statewide prosecutor or arresting agency may respond to the court regarding the completed petition.

The court may order the expunction of a criminal history that pertains to more than one arrest or one incident of alleged criminal activity if a person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity or delinquent act they are seeking to have expunged.

If the petitioner is granted relief, the clerk of the court will certify copies of the order to the appropriate state attorney or statewide prosecutor, to the county, and to the arresting agency. Each of these entities must forward the order to other entities to which they have disseminated the now expunged criminal history record.

FDLE or other criminal justice agencies are not required to act on orders to expunge entered by the court when the order does not comply with the requirements of this section. When such an order is received, FDLE must notify the issuing court, the prosecutor or statewide prosecutor, the petitioner or the petitioner's attorney and the arresting agency within 5 business days. The state attorney or statewide prosecutor will take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, will be filed against any criminal justice agency for failure to comply with an order when such an order to expunge does not comply with the requirements of this section.

Any expunctions granted under this section will not prevent a person from petitioning for a sealing or expunction provided in ss. 943.0585 or 943.059, F.S., if they are otherwise eligible.

The bill provides that a minor who participates in a prearrest, postarrest, or teen court diversion is eligible to have the related record expunged by the automatic expunction process created by this bill. In addition, a person who has their charges dismissed after participation in a treatment-based drug court program is also eligible to have the record expunged through automatic expunction.

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[22] *G.G. v. FDLE*, Case No.: 07-00599 CA 21 (Miami-Dade Circuit Court); Section 985.04(1), F.S., provides that juvenile records are confidential, subject to specified exceptions, and limited disclosure to certain enumerated entities or upon court order. Subsection (2) generally allows for the disclosure of an arrest report for a juvenile arrested for a felony or an arrest report for a juvenile found by a court to have committed three or more misdemeanor offenses.

The bill also provides that if a person is petitioning to have a record sealed or expunged under ss. 943.0585 or 943.059, F.S., it is unlawful to deny or fail to acknowledge arrests covered by the record sought to have sealed or expunged if the subject of the record concurrently or subsequently petitions for the automatic expunction of a criminal history record.

Finally, the bill states that the automatic expunction statute it creates will not affect any administrative expunction of a person's criminal record resulting from a wrongful arrest, conviction, and incarceration.

B. SECTION DIRECTORY:

Section 1. Creates s. 943.095, F.S., relating to automatic qualification for expunction of criminal history record if no finding of guilt.

Section 2. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 3. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 4. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 5. Amends s. 948.08, F.S., relating to pretrial intervention program.

Section 6. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

Section 7. Amends s. 961.06, F.S., relating to compensation for wrongful incarceration.

Section 8. Amends s. 985.345, F.S., relating to delinquency pretrial intervention program.

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:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may require local and county criminal justice agencies to process additional court orders generated by the automatic expunction of criminal history records. State attorneys may have extensive

new workloads in determining eligibility prior to court actions. Legal staff will have to address cases where FDLE notifies them that an order was issued in error.

D. FISCAL COMMENTS:

FDLE reports that based on an analysis of subjects in the Computerized Criminal History (CCH) file with one or more arrest records which would qualify for automatic expunction, approximately 1,893,440 individuals could potentially petition for an "automatic" expunction under this bill. Of these, about 6% (106,570) subjects have applied for a Certificate of Eligibility under the current law. This leaves 1,787,407 additional subjects that could be eligible to request an expunction without receiving a prior Certificate of Eligibility from FDLE.

FDLE further analyzes that while it is not likely that all 1,787,407 of the subjects would apply to a court for an expunction, a significant number can be expected to. If only 5% of the potential is realized over a year, the total estimated workload would increase by 89,370.

Based on the 5% potential increase:

- 17 additional Criminal Justice Customer Service Specialist (CJCSS) positions would be required to complete the evaluation and affect the expunctions in the state criminal history filet, and
- 2 additional Government Analysts would be required to contact the courts and the state attorney in regards to court orders issued in error and other issues and questions.

Because there is no certificate of eligibility, there is no revenue to cover this new workload.

FDLE estimates that revenues can be expected to decrease, an estimated 6% the first year, and decreasing additionally by about 8% each subsequent year as the number of subjects who are eligible under this bill will no longer need to pay the fee for the certificate of eligibility.

	(FY 10-11) Amount / FTE	(FY 11-12) Amount / FTE	(FY 12-13) Amount / FTE
A. Revenues			
1. Recurring	-90,000	-97,200	-104,976

(Decrease in revenue for individuals who would apply for a certificate under the current law and would be able to petition the court without a Certificate of Eligibility under this bill.)

2. Non-Recurring

B. Expenditures (see charts below)

Positions 17 Criminal Justice Customer Service Specialists salary & benefits	**$726,999**	**$726,999**	**$726,999**
Standard Expense for 17 Positions	**$176,545**	**$110,636**	**$110,636**
Standard HR Services for 17 Positions	**$6,783**	**$6,783**	**$6,783**

Positions 2 Government Analyst salary & benefits	**$100,652**	**$100,652**	**$100,652**
Standard Expense for 2	**$20,770**	**$13,016**	**$13,016**

Positions			
Standard HR Services for 2 Positions	**$798**	**$798**	**$798**

Total Salary & Benefits for 19 positions	**$827,651**	**$827,651**	**$827,651**
Total Expenses for 19 Positions	**$197,315**	**$123,652**	**$123,652**
Total HR Services for 19 Positions	**$7,581**	**$7,581**	**$7,581**
TOTAL 19 Positions	**$1,032,547**	**$958,884**	**$958,884**

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:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires "the county" to forward the court's order to expunge a criminal history record to any agency, organization, or company to which the county has disseminated said record. It is unclear which agency "the county" may refer to. In addition, it is unclear if the intent of the court's order is to bind private companies or parties, which may include LexisNexis or Google.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to expunging criminal history records; creating s. 943.0595, F.S.; permitting automatic expunction of criminal history records in specified circumstances; providing procedures; providing for effect of expunction; providing for treatment of certain statutory cross-references; amending ss. 943.0582, 943.0585, 943.059, 948.08, 948.16, 961.06, and 985.345, F.S.; conforming provisions; providing an effective date.

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

Section 1. Section 943.0595, Florida Statutes, is created to read:

943.0595 Automatic qualification for expunction of criminal history record if no finding of guilt.—

(1) QUALIFICATION.—

(a) Notwithstanding any law dealing generally with the preservation and destruction of public records, a criminal history record relating to a person who has not been found guilty of, or not pled guilty or nolo contendere to, an offense automatically qualifies for expunction. The record shall be expunged if:

1. An indictment, information, or other charging document was not filed or issued in the case;

2. An indictment, information, or other charging document was filed or issued in the case and was dismissed or nolle

prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction; or

3. The person was found not guilty or acquitted by a judge or jury.

(b) If the person was adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity or delinquent act, the record does not qualify for automatic expunction.

(2) PETITION.—Each petition to a court to expunge a criminal history record is complete only when accompanied by a certified copy of the disposition of the offenses sought to be sealed.

(3) PROCESSING OF PETITION.—

(a) A certificate of eligibility for expunction from the department shall not be required under this section.

(b) Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult whose record qualifies for automatic expunction under this section.

(c) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(d) Notwithstanding ss. 943.0585 and 943.059 and any other provision of law, the court may order expunction of a criminal history record pertaining to more than one arrest or one incident of alleged criminal activity if the person has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity or delinquent act to which the petition to expunge pertains.

(e) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor, to the county, and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency that court records indicate has received the criminal history record from the court. The county is responsible for forwarding the order to any agency, organization, or company to which the county disseminated the criminal history information to which the order pertains.

(f) The department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or the statewide prosecutor, the petitioner or the petitioner's

attorney, and the arresting agency within 5 business days after determining that the department or the agency cannot comply with the court order. The appropriate state attorney or the statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when such order does not comply with the requirements of this section.

(g) An order expunging a criminal history record pursuant to this section does not require that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(4) SECTION NOT EXCLUSIVE.—Expunction granted under this section does not prevent the person who receives such relief from petitioning for the expunction or sealing of a criminal history record as provided for in ss. 943.0585 and 943.059 if the person is otherwise eligible under those sections.

(5) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 2. Subsection (6) of section 943.0582, Florida Statutes, is amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(6) Expunction or sealing granted under this section does not prevent the minor who receives such relief from petitioning

for the expunction or sealing of a later criminal history record as provided for in ss. 943.0585, ~~and~~ 943.059, and 943.0595 if the minor is otherwise eligible under those sections.

Section 3. 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, or s. 943.0595;

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(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 4. 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, or s. 943.0595;

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(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 5. Paragraph (b) of subsection (6) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.—

(6)

(b) While enrolled in a pretrial intervention program authorized by this subsection, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(4). The coordinated strategy 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 as defined in s. 397.311 or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court. 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. 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 or s. 943.0595.

Section 6. Paragraph (b) 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)

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(4). The coordinated strategy 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 as defined in s. 397.311 or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court. 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. 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 or s. 943.0595.

Section 7. Paragraph (e) of subsection (1) of section 961.06, Florida Statutes, is amended to read:

961.06 Compensation for wrongful incarceration.—

(1) Except as otherwise provided in this act and subject to the limitations and procedures prescribed in this section, a person who is found to be entitled to compensation under the provisions of this act is entitled to:

(e) Notwithstanding any provision to the contrary in s. 943.0585 or s. 943.0595, immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. The Department of Legal Affairs and the Department of Law Enforcement shall, upon a determination that a claimant is entitled to compensation, immediately take all action necessary to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived.

The total compensation awarded under paragraphs (a), (c), and (d) may not exceed $2 million. No further award for attorney's fees, lobbying fees, costs, or other similar expenses shall be made by the state.

Section 8. Subsection (2) of section 985.345, Florida Statutes, is amended to read:

985.345 Delinquency pretrial intervention program.—

(2) While enrolled in a delinquency pretrial intervention program authorized by this section, a child is subject to a coordinated strategy developed by a drug court team under s. 397.334(4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the child 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 as defined in s. 397.311 or serving a period of secure detention under this

chapter. The coordinated strategy must be provided in writing to the child before the child agrees to enter the pretrial treatment-based drug court program or other pretrial intervention program. Any child 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 or s. 943.0595.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 State Attorneys
SPONSOR(S): Ray
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 296

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

SUMMARY ANALYSIS

HB 761 removes requirements that state attorneys document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to various criminal statutes and report to the Legislature and Governor about such deviations. Specifically, the bill:

- Removes the requirement that state attorneys document in the case file why a defendant did not receive the minimum mandatory sentence pursuant to the "10-20-Life" statute and eliminates the requirement that state attorneys submit an annual report to the Speaker, the President of the Senate, and the Executive Office of the Governor regarding the prosecution and sentencing of defendants pursuant to that statute;

- Removes the requirement that state attorneys document in the case file why certain prison releasee reoffenders did not receive the minimum mandatory sentence and report such information to the Florida Prosecuting Attorneys Association;

- Repeals a statute requiring state attorneys to adopt uniform criteria when deciding to pursue habitual felony offender, habitual violent felony offender, or violent career criminal sanctions and to report such criteria to the Florida Prosecuting Attorneys Association; and

- Repeals a statute require state attorneys to develop written policies and guidelines to govern determinations for filing an information on a juvenile and submit those guidelines to the Speaker, Executive Office of the Governor, and the President of the Senate.

Current law requires the clerks of court to withhold sufficient funds to pay unpaid court fees, court costs, and criminal penalties from the return of a cash bond posted on behalf of a defendant. The bill requires clerks of the court to withhold costs of prosecution in addition to the other costs and penalties.

Current law provides that persons convicted of crimes or found to have violated probation or community control are liable for the costs of prosecution. This bill provides that persons whose cases are disposed of by diversionary alternatives are also liable for costs of prosecution. The bill requires that costs of prosecution be assessed in each case number before the court.

The bill requires a person seeking to have a criminal history record expunged or sealed to pay a $75 processing fee to the state attorney.

This bill may have a positive fiscal impact and becomes effective on July 1, 2010. See "Fiscal Analysis."

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:

Changes in Requirements Relating to Reports Created by State Attorneys

Current law requires the state attorneys to create reports for the Legislature and the governor relating to deviations from minimum mandatory sentences in certain habitual offender, releasee reoffender, and firearm statutes. The state attorneys are also required to establish procedures when juveniles can be prosecuted as adults. This bill repeals or modifies some of these requirements.

Section 775.087, Florida Statutes, contains mandatory minimum sentences when a criminal possesses or uses a firearm during the commission of certain crimes.[1] Section 27.366, Florida Statutes, requires the state attorneys to explain in writing each case where an offender qualifies for enhanced sentencing under section 775.087 but does not receive the minimum mandatory sentence. A similar requirement that the state attorney create memoranda to explain why an offender did not receive the minimum mandatory sentence is also contained in subsection 775.087(5), Florida Statutes. The state attorney must supply copies of these memoranda to the Florida Prosecuting Attorneys Association ("Association"). This bill eliminates the requirement that the state attorney create the memoranda and file them with the Association.

Section 27.366, Florida Statutes, also requires the state attorneys to prepare a report relating to age, gender, race, and ethnicity of offenders who met the criteria in sections 775.087(2) and 775.087(3) and supply that report to the Speaker, the President of the Senate, and the Executive Office of the Governor. This bill eliminates the requirement that this report be prepared and filed. Representatives of the Association have stated that such information will continue to be available but the bill will eliminate the necessity of yearly reports.[2]

Subsection 775.082(9), Florida Statutes, provides for enhanced sentencing for prison releasee reoffenders[3] , including minimum mandatory sentences. Paragraph 775.082(9)(d) requires the state attorney to place memoranda in the files of cases where an offender meets the criteria to be sentenced as a prison releasee reoffender but does not receive the minimum mandatory sentence and provide copies of the memoranda to the Florida Prosecuting Attorneys Association. This bill eliminates the requirement that the state attorney create the memoranda and file them with the Association.

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[1] This provision is commonly known as the "10-20-Life" law.
[2] Interview with staff of the Public Safety and Domestic Security Policy Committee, March 9, 2010.
[3] Persons who commit specified crimes within 3 years of being released from prison.

Section 775.08401, Florida Statutes, requires the state attorneys to adopt criteria to determine when to pursue habitual felony offender sanctions, habitual violent felony offender sanctions, and violent career criminal sanctions and report these criteria to the Association. Deviations from the criteria must documented by the state attorney. This bill repeals section 775.08401.

Subsection 985.557(4), Florida Statutes, requires a state attorney to develop written policies to govern determinations for filing an information on a juvenile and submit those policies to the Speaker, the President of the Senate, and the Executive Office of the Governor each year. This bill repeals subsection 985.557(4), Florida Statutes.

Collection of Costs of Prosecution

Section 903.286, Florida Statutes, requires the clerk of the court to withhold funds to cover unpaid court fees, court costs, and criminal penalties from the return of a cash bond posted on behalf of a criminal defendant by persons other than bail bond agents. This bill requires the clerk to withhold costs of prosecution in addition to the other costs and fees.

This bill requires the clerk of the court to separately record each assessment and each payment of the costs of prosecution. The clerk of the court must provide monthly reports to the state attorney's office of the assessments and payments recorded.

Persons convicted of crimes or found to have violated probation or community control are liable for payment of the costs of prosecution pursuant to section 938.27, Florida Statutes. Costs include investigative costs incurred by law enforcement agencies, by fire departments, and by investigations by the Department of Financial Services and the Office of Financial Regulation.[4] This bill makes persons who cases are disposed of through diversionary alternatives to prosecution liable for costs as well. It requires the clerk of the court to assess costs in all cases before the court.

Sealing and Expunging Criminal History Records

Sections 943.0585 and 943.059, Florida Statutes, set forth procedures for sealing and expunging criminal history records. When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the Florida Department of Law Enforcement ("FDLE").[5] When a record is sealed it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.[6] Records that have been sealed or expunged are confidential and exempt from the public records law in many circumstances.[7]

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[8]

In order to obtain seal or expunge criminal history records, a person must obtain a certificate of eligibility from the FDLE and file a petition with the court. It currently costs $75 to obtain a certificate of eligibility from the FDLE. This bill would require persons seeking to seal or expunge criminal history records to pay an additional $75 to the state attorney's grants and donations trust fund unless the fee is waived by the state attorney.

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

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[4] See § 928.27(1), Florida Statutes.
[5] See § 943.0585(4), Florida Statutes.
[6] See § 943.059(4), Florida Statutes.
[7] See §§ 943.0585(4)(c) and 943.059(4)(c), Florida Statutes.
[8] See §§ 943.0585(4) and 943.059(4), Florida Statutes.

B. SECTION DIRECTORY:

Section 1: Amends s. 27.366, F.S., relating to legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3).

Section 2: Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 3: Repeals s. 775.08401, F.S., relating to habitual offenders and habitual violent felony offenders; violent career criminals; eligibility criteria.

Section 4: Repeals s. 775.087(5), F.S., relating to a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain specified offenses.

