PUBLIC SAFETY
&
DOMESTIC SECURITY POLICY COMMITTEE

TUESDAY, JANUARY 12, 2010
10:00 A.M. – 12:00 P.M.
404 HOB

MEETING PACKET

Amended

Larry Cretul
Speaker

Kevin C. Ambler
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 1/8/2010 12:12:37PM)

Amended(1)

Public Safety & Domestic Security Policy Committee

Start Date and Time: Tuesday, January 12, 2010 10:00 am

End Date and Time: Tuesday, January 12, 2010 12:00 pm

Location: 404 HOB
Duration: 2.00 hrs

Workshop on the following:

Workshop on Suggested Revisions to the "Tourist Safety Act of 2005"

Consideration of the following bill(s):

HB 11 Crimes Against Homeless Persons by Porth, Rogers
HB 33 Selling, Giving, or Serving Alcoholic Beverages to Persons Under 21 Years of Age by Randolph
HB 59 Athletic Coaches by Gibbons
HB 89 Pretrial Proceedings by Thompson, N.
HB 97 Street Racing by Soto
HB 247 Driving or Boating Under the Influence by Weinstein
HB 259 Capital Felonies by Weinstein
HB 261 Parole Interview Dates for Certain Inmates by Evers
HB 297 Vehicle Crashes Involving Death by Planas

NOTICE FINALIZED on 01/08/2010 12:12 by Church.Linda

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, January 12, 2009
10:00 AM – 12:00 PM
(404 HOB)

I. Opening remarks by Chair Ambler

II. Roll call by CAA

III. Workshop on Suggested Revisions to the "Tourist Safety Act of 2005"

IV. Consideration of the following bill(s)

- HB 297 Vehicle Crashes Involving Death by Planas
- HB 33 Selling, Giving, or Serving Alcoholic Beverages to Persons Under 21 Years of Age by Randolph
- HB 59 Athletic Coaches by Gibbons
- HB 97 Street Racing by Soto
- HB 247 Driving or Boating Under the Influence by Weinstein

- **HB 259 Capital Felonies by Weinstein**
- **HB 11 Crimes Against Homeless Persons by Porth, Rogers**
- **HB 261 Parole Interview Dates for Certain Inmates by Evers**
- **HB 89 Pretrial Proceedings by Thompson, N.**

V. Closing Remarks

VI. Meeting Adjourned

Workshop on
Suggested Revisions to the
"Tourist Safety Act of 2005"

Tourist Safety Act

Public Safety & Domestic Security Policy Committee
Tuesday, January 12, 2010, 10:00am

Rich Maladecki
President
Central Florida Hotel & Lodging Association

Current Statute

- Florida Statute 509.144 "Tourist Safety Act"
- Prohibited handbill distribution in a public lodging establishment
- Approved 2005 – Effective July 1, 2005
- Current Law:
  - Prohibits advertising handbills to be distributed without permission
  - Violations include:
    - 1st Degree Misdemeanor for those distributing handbills
    - 1st Degree Misdemeanor & minimum $500 fine for those directing this distribution

GOAL

To enhance the original statute:

1. To protect the hospitality industry
2. To ensure guest safety and satisfaction

WHY?

Safety & Security

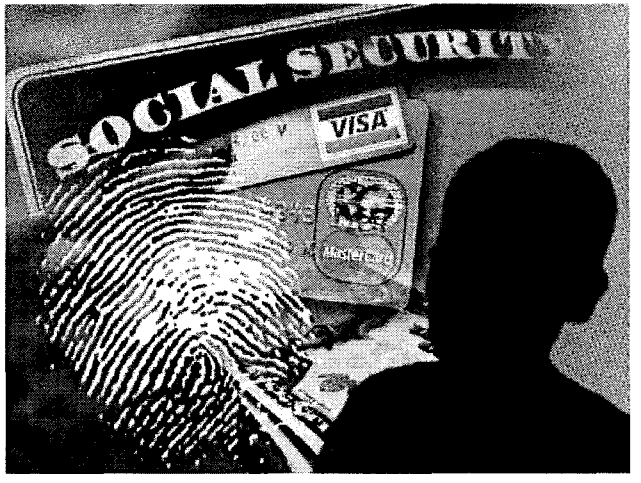
- Delivered by convicted criminals and repeat offenders.
- Check for loose handles and doors for easy entry.
- Threaten hotel employees and guests.

Credit Card Theft

- Guests who order services from these companies have also been victims of credit card theft, regardless of whether or not they receive the services requested.