Section 5: Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 6: Amends s. 938.27, F.S., relating to judgment for costs on conviction and disposition.

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: Repeals subsection (4) of s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 10: Amends s. 775.0843, F.S., relating to policies to be adopted for career criminal cases.

Section 11: Provides effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides that each person filing to have a criminal history record sealed or expunged pay a $75 fee to the state attorney for deposit in the state attorney's grants and donations fund unless the fee is waived by the state attorney. In FY 2008-2009, the court processed 14,851 petitions to seal or expunge criminal history records.[9] If a $75 fee were imposed, this would have generated $1,113,825 for the grants and donations trust fund.

The bill provides that persons whose cases are disposed of under diversionary alternatives would be assessed costs of prosecution. The amount of revenue generated by this change is not known.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

[9] Information provided by the FDLE (on file with the Committee on Public Safety and Domestic Security).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons seeking to have criminal records sealed or expunged will have to pay an additional $75 fee unless the fee is waived by the state attorney.

D. FISCAL COMMENTS:

The bill would relieve the state attorneys of duties relating to preparing reports and documenting some charging and sentencing information in the file. The fiscal impact, if any, of this change is not known.

The bill requires that costs of prosecution be assessed in all cases before the court. It is not known how much revenue this provision would generate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to state attorneys; amending s. 27.366, F.S.; deleting a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving the possession or use of a weapon; amending s. 775.082, F.S.; deleting a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain specified offenses; repealing s. 775.08401, F.S., relating to criteria to be used when state attorneys decide to pursue habitual felony offenders, habitual violent felony offenders, or violent career criminals; repealing s. 775.087(5), relating to a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain specified offenses; amending s. 903.286, F.S.; requiring the clerk of the court to withhold sufficient funds to pay any unpaid costs of prosecution from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent; amending s. 938.27, F.S.; providing that persons whose cases are disposed of under any diversionary alternative are liable for payment of the costs of prosecution; deleting provisions regarding the burden of establishing financial resources of the defendant; requiring the clerk of court to separately record each assessment and payment of costs of

prosecution; requiring the clerk to prepare a monthly report to the state attorney's office of the recorded assessments and payments; amending s. 943.0585, F.S.; requiring a person to remit a processing fee to the state attorney's office in order to receive a certificate of eligibility for expunction of a criminal history record; conforming cross-references; amending s. 943.059, F.S.; requiring a person to remit a processing fee to the state attorney's office in order to receive a certificate of eligibility for sealing a criminal history record; repealing s. 985.557(4), F.S., relating to direct-file policies and guidelines for juveniles; amending s. 775.0843, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 27.366, Florida Statutes, is amended to read:

27.366 Legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3)~~; report~~.—

~~(1)~~ It is the intent of the Legislature that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms provided <u>therein</u> ~~herein~~. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life. It is also the

intent of the Legislature that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime. ~~For every case in which the offender meets the criteria in this act and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this act to the President of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information and make such information available to the public upon request for at least a 10 year period.~~

~~(2) Effective July 1, 2000, each state attorney shall annually report to the Speaker of the House of Representatives, the President of the Senate, and the Executive Office of the Governor regarding the prosecution and sentencing of offenders who met the criteria in s. 775.087(2) and (3). The report must categorize the defendants by age, gender, race, and ethnicity. Cases in which a final disposition has not yet been reached shall be reported in a subsequent annual report.~~

Section 2. Paragraph (d) of subsection (9) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously

released from prison.—

(9)

(d) ~~1.~~ It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

~~2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On an annual basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the president of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information, and make such information available to the public upon request, for at least a 10-year period.~~

Section 3. Section 775.08401, Florida Statutes, is repealed.

Section 4. Subsection (5) of section 775.087, Florida Statutes, is repealed.

Section 5. Subsection (1) of section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold

unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid court fees, court costs, <u>costs of prosecution,</u> and criminal penalties. If sufficient funds are not available to pay all unpaid court fees, court costs, <u>costs of prosecution,</u> and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

Section 6. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs on conviction <u>and disposition</u>.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons <u>and persons whose cases are disposed of under any diversionary alternative</u> are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission~~, if requested by such agencies~~. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(b) The end of such period or the last such installment shall not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. ~~The burden of demonstrating~~

~~the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.~~

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case. The clerk of court shall separately record each assessment and the payment of costs of prosecution. Costs of prosecution must be assessed with respect to each case number before the court. The clerk shall provide a monthly report to the state attorney's office of the assessments and payments recorded.

(7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney shall be set in all cases at no less than $50 per case when a misdemeanor or criminal traffic offense is charged and no less than $100 per case when a

felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section shall be deposited into the state attorney's grants and donations trust fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 7. Paragraph (b) of subsection (1) of section 943.0585, Florida Statutes, is amended, present paragraphs (c) through (h) of subsection (2) of that section are redesignated as paragraphs (d) through (i), respectively, a new paragraph (c) is added to that subsection, and present paragraph (f) of that subsection 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.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction

outside the state, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(i) ~~(h)~~ and the record is otherwise eligible for expunction.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(c) Remits a $75 processing fee to the state attorney's office to be deposited into the state attorney's grants and donations trust fund unless the fee is waived by the state attorney.

(g) ~~(f)~~ Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (i) ~~(h)~~ and the record is otherwise eligible for expunction.

Section 8. Present paragraphs (c) through (f) of subsection (2) of section 943.059, Florida Statutes, are redesignated as paragraphs (d) through (g), respectively, and a new paragraph (c) is added to that subsection, 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.

(2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. A certificate of eligibility for sealing is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

(c) Remits a $75 processing fee to the state attorney's office to be deposited into the state attorney's grants and donations trust fund unless the fee is waived by the state attorney.

Section 9. Subsection (4) of section 985.557, Florida

Statutes, is repealed.

Section 10. Subsection (5) of section 775.0843, Florida Statutes, is amended to read:

775.0843 Policies to be adopted for career criminal cases.—

(5) Each career criminal apprehension program shall concentrate on the identification and arrest of career criminals and the support of subsequent prosecution. The determination of which suspected felony offenders shall be the subject of career criminal apprehension efforts shall be made in accordance with written target selection criteria selected by the individual law enforcement agency and state attorney consistent with the provisions of this section and s. ~~ss. 775.08401 and~~ 775.0842.

Section 11. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1289 Money Laundering
SPONSOR(S): Grady
TIED BILLS: **IDEN./SIM. BILLS:** SB 2318

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

SUMMARY ANALYSIS

HB 1289 defines "proceeds" in statutes relating to RICO, money services businesses, and money laundering. This bill defines "proceeds" to include gross receipts from a criminal enterprise. This definition mirrors the definition in federal law.

This bill amends statutes relating to RICO, money services businesses, and money laundering to remove the requirement that violations of those statutes occur over a 12 month period and allows prosecutors to make charging decisions based on a longer or shorter period of criminal conduct. It permits the values of separate transactions to be aggregated in determine the offense level if the transactions were committed pursuant to one scheme or course of conduct.

This bill amends 896.101(10), Florida Statutes, to allow financial institutions, licensed money services businesses, employees or officers of a financial institution or licensed money services business, or any other person to provide information about the existence and contents of the subpoena and the investigation to the attorney consulted by the person or entity whose testimony is sought. It provides for a $5,000 fine for each violation of the provision.

The bill creates a criminal forfeiture provision in the state RICO statute. Current law allows for a separate civil forfeiture proceeding but does not create a mechanism for the forfeiture proceeding to occur within the criminal case. Creating a criminal forfeiture procedure within the RICO statute will allow the forfeiture proceeding to be tried at the same time as the criminal case. This will help prevent issues involving discovery and self-incrimination that can arise if the forfeiture case is a separate proceeding. The language in the criminal forfeiture section of this bill substantially mirrors federal law.

The fiscal impact is not known. This bill might have a positive fiscal impact if it leads to more forfeitures in criminal RICO cases.

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:

This bill makes changes to statutes related to money services and money laundering to enable law enforcement to more effectively prosecute money laundering and RICO offenses in response to a decision from the United States Supreme Court. The bill modifies the penalty provisions so that increased penalties can be imposed on persons that violate the statutes. The bill prohibits certain financial institutions from notifying customers when the customers' financial information has been requested by law enforcement subpoena. Finally, the bill creates mechanism for forfeiture of assets in criminal RICO cases that tracks a federal criminal forfeiture statute.

Defining the Term "Proceeds"

Currently, Florida's money laundering act, Florida's statute relating to money services, and Florida's money laundering statute relating to financial institutions[1] use the term "proceeds" but do not define the term. For example, section 560.123, Florida Statutes, requires money services businesses[2] to maintain certain records[3] to deter the use of a money service business to conceal the proceeds of criminal activity. Section 896.101, Florida Statutes, Florida's money laundering act, prohibits a person knowing that the proceeds represent some form of unlawful activity, from conducting a financial transaction with the intent of carrying on some unlawful activity. Although "proceeds" is used throughout statutes, it is not defined.

The failure by Congress to define "proceeds" in federal statutes led to litigation before the United States Supreme Court. At issue in that case was whether the term "proceeds" referred to the "gross receipts" from criminal activity or from the "profits" derived from criminal activity.

United States v. Santos

In United States v. Santos,[4] the court dealt with the definition of word "proceeds" in the federal money laundering statute in a case related to an illegal gambling operation. From the 1970's until 1994,

[1] See §§ 560.103, 560.125, and 896.101, Florida Statutes.
[2] See § 560.103(18), Florida Statutes (defining money services business as "any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter").
[3] Records that are required to be maintained include a record of each financial transaction which has a value of greater than $10,000.
[4] 553 U.S. 507, 128 S.Ct. 2020 (2008). This analysis contains extensive quotations from the Santos opinions. In all such quotations, footnotes and internal citations are omitted.

Santos operated an illegal lottery and employed a number of workers to run the lottery.[5] At bars and restaurants, Santos's runners gathered bets from gamblers, kept a portion of the bets as commissions, and delivered the rest to Santos's collectors.[6] Collectors delivered the money to Santos, who used some of it to pay the salaries of collectors and to pay the winners.[7] At trial, the government was required to prove that the "proceeds" of the illegal gambling operation were used to fund an illegal act and that Santos knew the "proceeds" used to fund an illegal act were obtained by some unlawful activity. Based on the payments to runners, collectors, and winners with "proceeds" of his gambling operation, Santos was prosecuted and ultimately found guilty of money laundering and other crimes.[8] His initial appeals were unsuccessful but his federal habeas claim was ultimately heard by the Supreme Court.[9]

"Proceeds" was not defined in federal statute. The government argued that "proceeds" must mean "gross receipts." Otherwise, Justice Scalia summarized, the court will "disserve the purpose of the federal money-laundering statute," which is, the Government says, to penalize criminals who conceal or promote their illegal activities. On the Government's view, '[t]he gross receipts of a crime accurately reflect the scale of the criminal activity, because the illegal activity generated all of the funds.'"[10]

Santos argued that accepting the government's position would cause a "merger" problem.[11] That is, if "proceeds" meant "receipts," most violations of the illegal gambling statute would also be a violation of the money laundering statute because paying a winning bettor is a transaction involving receipts that the defendant intends to promote the carrying on of the lottery.[12] Justice Scalia continued:

> Since few lotteries, if any, will not pay their winners, the statute criminalizing illegal lotteries would "merge" with the money-laundering statute. Congress evidently decided that lottery operators ordinarily deserve up to 5 years of imprisonment but as a result of merger they would face an additional 20 years.[13]

Justice Scalia, writing for the plurality[14], argued that there was nothing in the statute to indicate whether "proceeds" meant "profits" or "gross receipts" so the statute was ambiguous. Justice Scalia argued that the rule of lenity required ambiguous criminal laws to be interpreted in favor of the defendants subjected to them ("Under a long line of our decisions, the tie must go to the defendant."[15] so he argued that Congress must have intended "proceeds" to mean "profits" and not "gross receipts."

In dissent, Justice Alito argued that the Model Money Laundering Act and the fourteen states that defined "proceeds" did so as "gross receipts."[16] He said that no state defined "proceeds" to mean "profits:"

> The federal money laundering statute is not the only money laundering provision that uses the term "proceeds." On the contrary, the term is a staple of money laundering laws, and it is instructive that in every single one of these provisions in which the term "proceeds" is defined—and there are many—the law specifies that "proceeds" means "the total amount brought in."
> ...

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[5] See 128 S.Ct. at 2022.
[6] See 128 S.Ct. at 2022.
[7] See 128 S.Ct. at 2022.
[8] See 128 S.Ct. at 2023.
[9] See 128 S.Ct. at 2023.
[10] 128 S.Ct. at 2026.
[11] 128 S.Ct. at 2026.
[12] 128 S.Ct. at 2026.
[13] See 128 S.Ct. at 2026.
[14] Justices Souter, Thomas, and Ginsburg joined the opinion. Justice Stevens concurred in the judgment but did not join the opinion so the Scalia opinion became the plurality opinion and the opinion by Justice Alito, joined by Chief Justice Roberts, Justice Kennedy, and Justice Breyer became the dissent.
[15] See 128 S.Ct. at 2025.
[16] 128 S.Ct. at 2037.

> Fourteen States have money laundering statutes that define the term "proceeds," and in every one of these laws the term is defined in a way that encompasses gross receipts.
> ...
>
> This pattern of usage is revealing. It strongly suggests that when lawmakers, knowledgeable about the nature and problem of money laundering, use the term "proceeds "in a money laundering provision, they customarily mean for the term to reach all receipts and not just profits. There is a very good reason for this uniform pattern of usage. Money laundering provisions serve two chief ends. First, they provide deterrence by preventing drug traffickers and other criminals who amass large quantities of cash from using these funds "to support a luxurious lifestyle" or otherwise to enjoy the fruits of their crimes. Second, they inhibit the growth of criminal enterprises by preventing the use of dirty money to promote the enterprise's growth. Both of these objectives are frustrated if a money laundering statute is limited to profits.[17]

Justice Alito rejected Justice Scalia's "merger" problem by noting that it does not justify "hobbling a statute that applies to more than 250 predicate offenses"[18] in order to reach the result reached in a gambling case.

Justice Stevens concurred in the judgment of Justice Scalia so "proceeds" was defined as "profits" for the limited purpose of the Santos case. Perhaps in anticipation of further litigation on other applications of the word "proceeds," Congress enacted a statute to define "proceeds" as "gross receipts." See Fraud Enforcement and Recovery Act of 2009, Public Law 111-21 § 2 (amending 18 USC § 1956).

Effect of the Bill

This bill defines "proceeds" in Florida's money laundering act, Florida's statute relating to money services, and Florida's money laundering statute relating to financial institutions to mean "gross receipts" from the unlawful activity. Adopting a definition in statute could help Florida avoid the litigation on a state level that occurred in the Santos case. The definition proposed in this bill is the same definition recently codified in federal law. See Fraud Enforcement and Recovery Act of 2009, Public Law 111-21 § 2 (amending 18 USC § 1956).

Increased Penalties for Money Laundering and for Violations of the Money Services Statute

Chapter 560 of the Florida Statutes sets forth Florida's Money Transmitters' Code. A Florida court explained the purposes of chapter 560:

> One of the purposes of this code, among others, is "[t]he deterrence of the use of money transmitters as a vehicle for money laundering." § 560.102(2)(d), Fla. Stat. (1995). To further this goal, the code requires any money transmitter operating in the state to register with the Florida [Office of Financial Regulation]. See § 560.122, Fla. Stat. (1995). Operating as a money transmitter without registration is a [felony] and also exposes the offender to an administrative fine.[19]

Section 560.125, Florida Statutes, provides penalties for engaging in money services businesses without a license. The penalties are as follows:

> If the violation involves currency or payment instruments in amounts greater than $300 but less than $20,000 in any 12 month period, it is punished as a third degree felony.

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[17] See 128 S.Ct. at 2036-2038.
[18] 128 S.Ct. at 2044.
[19] See In re Forfeiture of One Hundred Seventy-One Thousand Nine Hundred Dollars ($171,900) in United States Currency, 711 So.2d 1269, 1273 (Fla. 3rd DCA 1998).

If the violation involves currency or payment instruments in amounts greater than $20,000 but less than $100,000 in any 12 month period, it is punished as a second degree felony.

If the violation involves currency or payment instruments in amounts greater than $100,000 in any 12 month period, it is punished as a first degree felony.[20]

In addition, persons who violate section 560.125 face additional criminal fines and administrative penalties of up to five times the value of the currency.[21]

Similar penalties are imposed for violations of the Florida Control of Money Laundering and Financial Institutions Act, section 655.50, Florida Statutes (the "Act"). The Act requires reporting of certain financial transactions. The reports are required to "deter the use of financial institutions to conceal the proceeds of criminal activity."[22] The penalties are as follows:

If the violation involves financial transactions in amounts greater than $300 but less than $20,000 in any 12 month period, it is punished as a third degree felony.

If the violation involves financial transactions in amounts greater than $20,000 but less than $100,000 in any 12 month period, it is punished as a second degree felony.

If the violation involves financial transactions in amounts greater than $100,000 in any 12 month period, it is punished as a first degree felony.[23]

Section 896.101, Florida Statutes, the Florida Money Laundering Act, provides penalties for making certain financial transactions while knowing that the property involved in the transaction represented proceeds from felony criminal activity. The penalties are as follows:

If the violation involves financial transactions in amounts less than $20,000 in any 12 month period, it is punished as a third degree felony.

If the violation involves financial transactions greater than $20,000 but less than $100,000 in any 12 month period, it is punished as a second degree felony.

If the violation involves financial transactions greater than $100,000 in any 12 month period, it is punished as a first degree felony.[24]

Current law requires violations to be aggregated over a 12 month period. This has the effect of restricting charging decisions of prosecutors. Federal law does not contain such a restriction.

Effect of the Bill

This bill amends sections 560.125, 655.50, and 896.101, Florida Statutes, to remove the requirement that violations of those statutes occur over a 12 month period and allows prosecutors to make charging decisions based on a longer or shorter period of criminal conduct. It permits the values of separate transactions to be aggregated in determining the offense level if the transactions were committed pursuant to one scheme or course of conduct. The bill makes conforming changes to the offense severity ranking chart to reflect some renumbering.

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[20] See § 560.125, Florida Statutes.
[21] See § 560.125(6) and (7), Florida Statutes.
[22] § 655.50(2), Florida Statutes.
[23] See § 560.125, Florida Statutes.
[24] See § 896.101(5), Florida Statutes.

Investigative Subpoenas

Section 16.56, Florida Statutes, gives the Statewide Prosecutor the power to issue subpoenas to aid in investigations. Section 27.04, Florida Statutes, gives the state attorney the power to subpoena witness appearances. Section 896.101(10), Florida Statutes, states, in relevant part:

> If any subpoena issued under s. 16.56 or s. 27.04 contains a nondisclosure provision, any financial institution, licensed money services business, employee or officer of a financial institution or licensed money services business, or any other person may not notify, directly or indirectly, any customer of that financial institution or money services business whose records are being sought by the subpoena, or any other person named in the subpoena, about the existence or the contents of that subpoena or about information that has been furnished to the state attorney or statewide prosecutor who issued the subpoena or other law enforcement officer named in the subpoena in response to the subpoena.

Effect of the Bill

This bill amends 896.101(10), Florida Statutes, to allow financial institutions, licensed money services businesses, employees or officers of a financial institution or licensed money services business, or any other person to provide information about the existence and contents of the subpoena and the investigation to the attorney consulted by the person or entity whose testimony is sought. It provides for a $5,000 fine for each violation of the provision.

Criminal Forfeiture in RICO Cases

The bill creates a criminal forfeiture provision in the state RICO statute. Current law allows for a separate civil forfeiture proceeding but does not create a mechanism for the forfeiture proceeding to occur within the criminal case. Creating a criminal forfeiture procedure within the RICO statute will allow the forfeiture proceeding to be tried at the same time as the criminal case. This will help prevent issues involving discovery and self-incrimination that can arise if the forfeiture case is a separate proceeding.[25]

The language in the criminal forfeiture section of this bill substantially mirrors 18 USC §1963.

The bill provides that chapter 895, Florida Statutes, should be construed liberally for the purpose of curtailing racketeering activity and controlled substance crimes and to lessen the economic power of criminal enterprises.

A discussion of the criminal forfeiture process created by this bill follows.

Notice to the Defendant

The bill amends section 923.03, Florida Statutes, to provide that a judgment of forfeiture cannot be entered in a criminal case unless the indictment or information provides notice that the defendant has an interest in the property that is subject to forfeiture.[26] The state must prove beyond a reasonable doubt that the property is subject to forfeiture.[27]

A Defendant's Property is Subject to Forfeiture Upon Conviction

The bill provides that when a defendant is convicted of a violation of the RICO statute, the defendant forfeits any interest the defendant has acquired or maintained in violation of the statute, any interest

[25] Telephone interviews with a representative of the Office of the Attorney General, March 11-12, 2010.
[26] In United States v. Musson, 802 F.2d 384 (10th Cir. 1986), the court held that notice by indictment satisfied due process.
[27] In United States v. Pellullo, 14 F.3d 881 (3rd Cir. 1994), the court held that the state's burden of proof in criminal RICO forfeiture statutes is beyond a reasonable doubt. The language of the statute at issue in Pellullo is identical to the bill's language.

providing a source of influence over any enterprise that the defendant has acquired in violation of the statute, or any property or proceeds derived from the unlawful activity. Any such interest or property is transferred to the state upon conviction. Property subject to forfeiture includes real and personal property.

The bill provides that all rights to the property subject to forfeiture vests with the state upon commission of the crime. If the defendant transfers the property to another person after commission of the crime but before conviction, the bill provides a procedure for that person to show that the property was purchased without knowledge that it was subject to forfeiture. Accordingly, the bill provides protection for an "innocent" purchaser while preventing a defendant from transferring property to a co-defendant to avoid forfeiture.

The bill gives the circuit courts the authority to enter orders related to forfeited property or property that is subject to forfeiture without regard to the location of the property.

Disposition of Forfeited Property

The bill defines "prosecuting authority" for purposes of chapter 895, Florida Statutes, as the Attorney General, any state attorney, or the statewide prosecutor. The bill authorizes the court to enter a judgment of forfeiture upon conviction of a defendant and authorize the prosecuting authority to seize the property. The court is authorized to enter appropriate orders to protect the state's interest. Once the property is seized, the bill authorizes the prosecuting authority to dispose of the property by sale or other means. The bill gives persons other than the defendant or persons acting in concert with the defendant the right to petition to stay the sale of property while any appeal is pending if the person can show that failure to enter a stay will result in irreparable harm.

The bill authorizes the prosecuting authority to grant petitions or remission of forfeiture, compromise claims that may arise regarding the property, award compensation to persons providing information resulting in forfeiture of property, and direct the disposition of property. This provision could allow the prosecuting authority to resolve third party claims without the necessity of the court hearing provided for by the bill.

The bill authorizes the Attorney General to adopt rules relating to notice, granting petitions for mitigation, sale of property, and the compromise of claims arising from forfeiture.

Procedure for Pretrial Seizure of Property

The bill provides a procedure for the state to petition the court to enter a restraining order[28] or injunction to preserve the availability of property subject to forfeiture. The state may move for an appropriate order either:

(1) upon the filing of an indictment or information charging a violation of section 895.03(3), Florida Statutes.[29] The state must allege that the property is subject to forfeiture upon conviction; or

(2) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture and the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the

[28] In United States v. Musson, 802 F.2d 284 (10th Cir. 1986), the court noted that the Supreme Court has approved physical seizure of property on the basis of probable cause without a hearing. Accordingly, the court held, the entry of restrictions on transfer of property is constitutionally permissible.

[29] In Musson, 802 F.2d 384 (10th Cir. 1986), the court upheld the federal statute on which these provisions of bill are based against various constitutional challenges. The Musson court rejected claims that the defendant was entitled to an evidentiary hearing on a restraining order entered after an indictment was issued and that due process does not require such a hearing.

order is to be entered. A pre-indictment order is only effective for 90 days unless the court extends it for good cause.

The bill provides for a temporary restraining order without notice or a hearing when an information or indictment has not yet been filed with respect to the property and the state demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture.

A temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause. A hearing requested concerning an order must be held at the earliest possible time prior to the expiration of the temporary order. At such a hearing, the court may receive and consider evidence and information that would be inadmissible under the Florida Rules of Evidence.[30]

Procedure for a Hearing to Allow Bona Fide Purchasers to Reclaim Forfeited Property

The bill provides a mechanism for a person other than the defendant to assert an interest in property that has been ordered forfeited to the state.[31],[32]

It requires the state to publish notice of the forfeiture order and of its intent to dispose of the property. The state may also provide direct written notice to any person known to have alleged an interest in the property. A person may petition for a hearing within 30 days of publication or receipt of notice, whichever is earlier. The petition must be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

The hearing is held before the court without a jury.[33] The hearing on the petition shall be held within 30 days (if practicable) after the filing of the petition. At the hearing, the state and the petitioner may present evidence and witnesses. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

The petitioner must show either:

(1) a legal right, title, or interest in the property and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(2) that the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

If the petitioner makes the appropriate showing, the court must amend the forfeiture order. Once the court has disposed of all petitions or if no such petitions are filed, the state shall have clear title to

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[30] In In re Assets of Parent Industries, 739 F.Supp. 248 (E.D. Pennsylvania June 1, 1990), the court explained that more permissive evidentiary standards in pre-indictment cases are permissible and that the government is not required to reveal its entire RICO case in a pre-indictment hearing.

[31] The defendant is permitted to assert his or her interest during the criminal trial proceedings.

[32] The Musson court noted that the provisions for third party petitions addressed Musson's claim regarding limitations on his ability to sell his property. See Musson, 802 F.2d at 386.

[33] Libretti v. United States, 516 U.S. 29 (1995), holds that there is no Sixth Amendment right to a jury trial in a forfeiture determination.

property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

The bill prohibits parties claiming an interest in property subject to forfeiture from intervening in the trial or appeal of a criminal case or commence an action against the state concerning the validity of a property interest except as provided in the bill.

Assets if Property Subject to Forfeiture is Unavailable

If the property subject to forfeiture is unavailable because the homestead provisions of the Florida Constitution, because it cannot be located, because it has been sold or transferred to a third party, because it has been moved beyond the court's jurisdiction, or has been comingled with other property, the court must order forfeiture of other property up to the value of the unavailable property.

Discovery to Identify or Locate Property Subject to Forfeiture

The bill authorizes the court to enter orders compelling testimony regarding the identification or location of property ordered forfeited after the entry of an order declaring the property forfeited to the state.

B. SECTION DIRECTORY:

Section 1. Amends s. 560.103, F.S., relating to definitions.

Section 2. Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 3. Amends s. 655.50, F.S., relating to the Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.

Section 4. Creates s. 895.011, F.S., relating to statutory construction.

Section 5. Amends s. 895.02, F.S., relating to definitions.

Section 6. Creates s. 895.041, F.S., relating to criminal forfeiture.

Section 7. Amends s. 896.101, F.S., relating to the Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.

Section 8. Amends s. 923.03, F.S., relating to indictment and information.

Section 9. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 10. 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:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   The fiscal impact of the bill is not known. By expanding the definition of "proceeds," there is a possibility the state will be able to capture more proceeds generated through criminal activity. The amount cannot be determined at this time.

   There is a potential for more revenue to the state by the use of criminal forfeiture in RICO cases. That amount, if any, is not known.

   The provisions relating to criminal forfeiture will require an unknown number of hearings in circuit court. The costs of those additional hearings are not known.

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:

   The substantive portion of this analysis notes constitutional issues that have been raised and rejected by various federal courts regarding the federal criminal forfeiture law on which the criminal forfeiture statutes are based. Specifically, courts have rejected claims relating to notice, the denial of the right to a jury trial, violation of the ex post facto clause[34], the right to a pre-indictment hearing, the burden of proof in a criminal forfeiture case, and the ability of a defendant to sell his property.

B. RULE-MAKING AUTHORITY:

   The bill gives the Attorney General the authority to adopt rules relating to notice to persons who may have an interest in property ordered forfeited, granting petitions for remission or mitigation, the disposition of property forfeited to the state, and related matters.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   Lines 176-77 contain a reference to a hearing pursuant to subsection (1). No hearing is provided in subsection (1). The appropriate reference appears to be to the hearing provisions in subsection (12).

   Line 349 contains a reference to subsection (1) that also appears to refer to subsection (12).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[34] See United States v. Reed, 924 F.2d 1014 (11th Cir. 1991).

A bill to be entitled

An act relating to money laundering; amending s. 560.103, F.S.; defining the term "proceeds" for purposes of provisions relating to money services businesses; amending s. 560.125, F.S.; revising provisions relating to criminal penalties for violations relating to money services businesses; providing for aggregating transactions for the purposes of determining the grade of offenses; amending s. 655.50, F.S.; defining the term "proceeds" for purposes of provisions relating to money laundering; revising provisions relating to criminal penalties for violations relating to money laundering; providing for aggregating transactions for the purposes of determining the grade of offenses; creating s. 895.011, F.S.; providing legislative intent concerning construction of provisions relating to offenses concerning racketeering and illegal debts; amending s. 895.02, F.S.; defining the term "prosecuting authority" for purposes of Florida RICO Act; creating s. 895.041, F.S.; providing for criminal forfeitures for violations of the Florida RICO Act; specifying property and interests subject to forfeiture; authorizing a fine in lieu of forfeiture; providing that title to property subject to forfeiture vests in the state upon the commission of the act giving rise to forfeiture; providing that subsequent transfer of the property may be subject to a special verdict of forfeiture; providing an exception; providing for certain actions to preserve property for forfeiture; providing for judgments of forfeiture;

providing for seizure of forfeited property; authorizing a prosecuting authority to take specified actions in a forfeiture proceeding; authorizing rulemaking by the Attorney General; prohibiting certain actions by parties claiming an interest in property subject to forfeiture; providing exceptions; providing for discovery depositions; providing for notice of orders of forfeiture; providing for determination of claims of interest in forfeited property; providing for forfeiture of other property of the defendant up to the value of any property that is protected or unavailable; amending s. 896.101, F.S.; defining the term "proceeds" for purposes of Florida Money Laundering Act; revising provisions relating to criminal penalties for violations of the act; providing for aggregating transactions for the purposes of determining the grade of offenses; revising provisions relating to subpoenas issued under specified provisions to prohibit, if the subpoena contains a nondisclosure provision, notification concerning the subpoena other than to an attorney consulted by the person or entity whose testimony is sought; providing for fines for violations of such disclosure provisions; amending s. 923.03, F.S.; providing that a judgment of forfeiture may not be entered in a criminal proceeding unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture; amending s. 921.0022, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (28) through (30) of section 560.103, Florida Statutes, are renumbered as subsections (29) through (31), respectively, and a new subsection (28) is added to that section to read:

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

(28) "Proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

Section 2. Subsection (5) of section 560.125, Florida Statutes, is amended to read:

560.125 Unlicensed activity; penalties.—

(5)(a) A person who violates this section, if the violation involves:

1.~~(a)~~ Currency or payment instruments valued at more than ~~exceeding~~ $300 but less than $20,000 ~~in any 12 month period~~, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2.~~(b)~~ Currency or payment instruments valued at ~~totaling or exceeding~~ $20,000 or more but less than $100,000 ~~in any 12 month period~~, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3.~~(c)~~ Currency or payment instruments valued at ~~totaling or exceeding~~ $100,000 or more ~~in any 12 month period~~, commits a felony of the first degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

(b) Amounts of value of separate transactions committed pursuant to one scheme or course of conduct, whether the transactions involve the same person or several persons, may be aggregated in determining the grade of the offense.

Section 3. Paragraphs (f) and (g) of subsection (3) of section 655.50, Florida Statutes, are redesignated as paragraphs (g) and (h), respectively, a new paragraph (f) is added to that subsection, and paragraph (b) of subsection (10) of that section is amended, to read:

655.50 Florida Control of Money Laundering in Financial Institutions Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.—

(3) As used in this section, the term:

(f) "Proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(10)

(b)1. A person who willfully violates or knowingly causes another to violate any provision of this section, when the violation involves:

a.~~1.~~ Financial transactions valued at ~~totaling or exceeding~~ $300 or more but less than $20,000 ~~in any 12-month period~~, commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; or

b.~~2.~~ Financial transactions valued at ~~totaling or~~

~~exceeding~~ $20,000 or more but less than $100,000 commits ~~in any 12 month period is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083; or

c.~~3.~~ Financial transactions valued at ~~totaling or exceeding~~ $100,000 or more commits ~~in any 12 month period is guilty of~~ a felony of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Amounts of value of separate transactions committed pursuant to one scheme or course of conduct, whether the transactions involve the same person or several persons, may be aggregated in determining the grade of the offense.

Section 4. Section 895.011, Florida Statutes, is created to read:

895.011 Construction.—The provisions of this chapter shall be liberally construed to achieve their remedial purposes of curtailing racketeering activities and controlled substance crimes and lessening the economic power of criminal organizations engaged in patterns of racketeering activities in this state.

Section 5. Subsection (13) is added to section 895.02, Florida Statutes, to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(13) "Prosecuting authority" means the Attorney General, any state attorney, or the statewide prosecutor.

Section 6. Section 895.041, Florida Statutes, is created to read:

895.041 Criminal forfeiture.—

(1)(a) Upon conviction of a violation of s. 895.03, in addition to any other sanction, the defendant shall forfeit to the state, irrespective of any other provision of law, the following:

1. Any interest the person has acquired or maintained in violation of s. 895.03.

2. Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled, or conducted, or participated in the conduct of, in violation of s. 895.03.