Identity Theft

- As many guests carry these items during their visit, criminals have the ability to steal these items through a variety of opportunities, including during handbill distribution or while taking an order over the phone.



Health Concerns

- Visitors often order from these flyers, not knowing exactly where food items were prepared.
- Using hidden surveillance, suspects have been discovered preparing food items in unsanitary conditions, including vans and home garages.

Negative Word of Mouth

- According to VisitFlorida, over 70,000,000 people visit the Sunshine State each year.
- When a visitor has a negative experience during their stay, this creates a negative ripple-effect.

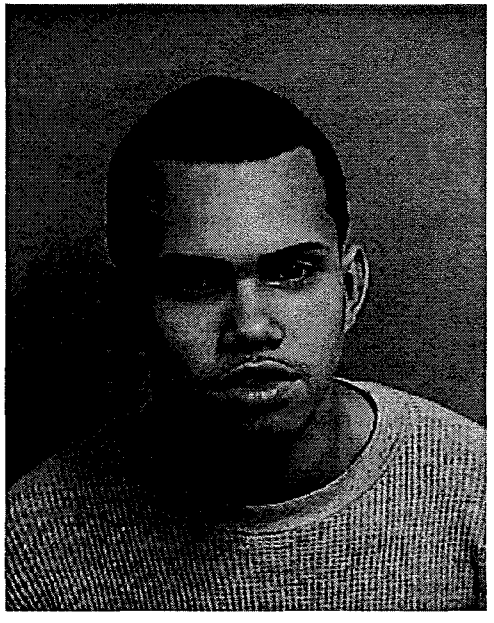
Examples

- The following flyers were distributed to hotels in Central Florida:

Hotel Security Officer Assaulted

- On Monday, November 23, 2009 at the Doubletree Resort Orlando International Drive, a Security Officer was assaulted by an unauthorized individual distributing flyers on the property. (Greg Gooding, General Manager)

- On June 25, 2009, at the Regal Sun Resort a young man was trespassed for distributing flyers, provided a false name and date of birth, was photographed and thumb printed. On November 27, 2009 this individual (see below) was involved and arrested for a murder that occurred in the area. (Steve Hinson, Regal Sun Resort)



Edward Barreiro-Trevino

18-Years Old

Suspect Leaves Scene Before Police Arrive

- **Wednesday, November 11, 2009, Orlando Airport Marriott** encountered a representative from Joe's Pizzeria. When the man was approached by Loss Prevention, he became belligerent, shouted profanities and was later found screaming at guests. The City of Orlando Police Department arrived 5 minutes after the individual left the scene in a vehicle – a license plate was unavailable.

  (General Manager, Roy Nassau)

Customer Survey Responses

At the Quality Royale Parc Suites (Duane Winjum, General Manager) customers surveyed were asked "Do you have any comments regarding your experience at this hotel?"

"Great staff. Great food. Great facility. Getting pizza flyers numerous times a day was distracting, irritating, and (at times) disconcerting."

"There was a food vendor that had left a pizza advertisement on our door. I was not happy with their service. I would suggest a check of the vendors you allow to place flyers in your hotel, since it reflects on you."

"My husband heard the door open and thought we had returned. He got up & found a pizza flyer way inside the room. It appeared that someone opened the door and tossed it in. This gave us the creeps."

ACTION

- Removing **'or oral'** to accept only written permission of the owner, manager, or agent of the owner or manager of the public lodging establishment.

- By exclusively requiring written permission, properties will be able to restrict entry.

ACTION

- Increase penalty, for both the distributor and director, from a 1st Degree Misdemeanor to a 3rd Degree Felony.
- By increasing the penalty:
  - The minimum fine would raise from $500 to $1,000.
  - Those convicted would face a maximum fine of $5,000 and may serve up to 5 years imprisonment.
- Seeks to deter repeat offenders and provides a 'bargaining chip' for negotiations.

Budget Neutral

- To remain budget neutral, this bill would include a civil forfeiture provision.
- Ideally, the assets collected would benefit a related designated fund.

A Law Enforcement Perspective

Endorsements

ARDA
American Resort Development Association

CFHLA .org

Orlando Police — Courage · Pride · Commitment

Domino's Pizza

Florida Restaurant & Lodging Association

HCHMA
Hillsborough County Hotel and Motel Association

THANK YOU

Representative Kevin C. Ambler, Chair
Representative Ed Hooper, Vice Chair
Representative Luis R. Garcia, Democratic Ranking Member
Representative Sandra Adams
Representative Mackenson Bernard
Representative Brad Drake
Representative Greg Evers
Representative Bill Heller
Representative Doug Holder
Representative Lake Ray
Representative Julio Robaina
Representative Darryl Ervin Rouson
Representative Kelli Stargel
Representative James W. Waldman

Questions?