3. Any property constituting, or derived from, any proceeds that the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of s. 895.03.

(b) In imposing sentence on a person convicted of a violation of s. 895.03, the court shall order, in addition to any other sentence imposed, that the person forfeit all property described in this subsection. In lieu of a forfeiture otherwise authorized by this section, a defendant convicted of such a violation who derives profits or other proceeds from the offense may, in addition to any other fine authorized by law, be fined not more than three times the gross profits or other proceeds.

(2) Property subject to criminal forfeiture under this section includes:

(a) Real property, including things growing on, affixed to, and found in land.

(b) Tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(3) All right, title, and interest in property described in subsection (1) vests in the state upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the state, unless the transferee establishes in a hearing pursuant to subsection (1) that he or she is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(4)(a) Upon application of the state, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (1) for forfeiture under this section:

1. Upon the filing of an indictment or information charging a violation of s. 895.03(3) and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

2. Prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that:

a. There is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

b. The need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

An order entered pursuant to this subparagraph may be effective for no more than 90 days unless extended by the court for good cause shown or unless an indictment or information described in subparagraph 1. has been filed.

(b) A temporary restraining order under this subsection may be entered upon application of the state without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the state demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(c) At a hearing held pursuant to this subsection, the court may receive and consider evidence and information that would be inadmissible under the Florida Rules of Evidence.

(5) Upon finding that the state is entitled to forfeiture of property under this section, the court shall enter a judgment of forfeiture of the property to the state and shall also authorize the prosecuting authority to seize all property ordered forfeited upon such terms and conditions as the court deems proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the state, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law or are necessary to protect the interests of the state or of third parties.

(6) Following the seizure of property ordered forfeited under this section, the prosecuting authority shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the state shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant

be eligible to purchase forfeited property at any sale held by the state. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him or her. The proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance, and custody of the property pending its disposition, advertising, and court costs. The prosecuting authority shall deposit in the General Revenue Fund any amounts of such proceeds or moneys remaining after the payment of such expenses.

(7) With respect to property ordered forfeited under this section, the prosecuting authority is authorized to do the following:

(a) Grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter.

(b) Compromise claims arising under this section.

(c) Award compensation to persons providing information resulting in a forfeiture under this section.

(d) Direct the disposition by the state of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons.

(e) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(8) The Attorney General may adopt rules with respect to the following:

(a) Making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section.

(b) Granting petitions for remission or mitigation of forfeiture.

(c) The restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this section.

(d) The disposition by the state of forfeited property by public sale or other commercially feasible means.

(e) The maintenance and safekeeping of any property forfeited under this section pending its disposition.

(f) The compromise of claims arising under this section.

Pending the adoption of such rules, all provisions of law relating to the disposition of property, or the proceeds from the sale of such property, or the remission or mitigation of forfeitures for violation of the laws, and the compromise of claims and the award of compensation to persons providing

information in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, as applicable and not inconsistent with the provisions of this section.

(9) Except as provided in subsection (12), a party claiming an interest in property subject to forfeiture under this section may not:

(a) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(b) Commence an action at law or equity against the state concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(10) The circuit courts shall have jurisdiction to enter orders as provided in this section without regard to the location of any property that may be subject to forfeiture under this section or that has been ordered forfeited under this section.

(11) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the state, the court may, upon the state's application, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as

provided for the taking of depositions under Rule 3.220, Florida Rules of Criminal Procedure.

(12)(a) Following the entry of an order of forfeiture under this section, the state shall publish notice of the order and of its intent to dispose of the property in such manner as the prosecuting authority may direct. The state may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(b) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the state to this section may, within 30 days after the final publication of notice or his or her receipt of notice under subsection (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his or her alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(c) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(d) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days after the filing of the petition. The court may consolidate the hearing on the petition with a hearing on

any other petition filed by a person other than the defendant under this subsection.

(e) At the hearing, the petitioner may testify and present evidence and witnesses on his or her own behalf and cross-examine witnesses who appear at the hearing. The state may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(f) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

1. The petitioner has a legal right, title, or interest in the property and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

2. The petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section,

the court shall amend the order of forfeiture in accordance with its determination.

(g) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in subsection (2) for the filing of such petitions, the state shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(13) If any of the property described in subsection (1) is protected by s. 6, Art. VII of the Florida Constitution or, as a result of any act or omission of the defendant, is otherwise unreachable because it:

(a) Cannot be located upon the exercise of due diligence;

(b) Has been transferred or sold to, or deposited with, a third party;

(c) Has been placed beyond the jurisdiction of the court;

(d) Has been substantially diminished in value; or

(e) Has been commingled with other property which cannot be divided without difficulty,

the court shall order the forfeiture of any other property of the defendant up to the value of any such protected or unavailable property.

Section 7. Paragraphs (g), (h), and (i) of subsection (2) of section 896.101, Florida Statutes, are redesignated as paragraphs (h), (i), and (j), respectively, a new paragraph (g) is added to that subsection, and paragraph (a) of subsection (2)

and subsections (5) and (10) of that section are amended, to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

(2) As used in this section, the term:

(a) "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (h) ~~(g)~~.

(g) "Proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(5)(a) A person who violates this section, if the violation involves:

1.~~(a)~~ Financial transactions valued at ~~exceeding $300 but~~ less than $20,000 ~~in any 12 month period~~, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2.~~(b)~~ Financial transactions valued at ~~totaling or exceeding~~ $20,000 or more but less than $100,000 ~~in any 12 month period~~, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3.~~(c)~~ Financial transactions valued at ~~totaling or exceeding~~ $100,000 or more ~~in any 12 month period~~, commits a

felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Amounts of value of separate transactions committed pursuant to one scheme or course of conduct, whether the transactions involve the same person or several persons, may be aggregated in determining the grade of the offense.

(10)(a) Any financial institution, licensed money services business, or other person served with and complying with the terms of a warrant, temporary injunction, or other court order, including any subpoena issued under s. 16.56 or s. 27.04, obtained in furtherance of an investigation of any crime in this section, including any crime listed as specified unlawful activity under this section or any felony violation of chapter 560, has immunity from criminal liability and is not liable to any person for any lawful action taken in complying with the warrant, temporary injunction, or other court order, including any subpoena issued under s. 16.56 or s. 27.04. If any subpoena issued under s. 16.56 or s. 27.04 contains a nondisclosure provision, any financial institution, licensed money services business, employee or officer of a financial institution or licensed money services business, or any other person may not notify, directly or indirectly, any customer of that financial institution or money services business whose records are being sought by the subpoena, or any other person, other than an attorney consulted by the person or entity whose testimony is sought in the matter ~~named in the subpoena~~, about the existence or the contents of that subpoena, or of the investigation, or about information that has been furnished to the state attorney

or statewide prosecutor who issued the subpoena or any other law enforcement officer named in the subpoena in response to the subpoena.

(b) Any person who, having received or been served with such a warrant, temporary injunction, or other court order, including any subpoena issued under s. 16.56 or s. 27.04, containing a nondisclosure provision as described in paragraph (a) who thereafter notifies any person of information in violation of paragraph (a) shall be fined $5,000 for each such unauthorized notification.

Section 8. Subsection (3) is added to section 923.03, Florida Statutes, to read:

923.03 Indictment and information.—

(3) A judgment of forfeiture may not be entered in a criminal proceeding unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.

Section 9. Paragraphs (g), (h), and (i) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description

316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920(2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.

409.920(2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.

463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)<u>1.</u>	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.<u>a.</u>	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to

		register; failure to renew driver's license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a

			reckless manner (vehicular homicide).
533			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
534			
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
535			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
536			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
537			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
538			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
539			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
540			

784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.

549	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
550	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
551	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
552	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
553	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
	796.03	2nd	Procuring any person under 16

			years for prostitution.
554			
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
555			
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
556			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
557			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
558			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
559			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
560			
	810.02(3)(e)	2nd	Burglary of authorized

			emergency vehicle.
561			
	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
562			
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
563			
	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
564			
	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
565			
	812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
566			
	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the

		theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341(2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.

838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal

			park or publicly owned recreational facility or community center.
587			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
588			
	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
589			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
590			
	893.135(1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
591			
	893.135(1)(c)1.a.	1st	Trafficking in illegal drugs,

			more than 4 grams, less than 14 grams.
592			
	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
593			
	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
594			
	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
595			
	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
596			
	893.135(1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
597			
	893.135(1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
598			

893.135(1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)1.	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193(3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted

			eluding with serious bodily injury or death.
619			
	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
620			
	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
621			
	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
622			
	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
623			
	560.125(5)(a)2.~~(b)~~	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
624			
	655.50(10)(b)1.a.~~2.~~	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less

		than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.

790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
800.04(4)	2nd	Lewd or lascivious battery.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or

		structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(a)	1st	Exploiting an elderly person or

		disabled adult and property is valued at $100,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135(1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135(1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135(1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135(1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135(1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.

893.135(1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135(1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135(1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
893.135(1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through

		racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(a)2.~~(b)~~	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193(3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.

327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920(2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(a)3.~~(c)~~	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)1.c.~~3.~~	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.

782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of

			any governmental or political function.
686			
	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
687			
	790.161	1st	Attempted capital destructive device offense.
688			
	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
689			
	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
690			
	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
691			

794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.568(7)	2nd,PBL	Fraudulent use of personal

			identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
699			
	827.03(2)	1st	Aggravated child abuse.
700			
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
701			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
702			
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
703			
	893.135	1st	Attempted capital trafficking offense.
704			

893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135(1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135(1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135(1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135(1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135(1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135(1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135(1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.

893.135(1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(a)3.~~(c)~~	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 10. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1291 Domestic Violence Fatality Review Teams
SPONSOR(S): Coley
TIED BILLS: **IDEN./SIM. BILLS:** SB 1446

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

SUMMARY ANALYSIS

Domestic Violence Fatality Review Teams (FRTs) were first formed in Florida in the mid-1990's. FRTs, which are not funded by the state, work independently and may be composed of representatives from municipal, county, state and federal agencies, as well as individuals or organizations that are involved with, or affected by, a domestic violence fatality. The goals of FRTs are to review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides, and to identify changes in policy or procedure that may prevent future deaths.

Information gathered by FRTs is protected from discovery and introduction into evidence in civil or disciplinary proceedings. In addition, persons attending FRT meetings are prohibited from testifying in civil or disciplinary actions regarding records or information produced or presented at the meeting. These provisions do not apply to criminal or administrative proceedings.

HB 1291 provides that information and records acquired by the FRTs are not subject to discovery or introduction into evidence in any criminal or administrative proceeding in certain circumstances.

The bill also provides that a person who has attended a meeting of the FRTs may not testify in criminal or administrative proceedings regarding certain records or information that was produced or presented by the team.

HB 1291 deletes the requirement that the Governor's Task Force on Domestic Violence provide information and technical assistance to FRTs. The Governor's Task Force on Domestic Violence was part of an Executive Order that expired on June 30, 2001.

HB 1291 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:
In Florida, domestic violence is defined as:

> [A]ny 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.[1]

In 2008, the total number of domestic violence offenses reported across Florida was 113,123. Of the total, 194 offenses were classified as murder or manslaughter.[2]

Domestic Violence Fatality Review Teams (FRTs) were first formed in Florida in the mid-1990's. These teams began as local initiatives supported with federal grant funds.[3] In 2000, the Legislature enacted s. 741.316, F.S., which allows organizations to establish FRTs at the local, regional, or state level. The teams, which are not funded by the state, work independently and may be composed of representatives from municipal, county, state and federal agencies, as well as individuals or organizations that are involved with, or affected by, a domestic violence fatality.[4] The goals of the FRTs are to review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides, and to identify changes in policy or procedure that may prevent future deaths.[5] There are currently 19 active FRTs in Florida.[6]

Public Records and Meeting Exemptions for Domestic Violence Fatality Review Teams

Fatality Review Teams are immune from liability for "any act or proceeding undertaken or performed within the scope of the functions of the team" unless the act or proceeding was undertaken in bad

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[1] Section 741.28(2), F.S.
[2] Florida Department of Law Enforcement (FDLE), Crime in Florida, 2008 Florida Uniform Crime Report (2009).
[3] FDLE, Florida Domestic Violence Fatality Review Team 2008 Annual Report, Executive Summary (2008).
[4] *Id. See also*, s. 741.316, F.S.
[5] *Id.*
[6] As of June 19, 2009, there were active FRTs in the following counties: Alachua, Brevard, Broward, Columbia, Duval, Escambia, Highlands, Hillsborough, Lee, Manatee, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Santa Rosa, Sarasota, Seminole and St. John's. Department of Children and Families 2010 Analysis of HB 1291.

faith.[7] Information gathered by FRTs is protected from discovery and introduction into evidence in civil or disciplinary proceedings. In addition, persons attending FRT meetings are prohibited from testifying in civil or disciplinary actions regarding records or information produced or presented at the meeting.[8] These provisions do not apply to criminal or administrative proceedings. Because FRT members are not protected from criminal subpoenas, case reviews typically occur after the final disposition of the related criminal case. For this reason, fatality reviews are conducted years after the crimes occurred, which can result in the loss of key information and people.[9] In contrast, child abuse death review team members are protected from subpoenas in criminal cases as well as in civil proceedings.[10]

The Governor's Task Force on Domestic Violence (task force) was created to serve the public purpose of directing policies on reducing and eliminating domestic violence and domestic violence fatalities. The task force was required to produce an annual report including a summary of task force findings, other special areas of interest, and efforts of the local FRTs.[11] Before it expired on June 30, 2001, the task force provided support and technical assistance to FRTs. Since its expiration, the task force has not been reauthorized.[12]

FRTs are now assigned to the Department of Children and Families (department) for administrative purposes.[13] The department provides technical support to FRTs and, although not directed, has assumed the responsibility of supporting FRTs with the collection and reporting of data from their reviews.[14]

Effect of Proposed Changes:
HB 1291 deletes the requirement that the Governor's Task Force on Domestic Violence provide information and technical assistance to local domestic violence fatality review teams (FRTs). The Governor's Task Force on Domestic Violence was part of an Executive Order that expired on June 30, 2001.

The bill provides that information and records acquired by the FRTs are not subject to discovery or introduction into evidence in any criminal or administrative proceeding in certain circumstances.

The bill provides that a person who has attended a meeting of the FRT may not testify in criminal or administrative proceedings regarding certain records or information that was produced or presented by the team.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.316, F.S., relating to Domestic violence fatality review teams; definition; membership; duties; report by the Department of Law Enforcement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[7] Section 741.316(4)(a), F.S.
[8] Section 741.316(5), F.S.
[9] Florida Senate, Committee on Children, Families, and Elder Affairs. Interim Report 2010-208. Open Government Sunset Review of Section 741.3165, F.S., Domestic Violence Fatality Review Teams. (September 2009).
[10] Section 383.402(14), F.S.
[11] The Governor's Task Force on Domestic Violence was created by Executive Order 93-269, and amended by Executive Orders 94-17, 94-256, 95-473, and 99-99, with the mission to end domestic violence. (Executive Order 00-226).
[12] Department of Children and Families 2010 Analysis of HB 1291.
[13] Section 741.316(6), F.S.
[14] Department of Children and Families 2010 Analysis of HB 1291.

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:

   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:

HB 1291 does not strike the reference in the title of s. 741.316, F.S., to the "report by Department of Law Enforcement." This requirement was repealed by Ch. 2008-112 L.O.F. SB 1446, the companion to HB 1291, does strike this reference in the title.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to domestic violence fatality review teams; amending s. 741.316, F.S.; deleting a requirement that the Governor's Task Force on Domestic Violence provide information and technical assistance to local domestic violence fatality review teams; providing that information and records acquired by a domestic violence fatality review team are not subject to discovery or introduction into evidence in criminal or administrative proceedings in certain circumstances; providing that a person who has attended a meeting of a domestic violence fatality review team may not testify in criminal or administrative proceedings as to certain records or information produced or presented to the team; providing an effective date.

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

Section 1. Section 741.316, Florida Statutes, is amended to read:

741.316 Domestic violence fatality review teams; definition; membership; duties; report by the Department of Law Enforcement.—

(1) As used in this section, the term "domestic violence fatality review team" means an organization that includes, but is not limited to, representatives from the following agencies or organizations:

(a) Law enforcement agencies.

(b) The state attorney.

(c) The medical examiner.

(d) Certified domestic violence centers.

(e) Child protection service providers.

(f) The office of court administration.

(g) The clerk of the court.

(h) Victim services programs.

(i) Child death review teams.

(j) Members of the business community.

(k) County probation or corrections agencies.

(l) Any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence, or suicide, including research, policy, law, and other matters connected with fatal incidents.

(m) Other representatives as determined by the review team.

(2) A domestic violence fatality review team may be established at a local, regional, or state level in order to review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides. The review may include a review of events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by systems and individuals related to the incident and the parties, and any information or action deemed relevant by the team, including a review of public records and records for which public records exemptions are granted. The purpose of the teams is to learn how to prevent domestic violence by intervening early and improving the

response of an individual and the system to domestic violence. The structure and activities of a team shall be determined at the local level. The team may determine the number and type of incidents it wishes to review and shall make policy and other recommendations as to how incidents of domestic violence may be prevented.

~~(3) The Governor's Task Force on Domestic Violence shall provide information and technical assistance to local domestic violence fatality review teams.~~

(3)~~(4)~~(a) There may not be any monetary liability on the part of, and a cause of action for damages may not arise against, any member of a domestic violence fatality review team or any person acting as a witness to, incident reporter to, or investigator for a domestic violence fatality review team for any act or proceeding undertaken or performed within the scope of the functions of the team, unless such person acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) This subsection does not affect the provisions of s. 768.28.

(4)~~(5)~~ All information and records acquired by a domestic violence fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any department or employing agency if the information or records arose out of matters that are the subject of evaluation and review by the domestic violence fatality review team. However, information, documents, and records otherwise available from other sources

are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by such a team. A person who has attended a meeting of a domestic violence fatality review team may not testify in any civil, criminal, administrative, or disciplinary proceedings as to any records or information produced or presented to the team during meetings or other activities authorized by this section. This subsection does not preclude any person who testifies before a team or who is a member of a team from testifying as to matters otherwise within his or her knowledge.

(5) ~~(6)~~ The domestic violence fatality review teams are assigned to the Department of Children and Family Services for administrative purposes.

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

HB 1359

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359 Detention by Licensed Security Officers
SPONSOR(S): Murzin
TIED BILLS: **IDEN./SIM. BILLS:** SB 2412

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

SUMMARY ANALYSIS

The bill authorizes licensed security officers and security agency managers who possess a valid Class G license, who are on duty and in uniform, and who are on the premises of their client, to temporarily detain a person who has committed or is committing a crime against a client or patron. The detention must be for the purpose of ascertaining the person's identity and the circumstances of the crime and may not extend beyond the place where it was first affected or the immediate vicinity thereof.

The bill requires the security officer to notify the appropriate law enforcement agency as soon as reasonably possible. Additionally, the bill specifies that the security officer may only detain the person in a reasonable manner and only until a law enforcement officer arrives on the premises and is in the presence of the detainee.

The bill also authorizes security officers who have probable cause to believe that a person being detained is armed with a weapon to conduct a search of the person and his or her belongings, only to the extent necessary for the purpose of disclosing the presence of a weapon.

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Power to Detain

Section 812.015(3)(a), F.S., currently authorizes law enforcement officers[1], merchants[2], farmers[3], and transit agency[4] employees or agents who have probable cause to believe that a retail theft,[5] farm theft,[6] or trespass,[7] has been committed to take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time for the purpose of attempting to effect recovery or for prosecution.[8] The statute further specifies that in the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be immediately called to the scene.

Innkeepers and food service establishment operators have the similar statutory authority to "take a person into custody and detain a person" if there is probable cause to believe the person is engaging in

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[1] Section 943.10, F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

[2] Section 812.015, F.S., defines the term "merchant" as an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

[3] Section 812.015, F.S., defines the term "farmer" as a person who is engaging in the growing or producing of farm produce, milk products, eggs, or meat, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land or a person designated in writing by the owner or lessee to act as her or his agent.

[4] Section 812.015, F.S., defines the term "transit agency" as any state agency, political subdivision of the state, or municipality which operates mass transit vehicles.

[5] "Retail theft" means the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value. *See* s. 812.015, F.S.

[6] "Farm theft" means the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person. *See* s. 812.015, F.S.

[7] Section 812.015, F.S., defines the term "trespass" in accordance with s. 810.08, F.S.

[8] In the case of retail or farm theft, the law enforcement officer, merchant, farmer, or transit agency employee must also have probable cause to believe that the property can be recovered by taking the offender into custody before detaining the offender.

disorderly conduct[9] that threatens the safety of the person or others.[10] In these situations, it is also required that law enforcement be called immediately.

Private, State-Licensed Security Officers

There are several classes of licenses issued by the Division of Licensing within the Department of Agriculture (Department). Section 493.6301, F.S., requires any person who performs the services of a security officer to have a Class "D" license. The requirements for a Class "D" security officer license are as follows:

(a) An applicant for a Class "D" license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content and number of hours of each subject area to be taught.

(b) An applicant may fulfill the training requirement prescribed in paragraph (a) by submitting proof of:

- Successful completion of the total number of required hours of training before initial application for a Class "D" license; or
- Successful completion of 24 hours of training before initial application for a Class "D" license and successful completion of the remaining 16 hours of training within 180 days after the date that the application is submitted. If documentation of completion of the required training is not submitted within the specified timeframe, the individual's license is automatically suspended until such time as proof of the required training is provided to the department.[11]

Class "MB" security officers may manage a security agency. Class "MB" and "D" security officers are permitted to carry a firearm, but must obtain a Class "G" license in order to do so.[12]

Seaport security officers must have a Class "D" license and complete a specialized seaport security officer training curriculum.[13]

Private, State-Licensed Security Officers – Ability to Detain

Section 311.124, F.S., specifies that any Class "D" or Class "G" seaport security officer certified under the Maritime Transportation Security Act guidelines and s. 311.121, F.S., who has probable cause to believe that a person is trespassing in a designated restricted area pursuant to s. 311.111, F.S., is authorized to detain such person in a reasonable manner for a reasonable period of time pending the arrival of a law enforcement officer. Upon detaining a person for trespass, the seaport security officer shall immediately call a certified law enforcement officer to the scene.

Effect of the Bill

The bill authorizes licensed security officers and security agency managers who possess a valid Class "G" license, who are on duty and in uniform, and who are on the premises of their client, to temporarily detain a person who has committed or is committing a crime against a client or patron. The detention must be for the purpose of ascertaining the person's identity and the circumstances of the crime. The bill specifies that temporary detention by a security officer may not extend beyond the place where it was first affected or the immediate vicinity thereof.

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[9] Disorderly conduct is described in s. 877.03, F.S.

[10] s. 509.143, F.S.

[11] s. 493.6303(4), F.S.

[12] Class "G" officers have special firearm training requirements and are authorized to carry their firearms on duty. s. 493.6301, F.S.

[13] The specialized seaport security officer training curriculum includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties. *See* s. 311.121, F.S.

The bill requires the security officer to notify the appropriate law enforcement agency as soon as reasonably possible. Additionally, the bill specifies that the security officer may only detain the person in a reasonable manner and only until a law enforcement officer arrives on the premises and is in the presence of the detainee. The bill specifies that a person may not be further detained upon the arrival of the law enforcement officer except under the authority of the responding law enforcement officer. Custody of the person being temporarily detained must be immediately transferred to the responding law enforcement officer for determination of appropriate disposition.

If the security officer has probable cause to believe the person being detained (or the person who is about to be detained) is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the officer or others, the security officer may conduct a search of the person and his or her belongings, only to the extent necessary for the purpose of disclosing the presence of a weapon. If the search reveals a weapon, the bill authorizes the seizure of the weapon and requires the security officer to give the weapon to the responding law enforcement officer. The bill specifies that in this context, the term "probable cause" means the observation of the security officer or an admission of the detainee that the detainee has a weapon in his or her possession.

The bill amends s. 493.6118, F.S., to specify that the Department take disciplinary actions against a security officer if the security officer commits an act of violence or use of force on any person except:

- In the lawful protection of one's self or another from physical harm; or
- In the process of a lawful detention of a suspect while awaiting the arrival of a law enforcement officer.

The bill conforms a cross-reference in s. 493.6115, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 493.6305, F.S., relating to uniforms, required wear; authority limitations.

Section 2. Amends s. 493.6118, F.S., relating to grounds for disciplinary action.

Section 3. Amends s. 493.6115, F.S., relating to weapons and firearms.

Section 4. This bill takes effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

It is possible that a person who is detained under this bill could raise Fourth Amendment search and seizure issues. The bill statutorily authorizes one citizen, arguably "under color of law," to detain and search another citizen virtually *on behalf of* law enforcement. For that reason, security officers who undertake a detention and subsequent search under the parameters authorized in the bill should be aware that any evidence they seize may be later used as evidence in a criminal case and it should be handled accordingly.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to detention by licensed security officers; amending s. 493.6305, F.S.; authorizing certain licensed security officers to detain certain individuals until the arrival of a law enforcement officer; providing limits on such detention; requiring that such security officers notify the appropriate law enforcement agency as quickly as possible; requiring the transfer of an alleged offender to the custody of the officer; authorizing limited searches of certain persons when a licensed security officer has probable cause to believe that the person is armed with a dangerous weapon; requiring that seized weapons be provided to a responding law enforcement officer; defining the term "probable cause" for the purpose of temporarily detaining a person suspected of having committed a crime; amending s. 493.6118, F.S.; conforming provisions to changes made by the act; amending s. 493.6115, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 493.6305, Florida Statutes, is amended to read:

493.6305 Uniforms, required wear; authority limitations ~~exceptions~~.—

(1) Class "D" and Class "MB" licensees shall perform duties regulated under this chapter in a uniform that ~~which~~

bears at least one patch or emblem visible at all times clearly identifying the employing agency. A licensed security officer who also possesses a valid Class "G" license, or a licensed security agency manager who also possesses a valid Class "G" license, who is on duty, in uniform, and on the premises of a client, and who has probable cause to believe that a person has committed or is committing a crime against the client or patrons thereof, may temporarily detain the person for the purpose of ascertaining his or her identity and the circumstances of the activity that is the basis for the temporary detention. The detaining officer may detain the person in a reasonable manner until the responding law enforcement officer arrives at the premises of the client and is in the presence of the detainee. ~~Upon resignation or termination of employment, a Class "D" licensee shall immediately return to the employer any uniform and any other equipment issued to her or him by the employer.~~

(2) When temporarily detaining any person, the licensed security officer or security agency manager shall notify the appropriate law enforcement agency as soon as reasonably possible. Temporary detention of a person by a licensed security officer or security agency manager must be done solely for the purpose of detaining the person before the arrival of a law enforcement officer, and custody of any person being temporarily detained shall be immediately transferred to the responding law enforcement officer for determination of appropriate disposition.

(3) A person may not be further detained under this section upon the arrival of a law enforcement officer except

under the authority of the responding law enforcement officer. The temporary detention by a licensed security officer or security agency manager may not extend beyond the place where it was first affected or the immediate vicinity thereof.

(4) A person may not be temporarily detained under subsection (2) longer than is reasonably necessary to effect the purposes of this section.

(5)(a) If a licensed security officer or security agency manager who is authorized to temporarily detain a person under subsection (1) has probable cause to believe that the person whom the security officer has temporarily detained, or is about to temporarily detain, is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or any person for whom the security officer is responsible for providing protection, the security officer or security agency manager may conduct a search of the person and his or her belongings only to the extent necessary for the purpose of disclosing the presence of a weapon. If the search reveals such a weapon, the weapon may be seized and shall be provided to the responding law enforcement officer.

(b) For the purpose of this subsection, the term "probable cause" is limited to the observation of the security officer or security agency manager or the admission of the detainee that the detainee has a weapon in his or her possession.

(6)~~(2)~~ Class "D" licensees may perform duties regulated under this chapter in nonuniform status on a limited special assignment basis, and only when duty circumstances or special

requirements of the client necessitate such dress.

(7) ~~(3)~~ Class "D" licensees who are also Class "G" licensees and who are performing limited, special assignment duties may carry their authorized firearm concealed in the conduct of such duties.

(8) Upon resignation or termination of employment, a Class "D" licensee shall immediately return to the employer any uniform and any other equipment issued to him or her by the employer.

Section 2. Paragraph (j) of subsection (1) of section 493.6118, Florida Statutes, is amended to read:

493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter.

(j) Commission of an act of violence or the use of force on any person except in the lawful protection of one's self or another from physical harm or in the process of a lawful detention of a suspect while awaiting the arrival of a law enforcement officer.

Section 3. Subsection (4) of section 493.6115, Florida Statutes, is amended to read:

493.6115 Weapons and firearms.—

(4) A Class "C" or Class "CC" licensee 21 years of age or older who has also been issued a Class "G" license may carry, in the performance of her or his duties, a concealed firearm. A

Class "D" licensee 21 years of age or older who has also been issued a Class "G" license may carry a concealed firearm in the performance of her or his duties under the conditions specified in s. 493.6305(6) ~~s. 493.6305(2)~~. The Class "G" license shall clearly indicate such authority. The authority of any such licensee to carry a concealed firearm shall be valid throughout the state, in any location, while performing services within the scope of the license.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PSDS 10-02 Department of Juvenile Justice
SPONSOR(S): Public Safety & Domestic Security Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The PCB makes various changes to Chapter 985, F.S., relating to juvenile justice, as well as changes to the "Children and Families in Need of Services" (CINS/FINS) statute and the "Comprehensive Child and Adolescent Mental Health Services Act." Specifically, the PCB:

- Amends the definition of "child or adolescent at risk of emotional disturbance" to include the additional risk factor of "being 9 years of age or younger at the time of referral for a delinquent act." This change will expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.
- Provides changes to the "child in need of services" and "families in need of services" definitions to allow youth 9 year of age or younger who have been referred to the Department of Juvenile Justice (Department) to be served by the CINS/FINS network.
- Permits a child who has been taken into custody for a misdemeanor domestic violence charge to be placed in a shelter prior to a court hearing.
- Promotes the use of restorative justice practices to support victims of juvenile delinquency;
- Encourages specified entities to establish prearrest/postarrest diversion programs and provides that youth 9 years of age or younger should be given the opportunity to participate in such programs.
- Requires juvenile probation officers to make a referral to the appropriate CINS/FINS shelter if a child taken into custody for a domestic violence offense is ineligible for secure detention.
- Requires the Department to independently validate the detention risk assessment instrument and adds two child advocates to the committee responsible for developing the risk assessment instrument.
- Authorizes the court to commit a child who has been adjudicated delinquent to the Department for placement in a mother-infant program.
- Requires the Department to submit an annual Comprehensive Accountability Report to the Governor and Legislature detailing the effectiveness of Department programs.

The PCB takes effect upon becoming a law and does not appear to have a fiscal impact.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child and Adolescent Mental Health System of Care – Eligibility

Chapter 394, F.S., entitled the "Comprehensive Child and Adolescent Mental Health Services Act," requires the Department of Children and Families (DCF) to establish a child and adolescent mental health system of care that that provides array of services to meet the individualized service and treatment needs of children[1] and adolescents[2] who are members of specified target populations. Currently, only individuals who fall within the following categories are eligible to be served through the child and adolescent mental health system of care:

- Children and adolescents who are experiencing an acute mental or emotional crisis.
- Children and adolescents who have a serious emotional disturbance or mental illness.
- Children and adolescents who have an emotional disturbance.
- Children and adolescents who are at risk of emotional disturbance.[3]

Section 394.492(4), F.S., currently defines a "child or adolescent at risk of emotional disturbance" as a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of risk factors that include, but are not limited to:

- Being homeless.
- Having a family history of mental illness.
- Being physically or sexually abused or neglected.
- Abusing alcohol or other substances.
- Being infected with human immunodeficiency virus (HIV).
- Having a chronic and serious physical illness.
- Having been exposed to domestic violence.
- Having multiple out-of-home placements.

Effect of the PCB

The PCB amends the definition of "child or adolescent at risk of emotional disturbance" to include the additional risk factor of "being 9 years of age or younger at the time of referral for a delinquent act." This change will expand the pool of persons eligible to receive treatment services through the child and adolescent mental health system of care.

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[1] Section 394.492, F.S., defines the term "child" as "a person from birth until the person's 13th birthday."
[2] Section 394.492, F.S., defines the term "adolescent" as "a person who is at least 13 years of age but under 18 years of age."
[3] Each of these groups is defined in s. 394.492, F.S.

Children and Families in Need of Services - Definitions

The Department of Juvenile Justice's (Department) CINS/FINS network provides services and treatment to children and families in need of services that are designed to preserve the integrity and unity of the family.[4] Such services and treatment include, but are not limited to, parent training, runaway center services, intensive crisis counseling, and placement in a staff-secure shelter. To be eligible for such services and treatment, a child or family must first meet the definition of a "child in need of services" or a "family in need of services."

Section 984.03(9), F.S., currently defines the term "child in need of services" as:

> A child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also be found by the court:
>
> - To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services;
>
> - To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to ss. 1003.26 and 1003.27 and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; or
>
> - To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.

Section 984.03(25), F.S., currently defines the term "family in need of services" as:

> A family that has a child who is running away; who is persistently disobeying reasonable and lawful demands of the parent or legal custodian and is beyond the control of the parent or legal custodian; or who is habitually truant from school or engaging in other serious behaviors that place the child at risk of future abuse, neglect, or abandonment or at risk of entering the juvenile justice system. The child must be referred to a law enforcement agency, the Department of Juvenile Justice, or an agency contracted to provide services to children in need of services. A family is not eligible to receive services if, at the time of the referral, there is an open investigation into an allegation of abuse, neglect, or abandonment or if the child is currently under supervision by the Department of Juvenile Justice or the Department of Children and Family Services due to an adjudication of dependency or delinquency.