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 11 Crimes Against Homeless Persons
SPONSOR(S): Porth and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor offense must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly known as the "hate crime" statute. HB 11 amends this statute to include offenses evidencing prejudice based on the homeless status of the victim. This will have the effect of increasing the maximum sentence that can be imposed for an offense against a homeless person where the commission of the offense evidences prejudice based on the homeless status of the victim.

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:

Hate Crime Statute: Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor offense must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly referred to as a "hate crime" statute. Offenses are reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.

Reclassification of an offense has the effect of increasing the maximum sentence that a judge can impose for the offense. The maximum sentence for a second degree misdemeanor is 60 days in jail; for a first degree misdemeanor is one year in jail; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.[1]

There is currently no section of statute that specifically applies to criminal offenses committed against a homeless person. In 2009, Maryland became the first state to amend their hate crime statute to specifically include homeless status.[2]

The bill amends section 775.085, F.S., the "hate crime" statute, to reclassify the felony or misdemeanor degree of a criminal offense if the commission of the offense evidences prejudice based on the *homeless status* of the victim.

The bill defines the term "homeless status" to mean that the victim:

1. lacks a fixed, regular, and adequate nighttime residence or
2. has a primary nighttime residence that is:

[1] s. 775.082, F.S.
[2] Maryland Criminal Law s. 10-304

a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or
b. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.085, F.S.; relating to evidencing prejudice while committing offenses; reclassification.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On April 6, 2009, the Criminal Justice Impact Conference determined that CS/HB 909 which was identical to this bill would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to crimes against homeless persons; amending s. 775.085, F.S.; reclassifying offenses evidencing prejudice based on the homeless status of the victim; providing a definition; providing an effective date.

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

Section 1. Subsection (1) of section 775.085, Florida Statutes, is amended to read:

775.085 Evidencing prejudice while committing offense; reclassification.--

(1)(a) The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age of the victim:

1. A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

2. A misdemeanor of the first degree is reclassified to a felony of the third degree.

3. A felony of the third degree is reclassified to a felony of the second degree.

4. A felony of the second degree is reclassified to a felony of the first degree.

5. A felony of the first degree is reclassified to a life

felony.

(b) As used in paragraph (a), the term:

1. "Mental or physical disability" means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living.

2. "Advanced age" means that the victim is older than 65 years of age.

3. "Homeless status" means that the victim:

a. Lacks a fixed, regular, and adequate nighttime residence; or

b. Has a primary nighttime residence that is:

(I) A supervised publicly or privately operated shelter designed to provide temporary living accommodations; or

(II) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 33 Selling, Giving, or Serving Alcoholic Beverages to Persons Under 21 Years of Age
SPONSOR(S): Randolph and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Krol TK	Cunningham KC
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 562.11(1)(a)1., F.S., provides a second degree misdemeanor penalty for a person who sells, gives, serves, or permits to be served alcoholic beverages to a person under 21 years of age or permits a person under 21 years of age to consume such beverages on the licensed premises.

The bill amends present law to make a second or subsequent violation of s. 562.11(1)(a)1., F.S., a first degree misdemeanor if committed within a year of a prior violation.

The bill creates a complete defense for any person who violates s. 562.11(1)(a), F.S., if:

- The buyer or recipient of the alcoholic beverage falsely evidenced that he or she was 21 years of age or older,
- The appearance of the buyer or recipient was such that an ordinarily prudent person would believe him or her to be 21 years of age or older, and
- The person carefully checked the buyer or recipient's identification card, acted in good faith and relied upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

The bill may have a fiscal impact upon county governments because of potential jail bed impact.

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:

Background

Underage drinking in Florida was estimated to result in costs of nearly $3.073 billion in 2007.[1] Nearly 10% of 6th graders and more than 48% of 12th graders reported using alcohol in the past month with approximately one out of six Florida students (16.4%) reported binge drinking within the past two weeks.[2] Violent crime accounted for 49% of the total cost of underage drinking in Florida, followed by motor vehicle crashes at 21%.[3] Additionally, 10.2% of all alcohol-related crashes and 10.6% of fatal alcohol-related crashes involved a driver less than 21 years of age.[4] Specifically, underage drinking impose costs on the public through insurance rates, noninsured costs to employers, noninsured losses (medical & property), and Medicaid and other public programs, as well as pain and suffering for family members and victims.[5]

Proposed Changes

Currently s. 562.11(1)(a)1., F.S., provides a second degree misdemeanor[6] penalty for a person who sells, gives, serves, or permits to be served alcoholic beverages[7] to a person under 21 years of age or permits a person under 21 years of age to consume such beverages on the licensed premises.

The bill amends current law and provides a first degree misdemeanor[8] penalty for a subsequent violation of s. 562.11(1)(a)1., F.S., within a year of a prior violation. This mirrors the penalty that presently exists for distributing tobacco products to minors.[9]

---

[1] Popovici, I., Davalos, M.E., McColliser, K.E., and French, M.T. (2009) Economic Costs of Underage Drinking in Florida.
[2] Id.
[3] Id.
[4] Id.
[5] Miller, Ted R., David T. Levy, Rebecca S. Spicer, and Dexter M. Taylor. Societal Costs of Underage Drinking. Journal of Studies on Alcohol, 67(4) 519-528, 2006.
[6] Sections 775.082 and 775.083, F.S. provide that a second-degree misdemeanor carries a penalty of a jail sentence of not more than 60 days and a fine of not more than $500.
[7] Section 561.01, F.S., defines the term "alcoholic beverages" as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water."

Section 562.11(1)(c), F.S., provides that an alcoholic beverage licensee who violates the prohibition in s. 562.11(1)(a), F.S., has a complete defense to any civil action, except for any administrative action by the division[10] under the Beverage Law,[11] if at the time the alcoholic beverage was sold, given, served, or permitted to be served:

- The person falsely evidenced that he or she was of legal age to purchase or consume the alcoholic beverage;
- The appearance of the person was such that an ordinarily prudent person would believe him or her to be of legal age to purchase or consume the alcoholic beverage;
- The licensee carefully checked one of the person's identification cards;
- The licensee acted in good faith and in reliance upon the representation and the appearance of the person in the belief that he or she was of legal age to purchase or consume the alcoholic beverage.

The bill provides a complete defense for any person charged with a violation of 562.11(1)(a)1., F.S. The complete defense described in the bill is identical to the defense to any civil action provided in s. 562.11(1)(c), F.S. relating to licensees.[12]

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

B. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S.; an act relating to selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be insignificant revenues derived from the increase in penalties under this bill.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

---

[8] Section 775.082 and 775.083, F.S. provide that a first-degree misdemeanor carries a jail sentence not exceeding one year as well as a fine not exceeding $1,000.

[9] Section 569.101, F.S. provides a first degree misdemeanor for the second violation of distribution of tobacco products to minors.

[10] Section 561.01(1), F.S., defines the term as the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

[11] Section 561.01(6), F.S., defines the term "the Beverage Law" to mean this Ch. 561, 562, 563, 564, 565, 567, and 568, F.S.

[12] The complete defense created by HB 33 mirrors the complete defense offered in s. 569.101, F.S., an act relating to selling, delivering, bartering, furnishing, or giving tobacco products to persons under 18 years of age.

The bill creates a first degree misdemeanor penalty. A first degree misdemeanor carries a potential jail sentence of not more than one year. Persons serving a jail sentence of one year or less are housed in county jails, not state prisons. Thus, this bill may have an impact on county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

Clarity of Proposed Change

The bill provides an absolute defense for persons violating the section if certain conditions are met. At present, this absolute defense exists for licenses in civil actions. The bill provides this defense for any "person"—a much broader term than "licensee" and does not limit the defense to civil actions. It is unclear whether the bill's intent is to provide this defense in all cases or only in certain actions. Courts may interpret this provision differently; if the intent is to provide an absolute defense in all cases, clearly expressing this intent is suggested. Additionally, if this is the intent of the bill, then the provision in current law providing for the absolute defense in civil actions for licensees appears to be unnecessary.

Interpretation & Application of Current Law

Some courts have interpreted s. 562.1191)(a), F.S., to apply only to providing alcohol to a minor at a licensed location rather than at a residence or another location. The bill does not alter the law on this issue.

In their Interim Project,[13] the Senate Committee on Regulated Industries discussed the issue as follows:

"In [Butler],[14] the underage sale, delivery or service prohibition in s. 562.11, F.S., was interpreted as being limited to violations that occur on alcoholic beverage licensed locations and not applicable to instances that occur at locations that are not licensed to serve alcoholic beverage.

Based upon discussions with several State Attorney offices across the state, it appears that s. 562.11(1)(a), F.S., is not being interpreted consistently between judicial circuits. Some State Attorney

[13] "Underage Drinking and Alcohol Abuse on University and College Campuses," Report 2007-135.