The above definitions currently exclude children who have a pending referral to the Department from being served by the CINS/FINS network. The Department reports that 498 children age 9 or younger were referred to the Department during FY 08-09. As such, these youth were excluded from being served through the CINS/FINS network.

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[4] *See* ch. 984, F.S.

Effect of the PCB
The PCB amends the definitions of "child in need of services" and "family in need of services" in s. 984.03, F.S., to include youth who are 9 years of age or younger who have a delinquency referral. As a result, these youth will be able to receive CINS/FINS services even though they have an active referral to the Department.

The PCB makes the same changes to the definitions of "child in need of services" and "family in need of services" in the delinquency statute, s. 985.03(7), F.S.

Shelter Placement
Section 984.13, F.S., provides that a child may be taken into custody:

- By a law enforcement officer when the officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or other legal custodian;

- By a law enforcement officer when the officer has reasonable grounds to believe that the child is absent from school without authorization or is suspended or expelled and is not in the presence of his or her parent or legal guardian, for the purpose of delivering the child without unreasonable delay to the appropriate school system site;

- Pursuant to an order of the circuit court based upon sworn testimony before or after a petition seeking an adjudication that a child is a child in need of services is filed; or

- By a law enforcement officer when the child voluntarily agrees to or requests services pursuant to this chapter or placement in a shelter.

Section 984.14, F.S. provides that unless ordered by the court or upon voluntary consent by the child and the child's parent, legal guardian, or custodian, a child taken into custody shall not be placed in a shelter[5] prior to a court hearing unless a determination has been made that the provision of appropriate and available services will not eliminate the need for placement and that such placement is required:

- To provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement; or

- Because a parent, custodian, or guardian is unavailable to take immediate custody of the child.

Effect of the PCB
The PCB amends s. 984.14, F.S. to add that a child may also be placed into custody prior to a court hearing if the child is taken into custody for a misdemeanor domestic violence charge and is ineligible to be placed in secure detention.[6] The Department reports that there were 7,263 children with misdemeanor domestic violence-related offenses referred to the Department in FY 08-09. The PCB allows these children to be placed in a shelter prior to a court hearing rather than being placed back into the home where the domestic violence allegedly occurred.

[5] Section 984.03(39), F.S., defines the term "shelter" as "a place for the temporary care of a child who is alleged to be or who has been found to be dependent, a child from a family in need of services, or a child in need of services, pending court disposition before or after adjudication or after execution of a court order. "Shelter" may include a facility which provides 24-hour continual supervision for the temporary care of a child who is placed pursuant to s. 984.14."
[6] Section 984.03(18), F.S., defines the term "secure detention" as "temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement."

Legislative Intent

Section 985.02, F.S., sets forth the legislature's intent for the juvenile justice system. The PCB creates two new subsections under s. 985.02, F.S., entitled "children nine years of age or younger" and "restorative justice." The new subsections provide the following:

- Children 9 Years of Age or Younger
  - The Legislature finds that very young children need age-appropriate services in order to prevent and reduce future acts of delinquency. Children who are 9 years of age or younger should be diverted into prearrest or postarrest programs, civil citations programs, or child-in-need-of-services and families-in-need-of-services programs, or other programs as appropriate. If, upon findings from the needs assessment, the child is found to be in need of mental health services or substance abuse treatment services, the department shall cooperate with the parent or legal guardian and the Department of Children and Family Services, as appropriate, to identify the most appropriate services and supports and available funding sources to meet the needs of the child.[7]

- Restorative Justice
  - It is the intent of the Legislature that the juvenile justice system advance the principles of restorative justice. The department should focus on repairing the harm to victims of delinquent behavior, ensuring the youth understands the impact of their delinquent behavior on the victim and the community, and restoring the loss to the victim.
  - Offender accountability is one of he basic principles of restorative justice. The premise of this principle is that the juvenile justice system must respond to delinquent behavior in such a way that the offender is made aware of and takes responsibility for repaying or restoring loss, damage, or injury perpetrated upon the victim and the community. This goal is achieved when the offender understands the consequences of delinquent behaviors in terms of harm to others; and when the offender makes amends for the harm, loss or damage through restitution, community services or other appropriate payment.

Pre-Arrest and Post-Arrest Diversion Programs

Section 985.125, F.S., allows a law enforcement agency or a school district, in cooperation with the state attorney, to create a prearrest or postarrest diversion program for children who have committed or been alleged to have committed a delinquent act. Diversion is a process designed to keep a youth from entering the juvenile justice system through the legal process. Diversion programs include community arbitration, Juvenile Alternative Services Program (JASP), teen court, civil citation, boy scouts and girl scouts, boys and girls clubs, mentoring programs, and alternative schools.

Effect of the PCB

The PCB adds counties, municipalities, and the DJJ to the list of entities that may establish prearrest and postarrest diversion programs. It also specifies that youth 9 years of age or younger should be given the opportunity to participate in a prearrest or postarrest diversion program.

Intake

Section 985.14, F.S., requires the Department to develop an intake system whereby a child brought into intake is assigned a juvenile probation officer. The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child's programmatic needs and risks. The intake process is performed by the Department through a case

[7] The Department reports that it communicates with DCF regularly about youth who are served by both agencies. According to a FY 07-8 analysis of youth IDs, DCF had contact with approximately 30 percent of the youth age 9 and younger who were referred to the Department for a delinquent act.

management system, and a child's assigned juvenile probation officer serves as the primary case manager.[8]

Currently, s. 985.145(1)(d), F.S., requires a child's juvenile probation officer to ensure that a risk assessment instrument that establishes the child's eligibility for detention has been completed and that the appropriate recommendation was made to the court.

Effect of the PCB
The PCB amends s. 985.145(1)(d), F.S. to add that juvenile probation officers must make a referral to the appropriate CINS/FINS shelter if a child is ineligible for secure detention due to a misdemeanor charge of domestic violence when the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect.

Detention – Initial Assessment
Section 985.24, F.S., provides criteria used in determining if a child alleged to have committed a delinquent act qualifies for detention. Subsection (2) of the statute specifies that a child alleged to have committed a delinquent act may not be placed in detention for any of the following reasons:

- To allow a parent to avoid his or her legal responsibilities;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of appropriate facilities.

Effect of the PCB
The PCB amends s. 985.24(2), F.S., by adding the following reason to the above list:

- Due to a misdemeanor charge of domestic violence when the child lives with a family with a history of domestic violence or has been a victim of abuse or neglect, and the decision to place in secure detention is mitigated by the history of trauma faced by the child, unless the youth would otherwise score for secure detention based on prior history.

The PCB also provides children 9 years of age or younger not be placed into secure detention unless the child is charged with a capital felony, life felony, or a first degree felony.

Risk Assessment Instrument
Section 985.245, F.S., requires a detention risk assessment instrument to be developed by the Department in agreement with representatives appointed by the following associations:

- Conference of Circuit Judges of Florida
- Prosecuting Attorneys Association
- Public Defenders Association
- Florida Sheriff's Association
- Florida Association of Chiefs of Police

Effect of the PCB
The PCB amends s. 985.245, F.S., to provide that the risk assessment instrument be developed by the Department in agreement with a committee composed of two representatives from the above-listed association, as well as two representatives from child advocacy organizations appointed by the Secretary of the Department.

Additionally, the PCB amends s. 985.245, F.S., to require that the risk assessment instrument be independently validated. The PCB requires the Department to review the population, policies and procedures impacting the use of detention every seven years to determine the necessity of revalidating

[8] *See* ss. 985.14 and 985.145, F.S.

the instrument, and specifies that validation is assessing the effectiveness of the instrument's ability to measure the risk of new offending and failure to appear for court proceedings.

Continued Detention

Section 985.255, F.S. provides criteria the court may use in determining whether to continue to detain a child prior to a detention hearing. Section 985.255(1)(d), F.S. provides the court may continue to detain a child if the child is charged with domestic violence. Additionally, subsection (2) of the statute provides that a child who is charged with committing an offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

Effect of the PCB

The PCB amends s. 985.255(1)(d), F.S. to provide the court may consider only whether the child is charged with *felony* domestic violence when determining whether to continue to detain a child prior to a detention hearing. The PCB also amends subsection (2) of the statute to specify that a child who is charged with committing a *felony* offense of domestic violence and who does not meet detention criteria may be held in secure detention if the court makes specific findings.

Juvenile Justice Circuit Boards

Section 985.664, F.S., authorizes the creation of a juvenile justice circuit board in each of the 20 judicial circuits and a juvenile justice county council in each of the 67 counties. The purpose of each juvenile justice circuit board and each juvenile justice county council is to provide advice and direction to the Department in the development and implementation of juvenile justice programs and to work collaboratively with the Department in seeking program improvements and policy changes to address the emerging and changing needs of Florida's youth who are at risk of delinquency.[9]

Generally, membership of the circuit board may not exceed 18 members.[10] However, s. 985.664(8), F.S., permits a juvenile justice circuit board to revise its bylaws to increase the number of members by no more than three in order to adequately reflect the diversity of the population and community organizations or agencies in the circuit.

Effect of the PCB

The PCB amends s. 985.664(8), F.S., to expand the number of additional members that may be added to the juvenile justice circuit boards to adequately reflect the community diversity from 3 to 5.

Commitment – Mother-Infant Programs

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to:

- A licensed child-caring agency willing to receive the child
- The Department at a restrictiveness level defined in s. 985.03, F.S.
- The Department for placement in a program/facility for serious or habitual juvenile offenders
- The Department for placement in a program or facility for juvenile sexual offenders

The Department currently operates a 20-bed mother-infant program in Miami-Dade county that serves pregnant and postpartum females ages 14-19. The goal of the program is to return the women back to their communities with skills necessary to lead productive lives and successfully parent their children. At this time, there is no statutory provision allowing a court to commit a child who has been adjudicated delinquent to a mother-infant program.

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[9] s. 985.664(1), F.S.

[10] s. 985.664(7), F.S. In certain instances, the circuit board may exceed 18 members. *See* s. 985.664(8) and (9), F.S.

Effect of the PCB
The PCB amends s. 985.441, F.S., to authorize the court to commit a child to the Department for placement in a mother-infant program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents. The PCB requires the Department's mother-infant program to be licensed as a childcare facility under s. 402.308, F.S., and requires the program to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants who, upon agreement of the mother, may accompany them in the program. The PCB also requires the Department to adopt rules to govern the program.

Comprehensive Accountability Report
Legislative Intent
Section 985.632(1), F.S., provides that it is the intent of the Legislature that the Department:

- Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs of the department which achieve desired performance levels.
- Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.
- Provide information to aid in developing related policy issues and concerns.
- Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.
- Provide a basis for a system of accountability so that each client is afforded the best programs to meet his or her needs.
- Improve service delivery to clients.
- Modify or eliminate activities that are not effective.

Effect of the PCB
The PCB adds to the above list that it is the intent of the Legislature that the Department collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

The PCB also deletes the definition of the term "program effectiveness" and creates the following definitions in s. 985.632(2), F.S.:

- "Program" means any facility, service, or program for youth that is operated by the department or by a provider under contract with the department.
- "Program group" means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group.

Comprehensive Accountability Report
Currently, s. 985.632(3), F.S., requires the Department to annually collect and report cost data for every program operated or contracted by the Department. The cost data must conform to a format approved by the Department and the Legislature and shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The statute also requires the Department to ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. Further, the Department must submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year.

Effect of the PCB
The PCB deletes s. 985.632(3), F.S., in its entirety and replaces it with language requiring the Department to:

- Use a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group.
- Submit a Comprehensive Accountability Report to the appropriate substantive and fiscal committees of the Legislature and the Governor no later than January 15 of each year.

- Notify the Office of Program Policy Analysis and Government Accountability (OPPAGA) and contract service providers of substantive changes to the methodology.

The PCB specifies that the standard methodology must:

- Incorporate, whenever possible, performance-based budgeting measures/
- Include common terminology and operational definitions for measuring the performance of system and program administration, program outputs, and youth outcomes.
- Specify program outputs for each program and for each program group within the juvenile justice continuum.
- Specify desired youth outcomes and methods by which to measure youth outcomes for each program and program group.

Cost-Effectiveness Model

Section 985.632(4), F.S., currently requires the Department to develop a cost-effectiveness model and apply it to each commitment program. The statute also requires the Department to rank commitment programs based on the cost-effectiveness model and submit a report to specified entities. The Department is also required to develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance based program budgeting measures approved by the legislature to the extent the Department deems appropriate.

Effect of the PCB

The PCB makes several amendments to s. 985.632(4), F.S. The amendments:

- Require the Department to include the results of the cost-effectiveness model in the Comprehensive Accountability Report.
- Remove the language requiring the Department to rank commitment programs based on the cost-effectiveness model.
- Replaces the language requiring the Department to develop a work plan to refine the cost-effectiveness model with language requiring the Department to notify OPPAGA and contract service providers of substantive changes to the cost-effectiveness model.

Quality Assurance

Section 985.632(5), F.S., requires the Department to establish a comprehensive quality assurance system for each program operated by the Department or operated by a provider under contract with the Department. The statute also requires the Department to submit an annual report relating to quality assurance to specified entities. The annual report must include specified information about each program component.

Effect of the PCB

The PCB removes the requirement that the Department submit the annual quality assurance report and instead requires the Department to include quality assurance information in the Comprehensive Accountability Report.

Obsolete Reporting Requirement

The PCB removes an obsolete requirement that the Department submit a proposal to the Legislature by November 1, 2001 concerning funding incentives and disincentives for the Department and for providers under contract with the Department.

B. SECTION DIRECTORY:

Section 1. Amends s. 394.492, F.S., relating to definitions.

Section 2. Amends s. 984.03, F.S., relating to definitions.

Section 3. Amends s. 984.14, F.S., relating to shelter placement; hearing.

Section 4. Amends s. 985.02, F.S., relating to legislative intent for juvenile justice system.

Section 5. Amends s. 985.03, F.S., relating to definitions.

Section 6. Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

Section 7. Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.

Section 8. Amends s. 985.24, F.S., relating to use of detention; prohibitions.

Section 9. Amends s. 985.245, F.S., relating to risk assessment instrument.

Section 10. Amends s. 985.255, F.S., relating to detention criteria; detention hearing.

Section 11. Amends s. 985.664, F.S., relating to juvenile justice circuit boards and juvenile county councils.

Section 12. Amends s. 985.441, F.S., relating to commitment.

Section 13. Amends s. 985.632, F.S., relating to quality assurance and cost-effectiveness.

Section 14. Amends s. 985.45, F.S., relating to liability and remuneration for work.

Section 15. This PCB takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   The Department of Juvenile Justice reports that this bill 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:

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:

The PCB authorizes the Department to adopt rules pursuant to ch. 120, F.S., to govern operation of mother-infant 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; amending s. 394.492, F.S.; including children 9 years of age or younger at the time of referral for a delinquent act within the definition of those children who are eligible to receive comprehensive mental health services; amending s. 984.03, F.S.; expanding the meaning of the term "child in need of services" to include a child 9 years of age or younger at the time of referral to the Department of Juvenile Justice; amending s. 984.14, F.S.; providing for a youth to be placed in a shelter; amending s. 985.02, F.S.; providing additional legislative findings and intent; amending s. 985.03, F.S.; redefining the term "child in need of services" to provide that a child is eligible to receive comprehensive services if the child is 9 years of age or younger at the time of referral to the department; amending s. 985.125, F.S.; encouraging law enforcement agencies, school districts, counties, municipalities, and the Department of Juvenile Justice to establish prearrest or postarrest diversion programs for first-time misdemeanor offenders or who are 9 years of age or younger; amending s. 985.14, F.S.; providing that amending s. 985.441, F.S.; providing that a court may commit a female child adjudicated as delinquent to the department for placement in a mother-infant program designed to serve the needs of the juvenile mothers or expectant juvenile mothers who are committed as delinquents; requiring the

department to adopt rules to govern the operation of the mother-infant program; providing an effective date.

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

Section 1. Paragraph (i) is added to subsection (4) of section 394.492, Florida Statutes, to read:

394.492 Definitions.—As used in ss. 394.490-394.497, the term:

(4) "Child or adolescent at risk of emotional disturbance" means a person under 18 years of age who has an increased likelihood of becoming emotionally disturbed because of risk factors that include, but are not limited to:

(i) Being 9 years of age or younger at the time of referral for a delinquent act.

Section 2. Subsections (9) and (25) of section 984.03, Florida Statutes, are amended to read:

984.03 Definitions.—When used in this chapter, the term:

(9) "Child in need of services" means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent, except when a child 9 years of age or younger is being referred to the department; or no current supervision by the Department of Juvenile Justice or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also, pursuant to this chapter, be found by the court:

(d) To be 9 years of age or younger and have been referred

for a delinquent act.