[14] *United Services Automobile Association v. Butler*, 359 So.2d 498 (Fla. 4th DCA 1978).

offices interpret the provision as applicable to violations that occur only on licensed alcoholic beverage locations, while other offices interpret the provision more broadly to include both licensed and unlicensed locations. According to the division, this provision is also not interpreted consistently among the agency's district offices.

In instances involving an adult who gives an alcoholic beverage to a child under 18 years of age at an non-licensed location, jurisdictions that follow the Butler decision can use s. 827.04, F.S., to charge the adult with a first degree misdemeanor violation of contributing to the delinquency of a child. This is a greater penalty than the second degree misdemeanor offense in s. 562.11(1)(a), F.S.

When an adult serves an alcoholic beverage to another adult who is less than 21 years of age, jurisdictions that follow the Butler decision may rely on s. 777.011, F.S., to charge the adult as a principal in the first degree. This violation charges the person who gives the alcohol to the underage person with aiding and abetting the person to illegally possess the alcoholic beverage. A violation of s. 777.011, F.S., as a principal in the first degree for a violation of underage possession in [s. 562.111(1), F.S.,] constitutes a second degree misdemeanor.

The lack of clarity in s. 562.11(1)(a), F.S., regarding whether a violation of this section is limited to alcoholic beverage licensed locations and the inconsistent interpretation of this provision across the state, may contribute to the inequitable application of criminal penalties. For example, an adult may be charged with a second degree misdemeanor violation of s. 562.11(1)(a), F.S., while another adult in a different jurisdiction but with the same circumstances may be charged with a first degree misdemeanor violation of contributing to the delinquency of a child under s. 827.04, F.S."

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to selling, giving, or serving alcoholic beverages to persons under 21 years of age; amending s. 562.11, F.S.; increasing the penalty imposed for a second or subsequent offense of selling, giving, or serving alcoholic beverages to a person under 21 years of age within a specified period following the prior offense; providing a defense; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 562.11, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.--

(1)(a)1. It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this subparagraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this subparagraph a second or subsequent time within 1 year after a prior violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. In addition to any other penalty imposed for a violation of subparagraph 1., the court may order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege, as provided in s. 322.057, of any person who violates subparagraph 1. This subparagraph does not apply to a licensee, as defined in s. 561.01, who violates subparagraph 1. while acting within the scope of his or her license or an employee or agent of a licensee, as defined in s. 561.01, who violates subparagraph 1. while engaged within the scope of his or her employment or agency.

(d) Any person charged with a violation of paragraph (a) has a complete defense if, at the time the alcoholic beverage was sold, given, served, or permitted to be served:

1. The buyer or recipient falsely evidenced that he or she was 21 years of age or older;

2. The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and

3. Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States Uniformed Services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 59 Athletic Coaches
SPONSOR(S): Gibbons and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill requires an independent sanctioning authority to screen a person in this state who applies to be an athletic coach of an independent youth athletic team prior to hiring or recruiting the person as a sports coach. The screening consists of a search of the sexual offenders and predators public website of the Florida Department of Law Enforcement and the Dru Sjodin National Sex Offender Public Website of the United States Department of Justice.

The sanctioning authority must disqualify any athletic coach applicant appearing in either registry. It is the applicant's appearance in the state or national sex offender registry, rather than a conviction for any particular sexual offense, that disqualifies him or her as an athletic coach.

The bill requires the sanctioning authority to provide, within 7 business days following the background screening, written notice to the person disqualified advising of the results of the background check and of disqualification. The independent sanctioning authority must maintain documentation of the results of each person screened, and the written notice of disqualification provided to each person disqualified.

In any civil suit brought against an independent sanctioning authority for harm caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct, a rebuttable presumption is created that the independent sanctioning authority was not negligent in authorizing the athletic coach if the sanctioning authority complied with the results of the bill prior to authorizing a person to act as a sports coach.

Finally, this bill encourages sanctioning authorities to participate in the VECHS program authorized under the National Child Protection Act and s. 943.0542, F.S.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Criminal History Screenings

According to information received from the Florida Department of Law Enforcement (FDLE), there is currently no Florida law that requires sports coaches for independent youth athletic teams to be screened against state or national sex offender registries. However, other state laws may suggest that such background screenings must occur, or may prohibit or limit a convicted sexual predator's contact with minors altogether.

Background Screenings for Employment at Parks, Playgrounds, and Daycare Centers

Current law provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE.[1] The screening requirements of the bill are similar to the screening requirements of s. 943.04351, F.S., insofar as both require a search of the state sex offender registry, but different in that the bill also requires a national sex offender registry search.

Prohibited Employment for Registered Sexual Predators

Existing law provides that it is a third-degree felony for a registered sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any specified sexual offense to work, whether for compensation or as a volunteer, at any business, school, daycare center, park, playground, or other place where children regularly congregate.[2] Notwithstanding the bill, it appears that a person would be precluded from acting as a sports coach of an independent youth athletic team (at least to the extent of contact with children) if the person is a registered sexual predator as described in s. 775.21(10)(b), F.S.

Volunteer and Employee Criminal History System (VECHS)

Pertinent to the bill, the FDLE has described the Volunteer and Employee Criminal History System (VECHS) as follows:

---

[1] Section 943.04351, F.S.

[2] Section 775.21(10)(b), F.S.

Through the VECHS program, FDLE and the Federal Bureau of Investigation (FBI) provide to qualified organizations (not individuals) in Florida state and national criminal history record information on applicants, employees, and volunteers. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or the disabled.

Generally, to be qualified to participate in the VECHS program, an organization (public, private, profit, or non-profit) must provide "care"[3] or "care placement services" ... to children, the elderly, or the disabled.

The VECHS program is not available to organizations currently required to obtain criminal history record checks on their employees and/or volunteers under other statutory provisions, such as day care centers. Those organizations must continue to follow the statutory mandates that specifically apply to them. If, however, an organization is required to obtain state and national checks on only specific types of employees or volunteers, the VECHS program may be able to process requests for state and national checks on the organization's other employees or volunteers.[4]

To become a qualified organization and to obtain criminal history record information through the VECHS program at FDLE, an organization will need to do the following:

- Submit an application to FDLE explaining what functions the organization performs that serve children, elderly, or disabled persons;
- Sign an agreement that the criminal history information would be used only to screen employees and volunteers of that organization for employment purposes;
- Submit $54.25 for each employee or $33.25 for each volunteer fingerprint card submission; and
- Submit $43.25 for each employee or $33.25 for each volunteer electronic submission.

If an organization becomes qualified and provides the required information for criminal history record requests, FDLE, with the assistance of the FBI, will provide the organization with the following:

- An indication that the person has no criminal history, i.e., no serious arrests in state or national databases, if there are none;
- The criminal history record (RAP sheet) that shows arrests and/or convictions for Florida and other states, if any; and
- Notification of any warrants or domestic violence injunctions that the person may have.[5]

Sexual Predator and Offender Information

The FDLE compiles information regarding sex offenders and makes that information available to the public. The information on the FDLE's public website of sexual offenders and sexual predators comes from the following sources: the Florida Department of Corrections, the Florida Department of Highway Safety and Motor Vehicles, and various law enforcement officials.[6] The Dru Sjodin National Sex Offender Public Website of the United States Department of Justice allows the public to search participating state websites for public information "regarding the presence or location of offenders who, in most cases, have been convicted of sexually violent offenses against adults and children and certain sexual contact and other crimes against victims who are minors."[7]

---

[3] The word "care" is defined in s. 943.0542, F.S. (access to criminal history information provided by FDLE to qualified entities), to include the provision of recreation to children.

[4] Florida Department of Law Enforcement, *Volunteer And Employee Background Checks,* http://www.fdle.state.fl.us/content/getdoc/9023f5ac-2c0c-465c-995c-f949db57d0dd/VECHS.aspx (last visited March 13, 2009).

[5] *Id.*

[6] *See* Florida Department of Law Enforcement, http://offender.fdle.state.fl.us (last visited March 11, 2009).

[7] *See* United States Department of Justice, http://www.nsopr.gov/ (last visited April 18, 2008).

Liability for Negligent Hiring

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee if, prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.[8] Pursuant to statute, the background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE);[9]
- Reasonable efforts to contact references and former employers;
- A job application form that includes questions requesting detailed information regarding previous criminal convictions;
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed; or
- An interview of the prospective employee.[10]

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.[11]

PROPOSED CHANGES

The bill requires that an independent sanctioning authority of a youth athletic team to screen a person in this state who applies to be an athletic coach of the team, prior to hiring or recruiting the person as a athletic coach. The screening consists of a search of the state and national sex offender registries. The sanctioning authority must disqualify any athletic coach appearing in either registry.

Definitions

The bill defines an "independent sanctioning authority" as a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S. The team must be based in this state.

Under the bill, an "athletic coach" means a person who is authorized by an independent sanctioning authority to work for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state and has direct contact with one or more minors on then youth athletic team.