(25) "Family in need of services" means a family that has a child who is running away; who is persistently disobeying reasonable and lawful demands of the parent or legal custodian and is beyond the control of the parent or legal custodian; or who is habitually truant from school or engaging in other serious behaviors that place the child at risk of future abuse, neglect, or abandonment or at risk of entering the juvenile justice system; or who is 9 years of age or younger and being referred to the Department of Juvenile Justice for a delinquent act. The child must be referred to a law enforcement agency, the Department of Juvenile Justice, or an agency contracted to provide services to children in need of services. A family is not eligible to receive services if, at the time of the referral, there is an open investigation into an allegation of abuse, neglect, or abandonment or if the child is currently under supervision by the Department of Juvenile Justice or the Department of Children and Family Services due to an adjudication of dependency or delinquency.

Section 3. Subsection (1) of section 984.14, Florida Statutes, is amended to read:

984.14 Shelter placement; hearing.—

(1) Unless ordered by the court pursuant to the provisions of this chapter, or upon voluntary consent to placement by the child and the child's parent, legal guardian, or custodian, a child taken into custody shall not be placed in a shelter prior to a court hearing unless the child is taken into custody for a misdemeanor domestic violence charge and is ineligible to be

held in secure detention or a determination has been made that the provision of appropriate and available services will not eliminate the need for placement and that such placement is required:

(a) To provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement; or

(b) Because a parent, custodian, or guardian is unavailable to take immediate custody of the child.

Section 4. Subsections (9) and (10) are added to section 985.02, Florida Statutes, to read:

985.02 Legislative intent for the juvenile justice system.—

(9) CHILDREN 9 YEARS OF AGE OR YOUNGER.—The Legislature finds that very young children need age-appropriate services in order to prevent and reduce future acts of delinquency. Children who are 9 years of age or younger should be diverted into prearrest or postarrest programs, civil citation programs, or children-in-need-of-services and families-in-need-of-services programs, or other programs as appropriate. If, upon findings from the needs assessment, the child is found to be in need of mental health services or substance abuse treatment services, the department shall cooperate with the parent or legal guardian and the Department of Children and Family Services, as appropriate, to identify the most appropriate services and

supports and available funding sources to meet the needs of the child.

(10) Restorative Justice.—

(a) It is the intent of the Legislature that the juvenile justice system advance that principles of restorative justice. The department should focus on repairing the harm to victims of delinquent behavior, ensuring the youth understands the impact of their delinquent behavior on the victim and the community, and restoring the loss to the victim.

(b) Offender accountability is one of the basic principles of restorative justice. The premise of this principle is that the juvenile justice system must respond to delinquent behavior in such a way that the offender is made aware of and takes responsibility for repaying or restoring loss, damage or injury perpetrated upon the victim and the community. This goal is achieved when the offender understands the consequences of delinquent behaviors in terms of harm to others; and when the offender makes amends for the harm, loss or damage through restitution, community services or other appropriate repayment.

Section 5. Subsections (7) and (23) of section 985.03, Florida Statutes, are amended to read:

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

(7) "Child in need of services" means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent, except when a child 9 years of age or younger is being referred to the department; or no current supervision by the department or the Department of

Children and Family Services for an adjudication of dependency or delinquency. The child must also, under this chapter, be found by the court:

(a) To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the department or the Department of Children and Family Services;

(b) To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation under ss. 1003.26 and 1003.27 and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Family Services; ~~or~~

(c) To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling; or

(d) To be 9 years of age or younger and have been referred for a delinquent act.

(23) "Family in need of services" means a family that has

a child for whom there is no pending investigation into an allegation of abuse, neglect, or abandonment or no current supervision by the department or the Department of Children and Family Services for an adjudication of dependency or delinquency. The child must also have been referred to a law enforcement agency or the department for:

(a) Running away from parents or legal custodians;

(b) Persistently disobeying reasonable and lawful demands of parents or legal custodians, and being beyond their control; ~~or~~

(c) Habitual truancy from school; or

(d) Being a child 9 years of age or younger and being referred for a delinquent act.

Section 6. Subsection (1) of section 985.125, Florida Statutes, is amended to read:

985.125 Prearrest or postarrest diversion programs.—

(1) A law enforcement agency, ~~or~~ school district, county, municipality, or the department in cooperation with the state attorney, is encouraged to ~~may~~ establish a prearrest or postarrest diversion program. Youth 9 years of age or younger should be given the opportunity to participate in a prearrest or postarrest diversion program.

Section 7. Paragraph (d) of subsection (1) of section 985.145, Florida Statutes, is amended to read:

985.145 Responsibilities of juvenile probation officer during intake; screenings and assessments.—

(1) The juvenile probation officer shall serve as the primary case manager for the purpose of managing, coordinating,

and monitoring the services provided to the child. Each program administrator within the Department of Children and Family Services shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the assigned juvenile probation officer shall be responsible for the following:

(d) Completing risk assessment instrument.—The juvenile probation officer shall ensure that a risk assessment instrument establishing the child's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court. <u>If upon completion of the risk assessment instrument, the child is ineligible for secure detention based on the criteria in s. 985.24(2)(e), the juvenile probation officer shall make a referral to the appropriate CINS/FINS shelter.</u>

Section 8. Section 985.24, Florida Statutes, is amended to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of secure, nonsecure, or home detention shall be based primarily upon findings that the child:

(a) Presents a substantial risk of not appearing at a subsequent hearing;

(b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;

(c) Presents a history of committing a property offense prior to adjudication, disposition, or placement;

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or

(e) Requests protection from imminent bodily harm.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into secure, nonsecure, or home detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

(e) Due to a misdemeanor charge of domestic violence when the child lives in a family with a history of domestic violence as defined in s. 741.28 or has been a victim of abuse or neglect as defined in s. 39.01, and the decision to place in secure detention is mitigated by the history of trauma faced by the child, unless the youth would otherwise score for secure detention based on prior history.

(3) A child alleged to be dependent under chapter 39 may not, under any circumstances, be placed into secure detention care.

(4) A child 9 years of age or younger may not be placed in

secure detention unless the child is charged with a capital felony, a life felony, or a felony of the first degree.

(5) ~~(4)~~ The department shall continue to identify alternatives to secure detention care and shall develop such alternatives and annually submit them to the Legislature for authorization and appropriation.

Section 9. Subsection (2) of section 985.245, Florida Statutes, is amended to read:

985.245 Risk assessment instrument.—

(2)(a) The risk assessment instrument for detention care placement determinations and court orders shall be developed by the department in agreement with a committee composed of two representatives appointed by ~~the following associations:~~ the Conference of Circuit Judges of Florida, the Prosecuting Attorneys Association, the Public Defenders Association, the Florida Sheriffs Association, and the Florida Association of Chiefs of Police. Each association shall appoint two individuals, one representing an urban area and one representing a rural area. In addition, the committee shall include two representatives from child advocacy organizations appointed by the Secretary of the department. The parties involved shall evaluate and revise the risk assessment instrument as is considered necessary using the method for revision as agreed by the parties.

(b) The risk assessment instrument shall take into consideration, but need not be limited to, prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a

motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.255. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure~~, nonsecure,~~ or home detention care.

(c) The risk assessment instrument shall be independently validated. The department shall review the population, policies and procedures impacting the use of detention every seven years to determine the necessity of revalidating the risk assessment instrument. Validation is assessing the effectiveness of the instrument's ability to measure the risk of new offending and failure to appear for court proceedings.

Section 10. Section 985.255, Florida Statutes, is amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into ~~nonsecure or~~ home detention care or detained in secure detention care prior to a detention hearing may continue to be detained by the court if:

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or

conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing a felony ~~an~~ offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession or discharging a firearm on school property in violation of s. 790.115.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations prior to court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on home detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, for an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(j) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice, at two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument. A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to

this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(2) A child who is charged with committing a felony ~~an~~ offense of domestic violence as defined in s. 741.28 and who does not meet detention criteria may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

(3)(a) A child who meets any of the criteria in subsection (1) and who is ordered to be detained under that subsection shall be given a hearing within 24 hours after being taken into custody. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged

with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the juvenile probation officer and, based on the criteria in subsection (1), shall determine the need for continued detention. A child placed into secure, nonsecure, or home detention care may continue to be so detained by the court.

(b) If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in s. 790.22(8) or in s. 985.27, when a child is placed into secure or nonsecure detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4).

Section 11. Subsection (8) of section 985.664, Florida Statutes, is amended to read:

985.664 Juvenile justice circuit boards and juvenile justice county councils.—

(8) At any time after the adoption of initial bylaws pursuant to subsection (12), a juvenile justice circuit board may revise the bylaws to increase the number of members by not

more than five ~~three~~ in order to adequately reflect the diversity of the population and community organizations or agencies in the circuit.

Section 12. Paragraph (e) is added to subsection (1) of section 985.441, Florida Statutes, to read:

985.441 Commitment.—

(1) The court that has jurisdiction of an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(e) Commit the child to the department for placement in a mother-infant program designed to serve the needs of the juvenile mothers or expectant juvenile mothers who are committed as delinquents. The department's mother-infant program shall be licensed as a child care facility in accordance with s. 402.308 and shall provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants who, upon agreement of the mother, may accompany them in the program. The department shall adopt rule provisions pursuant to ch. 120 to govern operation of such programs.

Section 13. Section 985.632, Florida Statutes, is amended to read:

985.632 Quality assurance and cost-effectiveness.—

(1) It is the intent of the Legislature that the department:

(a) Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs that ~~of the department which~~ achieve desired performance levels.

(b) Collect and analyze available statistical data for the purpose of ongoing evaluation of all programs.

(c) ~~(b)~~ Provide information about the cost of such programs and their differential effectiveness so that program ~~the~~ quality ~~of such programs~~ can be compared and improvements made continually.

(d) ~~(c)~~ Provide information to aid in developing related policy issues and concerns.

(e) ~~(d)~~ Provide information to the public about the effectiveness of such programs in meeting established goals and objectives.

(f) ~~(e)~~ Provide a basis for a system of accountability so that each youth ~~client~~ is afforded the best programs to meet his or her needs.

(g) ~~(f)~~ Improve service delivery to youth ~~clients~~.

(h) ~~(g)~~ Modify or eliminate activities that are not effective.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Youth" ~~"Client"~~ means any person who is being provided treatment or services by the department or by a provider under contract with the department.

(b) "Program" means any facility, service, or program for youth that is operated by the department or by a provider under contract with the department.

(c) ~~(b)~~ "Program component" means an aggregation of generally related objectives which, because of their special character, related workload, and interrelated output, can logically be considered an entity for purposes of organization,

management, accounting, reporting, and budgeting.

~~(c) "Program effectiveness" means the ability of the program to achieve desired client outcomes, goals, and objectives.~~

(d) "Program group" means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group.

(3) COMPREHENSIVE ACCOUNTABILITY REPORT.--The department shall use a standard methodology for annually measuring, evaluating, and reporting program outputs and youth outcomes for each program and program group. The department shall submit a report to the appropriate substantive and fiscal committees of the Legislature and the Governor no later than January 15 of each year. The department shall notify the Office of Program Policy Analysis and Government Accountability and contract service providers of substantive changes to the methodology.

(a) The standard methodology must:

1. Incorporate, whenever possible, performance-based budgeting measures.

2. Include common terminology and operational definitions for measuring the performance of system and program administration, program outputs, and youth outcomes.

3. Specify program outputs for each program and for each program group within the juvenile justice continuum.

4. Specify desired youth outcomes and methods by which to measure youth outcomes for each program and program group.

~~(3) The department shall annually collect and report cost data for every program operated or contracted by the department.~~

~~The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

(4) ~~(a)~~ COST-EFFECTIVENESS MODEL.—The department ~~Department of Juvenile Justice, in consultation with the Office of Economic and Demographic Research, and contract service providers,~~ shall ~~develop a cost-effectiveness model and~~ apply the cost-effectiveness model to each commitment program and include the results in the Comprehensive Accountability Report. ~~Program recidivism rates shall be a component of the model.~~

(a) The cost-effectiveness model shall compare program

costs to expected and actual youth recidivism rates ~~client outcomes and program outputs~~. It is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the cost-effectiveness model ~~and to integrate the standard methodology developed under s. 985.401(4) for interpreting program outcome evaluations~~.

~~(b) The department shall rank commitment programs based on the cost-effectiveness model and shall submit a report to the appropriate substantive and fiscal committees of each house of the Legislature by December 31 of each year.~~

(b) ~~(c)~~ Based on ~~reports of the department on client outcomes and program outputs and on~~ the department's most recent cost-effectiveness rankings, the department may terminate a commitment program ~~operated by the department or a provider~~ if the program has failed to achieve a minimum threshold of cost-effectiveness ~~program effectiveness~~. This paragraph does not preclude the department from terminating a contract as provided under this section or as otherwise provided by law or contract, and does not limit the department's authority to enter into or terminate a contract.

(c) ~~(d)~~ The department shall notify the Office of Program Policy Analysis and Government Accountability and contract service providers of substantive changes to the cost-effectiveness model. ~~In collaboration with the Office of Economic and Demographic Research, and contract service providers, the department shall develop a work plan to refine the cost-effectiveness model so that the model is consistent with the performance-based program budgeting measures approved~~

~~by the Legislature to the extent the department deems appropriate. The department shall notify the Office of Program Policy Analysis and Government Accountability of any meetings to refine the model.~~

(d) ~~(e)~~ Contingent upon specific appropriation, the department, in consultation with the Office of Economic and Demographic Research, and contract service providers, shall:

1. Construct a profile of each commitment program that uses the results of the quality assurance report required by this section, the cost-effectiveness report required in this subsection, and other reports available to the department.

2. Target, for a more comprehensive evaluation, any commitment program that has achieved consistently high, low, or disparate ratings in the reports required under subparagraph 1.

3. Identify the essential factors that contribute to the high, low, or disparate program ratings.

4. Use the results of these evaluations in developing or refining juvenile justice programs or program models, youth ~~client~~ outcomes and program outputs, provider contracts, quality assurance standards, and the cost-effectiveness model.

(5) QUALITY ASSURANCE.--The department shall:

(a) Establish a comprehensive quality assurance system for each program operated by the department or operated by a provider under contract with the department. Each contract entered into by the department must provide for quality assurance and include the results in the Comprehensive Accountability Report.

(b) Provide operational definitions of and criteria for

quality assurance for each specific program component.

(c) Establish quality assurance goals and objectives for each specific program component.

(d) Establish the information and specific data elements required for the quality assurance program.

(e) Develop a quality assurance manual of specific, standardized terminology and procedures to be followed by each program.

(f) Evaluate each program operated by the department or a provider under a contract with the department and establish minimum thresholds for each program component. If a provider fails to meet the established minimum thresholds, such failure shall cause the department to cancel the provider's contract unless the provider achieves compliance with minimum thresholds within 6 months or unless there are documented extenuating circumstances. In addition, the department may not contract with the same provider for the canceled service for a period of 12 months. If a department-operated program fails to meet the established minimum thresholds, the department must take necessary and sufficient steps to ensure and document program changes to achieve compliance with the established minimum thresholds. If the department-operated program fails to achieve compliance with the established minimum thresholds within 6 months and if there are no documented extenuating circumstances, the department must notify the Executive Office of the Governor and the Legislature of the corrective action taken. Appropriate corrective action may include, but is not limited to:

1. Contracting out for the services provided in the

program;

2. Initiating appropriate disciplinary action against all employees whose conduct or performance is deemed to have materially contributed to the program's failure to meet established minimum thresholds;

3. Redesigning the program; or

4. Realigning the program.

~~The department shall submit an annual report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than February 1 of each year. The annual report must contain, at a minimum, for each specific program component: a comprehensive description of the population served by the program; a specific description of the services provided by the program; cost; a comparison of expenditures to federal and state funding; immediate and long-range concerns; and recommendations to maintain, expand, improve, modify, or eliminate each program component so that changes in services lead to enhancement in program quality. The department shall ensure the reliability and validity of the information contained in the report.~~

~~(6) The department shall collect and analyze available statistical data for the purpose of ongoing evaluation of all programs. The department shall provide the Legislature with necessary information and reports to enable the Legislature to make informed decisions regarding the effectiveness of, and any~~

~~needed changes in, services, programs, policies, and laws.~~

~~(7) No later than November 1, 2001, the department shall submit a proposal to the Legislature concerning funding incentives and disincentives for the department and for providers under contract with the department. The recommendations for funding incentives and disincentives shall be based upon both quality assurance performance and cost-effectiveness performance. The proposal should strive to achieve consistency in incentives and disincentives for both department-operated and contractor-provided programs. The department may include recommendations for the use of liquidated damages in the proposal; however, the department is not presently authorized to contract for liquidated damages in non-hardware-secure facilities until January 1, 2002.~~

Section 14. Subsection (1) of section 985.45, Florida Statutes, is amended to read:

985.45 Liability and remuneration for work.—

(1) Whenever a child is required by the court to participate in any work program under this part or whenever a child volunteers to work in a specified state, county, municipal, or community service organization supervised work program or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or probation program, the child is an employee of the state for the purposes of ch. 440 ~~liability~~.

Section 15. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB PSDS 10-03 Handbill Distribution
SPONSOR(S): Public Safety & Domestic Security Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Public Safety & Domestic Security Policy Committee		Cunningham	Cunningham
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Section 509.144, F.S., prohibits persons from distributing handbills, or directing another to distribute handbills, at or in a public lodging establishment without permission. "Without permission" is defined as "without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation."

The PCB amends the definition of the term "without permission" to remove "oral permission." The PCB also increases the fine for persons who direct another to distribute handbills from $500 to $1,000. Additionally, the PCB provides the following fines for subsequent violations of the handbill statute:

- For a second violation, a minimum fine of $2,000
- For a third or subsequent violation, a minimum fine of $3,000.

The PCB amends the definition of the term "contraband" in the Florida Contraband Forfeiture Act to specify that property that was used as an instrumentality in the commission of a person's third or subsequent violation of the handbill distribution statute is subject to seizure and forfeiture.

The PCB also adds another exception to the general rule that officers must witness a misdemeanor offense in order to make a warrantless arrest. Specifically, the PCB provides that an officer may arrest a person without a warrant:

- If there is probable cause to believe that a violation of s. 509.144, F.S., has been committed; and
- Where the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

This PCB may have a positive fiscal impact on local governments. See fiscal section.

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

Handbill Distribution

Section 509.144(2), F.S., prohibits persons acting on behalf of another to, without permission, deliver, distribute, or place a handbill[1] at or in a public lodging establishment[2]. Subsection (3) of the statute also prohibits persons to, without permission, direct another person to deliver, distribute, or place a handbill in a public lodging establishment. Both crimes are punishable as 1st degree misdemeanors[3]. In addition to the 1st degree misdemeanor penalty, persons who violate subsection (3) of the statute are required to pay a minimum fine of $500.[4]

Currently, s. 509.144, F.S., defines the term "without permission" as "without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (4)."[5]

Effect of the PCB

The PCB amends the definition of the term "without permission" to remove "oral permission." Thus, a person who distributes handbills must have the written permission of the public lodging establishment's owner or manager. The PCB also increases the fine for violating subsection (3) of the handbill statute from $500 to $1,000. Additionally, the PCB provides the following fines for subsequent violations of the handbill statute:

- For a second violation, a minimum fine of $2,000
- For a third or subsequent violation, a minimum fine of $3,000.

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[1] Section 509.144, F.S., defines the term "handbill" as "a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about an individual, business, company, or food service establishment, but shall not include employee communications permissible under the National Labor Relations Act."

[2] Section 509.013, F.S., defines the term "public lodging establishment" as a transient public lodging establishment or a non-transient public lodging establishment. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. "Non-transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

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

[4] s. 509.144(3), F.S.

[5] Section 509.144(4), F.S., sets forth the manner in which public lodging establishments who intend to prohibit advertising or solicitation must post signs prohibiting such behavior.

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (Act)[6] provides that any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Act, or in, upon, or by means of which any violation of the Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Act. Section 932.701, F.S., defines the term "contraband" to include:

- Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.
- Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.
- Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
- Any motor fuel upon which the motor fuel tax has not been paid as required by law.
- Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.
- Any motor vehicle offered for sale in violation of s. 320.28., F.S.
- Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a), F.S.
- Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145, F.S., and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.

[6] Sections 932.701 – 932.706, F.S., contain the Florida Contraband Forfeiture Act.

The current definition of the term "contraband" does not include property that was used as an instrumentality in the commission of a violation of s. 509.144, F.S., relating to handbill distribution.

Effect of the PCB
The PCB amends the definition of the term "contraband" in s. 932.701, F.S., to include the following:

> Any personal property, including, but not limited to, any vehicle of any kind, item, object, tool, device, weapon, machine, money, securities, books, or records, which was used or was attempted to be used as an instrumentality in the commission of, or aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

The PCB also amends s. 509.144, F.S., to specify that the above-described property is subject to seizure and forfeiture under the Act.

Warrantless Arrest
Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes, which are listed in s. 901.15, F.S., are:

- Violations of injunctions for protection in domestic violence, repeat violence, sexual violence, and dating violence situations.
- Violations of pretrial release conditions in domestic and dating violence cases
- Acts of domestic or dating violence.
- Luring or enticing a child.
- Aggravated assault upon a law enforcement officer, firefighter and other listed persons.
- Battery.
- Criminal mischief or graffiti-related offenses.
- Violations of certain naval vessel protection zones or trespass in posted areas in airports.

For these offenses, an officer does not have to witness the crime in order to make a warrantless arrest - they only need to have probable cause to believe the person committed the crime.[7]

Effect of the PCB
The PCB adds another exception to the general rule that officers must witness a misdemeanor offense in order to make a warrantless arrest. Specifically, the PCB provides that an officer may arrest a person without a warrant:

- If there is probable cause to believe that a violation of s. 509.144, F.S., (the handbill statute) has been committed; and
- Where the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

B. SECTION DIRECTORY:

Section 1. Amends s. 509.144, F.S., relating to prohibited handbill distribution in a public lodging establishment; penalties.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

[7] s. 901.15, F.S.

Section 3. Amends s. 932.701, F.S., relating to short title; definitions.

Section 4. This PCB takes effect October 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:

   The PCB increases the fine for first, second, and subsequent violations of s. 509.144, F.S. The PCB also provides a civil forfeiture provision relating to violations of the handbill distribution statute. As such local governments may see increased revenues.

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 PCB 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 handbill distribution; amending s. 509.144, F.S.; revising definitions; providing additional penalties; specifying that certain items are subject to seizure and forfeiture; amending s. 901.15, F.S.; authorizing a law enforcement officer to arrest a person without a warrant when there is probable cause to believe the person violated s. 509.144, and where the owner or manager of the public lodging establishment signs an affidavit containing information supporting the probable cause determination; amending s. 932.701, F.S.; revising the definition of the term "contraband;" providing an effective date.

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

Section 1. Section 509.144, Florida Statutes, is amended to read:

509.144 Prohibited handbill distribution in a public lodging establishment; penalties.—

(1) As used in this section, the term:

(a) "Handbill" means a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about an individual, business, company, or food service establishment, but shall not include employee communications permissible under the National Labor Relations Act.

(b) "Without permission" means without the expressed written ~~or oral~~ permission of the owner, manager, or agent of

the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (4).

(c) "At or in a public lodging establishment" means any property under the sole ownership or control of a public lodging establishment.

(2) Any individual, agent, contractor, or volunteer who is acting on behalf of an individual, business, company, or food service establishment and who, without permission, delivers, distributes, or places, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person who, without permission, directs another person to deliver, distribute, or place, or attempts to deliver, distribute, or place, a handbill at or in a public lodging establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person sentenced under this subsection shall be ordered to pay a minimum fine of $1,000 ~~$500~~ in addition to any other penalty imposed by the court.

(4) In addition to any other penalty imposed by the court, a person who violates subsection (2) or (3):

(a) A second time shall be ordered to pay a minimum fine of $2,000.

(b) A third or subsequent time shall be ordered to pay a minimum fine of $3,000.

(5) ~~(4)~~ For purposes of this section, a public lodging

establishment that intends to prohibit advertising or solicitation, as described in this section, at or in such establishment must comply with the following requirements when posting a sign prohibiting such solicitation or advertising:

(a) There must appear prominently on any sign referred to in this subsection, in letters of not less than 2 inches in height, the terms "no advertising" or "no solicitation" or terms that indicate the same meaning.

(b) The sign must be posted conspicuously.

(c) If the main office of the public lodging establishment is immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed on a part of the main office, such as a door or window, and the sign must face the street, parking lot, grounds, or other area outside such establishment.

(d) If the main office of the public lodging establishment is not immediately accessible by entering the office through a door from a street, parking lot, grounds, or other area outside such establishment, the sign must be placed in the immediate vicinity of the main entrance to such establishment, and the sign must face the street, parking lot, grounds, or other area outside such establishment.

(6) Any personal property, including, but not limited to, any vehicle of any kind, item, object, tool, device, weapon, machine, money, securities, books, or records, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's

third or subsequent violation of this section, whether or not comprising an element of the offense, is subject to seizure and forfeiture under the Florida Contraband Forfeiture Act.

Section 2. Subsection (16) is added to section 901.15, Florida Statutes, to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(16) The officer has determined that he or she has probable cause to believe that a violation of s. 509.144 has been committed and where the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the officer's probable cause determination.

Section 3. Paragraph (a) of subsection (2) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific

narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research,

negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

12. Any personal property, including, but not limited to, any vehicle of any kind, item, object, tool, device, weapon, machine, money, securities, books, or records, which was used or

was attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

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

PUBLIC SAFETY
&
DOMESTIC SECURITY
POLICY COMMITTEE

TUESDAY, MARCH 16, 2010
8:00 A.M. – 10:00 A.M.
404 HOB

AMENDMENT PACKET

Larry Cretul
Speaker

Kevin C. Ambler
Chair

Amendment No. 1

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Public Safety & Domestic Security Policy Committee

Representative(s) Ambler offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. 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.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction, except as provided in subsection (6) and s. 943.059(6), of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the

renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate clerk of court ~~state attorney or statewide prosecutor~~ which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction, and that none of the charges related to the arrest or alleged criminal activity to which the petition to expunge pertains resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

3. That the criminal history record does not relate 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, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled

guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

(b) Remits a $75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

(d) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

(e) Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.

(f) Has never secured a prior sealing or expunction, except as provided in subsection (6) and s. 943.059(6), of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction.

(g) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(h) Has previously obtained a court order sealing the record under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were not dismissed prior to trial, without regard to whether the outcome of the trial was other than an adjudication of guilt. The requirement for the record to have previously been sealed for a minimum of 10 years does not apply when a plea was not entered or all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed prior to trial.

(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal

Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to expunge entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of an order to expunge which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to expunge. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the

certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(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(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.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of

s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 7. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

(6) EXPUNCTION OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING OR EXPUNCTION.—A court may expunge a person's criminal history record after a prior criminal history record has been sealed or expunged only if the person obtains a certificate from the department to expunge the criminal history record. The department shall issue the certificate for a second expunction only if:

(a) The person has had only one prior expunction of his or her criminal history record under s. 943.0585 or one prior expunction following the sealing of the same arrest or alleged criminal activity that was expunged;

(b) The person has not been arrested in Florida during the 10-year period prior to the date on which the application for the certificate is filed; and

(c) The person has not previously sealed or expunged a criminal history record that involved the same offense to which the petition to expunge pertains.

All other provisions and requirements of this section apply to an application to expunge a second criminal history record.

Section 2. 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.

(1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each petition to a court to seal a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for sealing issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. Has never secured a prior sealing or expunction, except as provided in subsection (6), of a criminal history record

under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. A certificate of eligibility for sealing is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

(a) Has submitted to the department a certified copy of the disposition of the charge to which the petition to seal pertains.

(b) Remits a $75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

(e) Has never secured a prior sealing or expunction, except as provided in subsection (6), of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.

(f) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

(3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

(a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state

attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to seal to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged, except as provided in subsection (6). Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to

seal entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to seal when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or when such order does not comply with the requirements of this section.

(e) An order sealing a criminal history record pursuant to this section does not require that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(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(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.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)8. to disclose information relating to the

existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

(6) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING OR EXPUNCTION.—A court may seal a person's criminal history record after a prior criminal history record has been sealed or expunged only if the person obtains a certificate from the department to seal the criminal history record. The department shall issue the certificate for the second sealing only if:

(a) The person has had only one prior expunction or sealing of his or her criminal history record under ss. 943.0585 or 943.059, or one prior expunction following the sealing of the same arrest or alleged criminal activity that was expunged;

(b) The person has not been arrested in Florida during the 5-year period prior to the date on which the application for the certificate is filed; and

(c) The person has not previously sealed or expunged a criminal history record that involved the same offense to which the petition to seal pertains.

Amendment No. 1

All other provisions and requirements of this section apply to an application to seal a second criminal history record.

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

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

Remove the entire title and insert:

An act to be entitled

An act relating to sealing and expunging criminal history records; amending s. 943.0585, F.S.; authorizing a court to expunge a criminal history record of a person who had a prior criminal history record sealed or expunged; amending s. 943.059, F.S.; authorizing a court to seal a criminal history record of a person who had a prior criminal history record sealed or expunged; providing an effective date.

Amendment No. 1

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

Council/Committee hearing bill: Public Safety & Domestic Security Policy Committee

Representative(s) Ray offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 27.366, Florida Statutes, is amended to read:

27.366 Legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3)~~; report~~.—

~~(1)~~ It is the intent of the Legislature that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms provided herein. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life. It is also the intent of the Legislature that prosecutors should appropriately exercise their discretion in those cases in which the offenders'

possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime. ~~For every case in which the offender meets the criteria in this act and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this act to the President of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information and make such information available to the public upon request for at least a 10-year period.~~

~~(2) Effective July 1, 2000, each state attorney shall annually report to the Speaker of the House of Representatives, the President of the Senate, and the Executive Office of the Governor regarding the prosecution and sentencing of offenders who met the criteria in s. 775.087(2) and (3). The report must categorize the defendants by age, gender, race, and ethnicity. Cases in which a final disposition has not yet been reached shall be reported in a subsequent annual report.~~

Section 2. Paragraph (d) of subsection (9) of section 775.082, Florida Statutes, is amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(9)

(d)~~1.~~ It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

~~2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On an annual basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the president of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information, and make such information available to the public upon request, for at least a 10-year period.~~

Section 3. Section 775.08401, Florida Statutes, is repealed.

Section 4. Subsection (5) of section 775.087, Florida Statutes, is repealed.

Section 5. Subsection (1) of section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid court fees, court costs, <u>costs of prosecution,</u> and criminal penalties. If sufficient funds are not available to pay all unpaid court fees, court costs, <u>costs of prosecution,</u> and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

Section 6. Section 938.27, Florida Statutes, is amended to read:

938.27 Judgment for costs on conviction.—

(1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission~~, if requested by such agencies~~. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to

pay. The court shall require the defendant to pay the costs within a specified period or in specified installments.

(b) The end of such period or the last such installment shall not be later than:

1. The end of the period of probation or community control, if probation or community control is ordered;

2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or

3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. ~~The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of~~

~~demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires.~~

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case. The clerk of court shall separately record each assessment and the payment of costs of prosecution. Costs of prosecution must be assessed by the court with respect to each case number in which the court orders costs of prosecution. The clerk shall provide a monthly report to the state attorney's office of the assessments and payments recorded.

(7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

(8) Costs for the state attorney shall be set in all cases at no less than $50 per case when a misdemeanor or criminal traffic offense is charged and no less than $100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community

control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section shall be deposited into the state attorney's grants and donations trust fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 7. Subsection (4) of section 985.557, Florida Statutes, is repealed.

Section 8. Subsection (5) of section 775.0843, Florida Statutes, is amended to read:

775.0843 Policies to be adopted for career criminal cases.—

(5) Each career criminal apprehension program shall concentrate on the identification and arrest of career criminals and the support of subsequent prosecution. The determination of which suspected felony offenders shall be the subject of career criminal apprehension efforts shall be made in accordance with written target selection criteria selected by the individual law enforcement agency and state attorney consistent with the provisions of this section and s. ~~ss. 775.08401 and~~ 775.0842.

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

Amendment No. 1

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

Remove the entire title and insert:

A bill to be entitled

An act relating to state attorneys; amending s. 27.366, F.S.; deleting a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving the possession or use of a weapon; amending s. 775.082, F.S.; deleting a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain specified offenses; repealing s. 775.08401, F.S., relating to criteria to be used when state attorneys decide to pursue habitual felony offenders or habitual violent felony offenders; repealing s. 775.087(5), F.S., relating to a provision that requires each state attorney to report why a case-qualified defendant did not receive the mandatory minimum prison sentence in cases involving certain specified offenses; amending s. 903.286, F.S.; requiring the clerk of the court to withhold sufficient funds to pay any unpaid costs of prosecution from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent; amending s. 938.27, F.S.; deleting provisions regarding the burden of establishing financial resources of the defendant; requiring the clerk of court to separately record each assessment and payment of costs of prosecution; requiring the clerk to prepare a monthly

report to the state attorney's office of the recorded assessments and payments; repealing s. 985.557(4), F.S., relating to direct-file policies and guidelines for juveniles; amending s. 775.0843, F.S.; conforming a cross-reference; providing an effective date.

Amendment No. 1

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

Council/Committee hearing bill: Public Safety & Domestic Security Policy Committee

Representative(s) Coley offered the following:

Amendment

Remove lines 22-23 and insert:

definition; membership; duties~~; report by the Department of Law Enforcement~~.~~-~~