Required Screenings

The bill requires an independent sanctioning authority to screen a person in this state who applies to be an athletic coach of an independent youth athletic team prior to hiring or recruiting the person as a sports coach. The screening consists of a search of the sexual offenders and predators public website of the Florida Department of Law Enforcement and the Dru Sjodin National Sex Offender Public Website of the United States Department of Justice.

The sanctioning authority must disqualify any athletic coach applicant appearing in either registry. It is the applicant's appearance in the state or national sex offender registry, rather than a conviction for any particular sexual offense, that disqualifies him or her as an athletic coach.

Notification of Screening Process

The bill requires the sanctioning authority to provide, within 7 business days following the background screening, written notice to the person disqualified advising of the results of the background check and

[8] Section 768.096(1), F.S.

[9] The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.

[10] Section 768.096(1)(a)-(e).

[11] Section 768.096(3), F.S.

of disqualification. The independent sanctioning authority must maintain documentation of the results of each person screened, and the written notice of disqualification provided to each person disqualified.

Civil Liability
In any civil suit brought against an independent sanctioning authority for harm caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct, a rebuttable presumption[12] is created that the independent sanctioning authority was not negligent in authorizing the athletic coach if the sanctioning authority complied with the results of the bill prior to authorizing a person to act as a sports coach.

Use of the VECHS Program
Finally, this bill encourages sanctioning authorities to participate in the VECHS program authorized under the National Child Protection Act and s. 943.0542, F.S.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section relating to athletic coaches for independent sanctioning authorities.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The state and federal sexual offender and sexual predator registries are available to the public via the Internet. There are no fees associated with accessing or searching the registries.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[12] Once evidence rebutting a presumption is introduced, "the presumption does not automatically disappear; it remains in effect even after evidence rebutting the presumption has been introduced. The jury must decide if the evidence is sufficient to overcome the presumption, that is, it is not overcome until the trier of fact believes that the presumed fact has been overcome by whatever degree of persuasion is required by the substantive law of the case." 23 FLA. JUR 2D *Evidence and Witnesses* s. 100.

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:

   The sex offender registry screening requirements of the bill should have a nominal impact on the sanctioning authorities. The state and national registries are public websites that can be accessed by persons with minimal computer skills, and searches can be conducted relatively quickly. Those sanctioning authorities electing to perform searches via a commercial consumer reporting agency may incur moderate expenses for the screening.

   Screening through the Volunteer and Employee Criminal History System (VECHS) program does require payment of a fee (see discussion in "Present Situation" section of this analysis). The bill does not require sanctioning authorities to do a VECHS search of a sports coach of an independent youth athletic team, but not doing so would give rise to a rebuttable presumption of negligent hiring (as described in the bill).

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 athletic coaches; defining the terms "athletic coach" and "independent sanctioning authority"; requiring the independent sanctioning authority of a youth athletic team to screen the background of current and prospective athletic coaches through designated state and federal sex offender registries; requiring the independent sanctioning authority to disqualify any athletic coach appearing on a registry; requiring the independent sanctioning authority to provide a disqualified athletic coach with written notice; requiring the independent sanctioning authority to maintain documentation of screening results and disqualification notices; providing a rebuttable presumption that an independent sanctioning authority did not negligently authorize an athletic coach for purposes of a civil action for an intentional tort relating to alleged sexual misconduct by the athletic coach if the authority complied with the screening and disqualification requirements; encouraging independent sanctioning authorities for youth athletic teams to participate in the Volunteer and Employee Criminal History System; providing an effective date.

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

Section 1. Athletic coaches for independent sanctioning authorities.--

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

(a) "Athletic coach" means a person who:

1. Is authorized by an independent sanctioning authority to work for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state; and

2. Has direct contact with one or more minors on the youth athletic team.

(b) "Independent sanctioning authority" means a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, Florida Statutes.

(2) An independent sanctioning authority shall:

(a) Conduct a background screening of each current and prospective athletic coach. No person shall be authorized by the independent sanctioning authority to act as an athletic coach after July 1, 2010, unless a background screening has been conducted and did not result in disqualification under paragraph (b). Background screenings shall be conducted annually for each athletic coach. For purposes of this section, a background screening shall be conducted with a search of the athletic coach's name or other identifying information against state and federal registries of sexual predators and sexual offenders, which are available to the public on Internet sites provided by:

1. The Department of Law Enforcement under s. 943.043, Florida Statutes; and

2. The Attorney General of the United States under 42 U.S.C. s. 16920.

(b) Disqualify any person from acting as an athletic coach if he or she is identified on a registry described in paragraph (a).

(c) Provide, within 7 business days following the background screening under paragraph (a), written notice to a person disqualified under this section advising the person of the results and of his or her disqualification.

(d) Maintain documentation of:

1. The results for each person screened under paragraph (a); and

2. The written notice of disqualification provided to each person under paragraph (c).

(3) In a civil action for the death of, or injury or damage to, a third person caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct by the athletic coach, there is a rebuttable presumption that the independent sanctioning authority was not negligent in authorizing the athletic coach if the authority complied with the background screening and disqualification requirements of subsection (2) prior to such authorization.

(4) The Legislature encourages independent sanctioning authorities for youth athletic teams to participate in the Volunteer and Employee Criminal History System, as authorized by the National Child Protection Act of 1993 and s. 943.0542, Florida Statutes.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 89 Pretrial Proceedings
SPONSOR(S): Thompson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 300

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

SUMMARY ANALYSIS

If a person sentenced to probation commits a new criminal offense, the person is in violation of the terms of probation. In such instances, the probation officer files an affidavit alleging a violation of probation with the court. The court may then issue a warrant for the probationer's arrest. Their probation is not violated until the probation officer files an affidavit and the judge signs an arrest warrant.

Generally, a judge may set any bond amount on the arrest warrant for a person who violates probation. The amount of the bond depends on the nature of the probation violation and the probationer's past history. Under certain circumstances listed in s. 903.0351, F.S., the judge must order pretrial detention without bail until the resolution of the probation violation or community control violation hearing.

The bill provides that the court may order pretrial detention or pretrial release of any person who is on probation or community control if the person commits a new criminal offense for which the court finds the existence of probable cause. If no affidavit of a violation of probation or community control is filed within 10 days, the order of pretrial detention or pretrial release relating to the violation is dismissed.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 948.01, F.S. provides the circumstances for which the court can place a person on probation[1] or community control[2]. Any person who is found guilty by a jury, the court sitting without a jury, or enters a plea of guilty or nolo contendre may be placed on probation or community control; regardless of whether adjudication is withheld.[3] The Department of Corrections (DOC) supervises all probationers sentenced in circuit court.[4] Section 948.03, F.S. provides a list of standard conditions of probation. In addition to the standard conditions of probation, the court may add additional conditions to the probation that it deems proper.[5] A condition requiring the probationer to not commit any new criminal offenses is a standard condition.[6]

If a person sentenced to probation commits a new criminal offense, the person is in violation of the terms of probation. In such instances, the probation officer files an affidavit alleging a violation of probation with the court.[7] The court may then issue a warrant for the probationer's arrest.[8] Their probation is not violated until the probation officer files an affidavit and the judge signs an arrest warrant.

Generally, a judge may set any bond amount on the arrest warrant for a person who violates probation. The amount of the bond depends on the nature of the probation violation and the probationer's past history. Under certain circumstances listed in s. 903.0351, F.S.[9], the judge must order pretrial

---

[1] "Probation" is defined as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Section 948.001(5), F.S.

[2] "Community control" is defined as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanction and imposed and enforced. Section 948.001(3), F.S.

[3] Section 948.01(1), F.S.

[4] Id.

[5] Section 948.03(2), F.S.

[6] Fl. R. Crim. Pro. 3.790 (2010).

[7] Section 948.06(1)(b), F.S.

[8] Id.

[9] Circumstances include detention of a person who is a violent felony offender of special concern defined in s. 948.06, F.S.; a person on felony probation who commits a qualifying act defined in s. 948.06(8)(c), F.S.; a person on felony probation that has previously been found by the court to be a habitual violent felony offender as defined in s. 775.084(1)(b), F.S., a three-time violent offender as

detention without bail until the resolution of the probation violation or community control violation hearing.

Proposed Changes

The bill provides that the court may order pretrial detention or pretrial release of any person who is on probation or community control if the person commits a new criminal offense for which the court finds the existence of probable cause. If no affidavit of a violation of probation or community control is filed within 10 days, the order of pretrial detention or pretrial release relating to the violation is dismissed.

B. SECTION DIRECTORY:

Section 1: Cites the bill as the "Officer Andrew Widman Act."

Section 2: Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could potentially increase the length of time a probationer arrested for a new offense must remain in jail. This could result in an increase in the local jail population.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

---

defined in s. 775.084(1)(c), F.S., or a sexual predator under s. 775.21, F.S. who commits a qualifying act defined in s. 948.06(8)(c), F.S.

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:

The idea of setting pretrial detention/release conditions for a potential violation of probation case, before the violation of probation affidavit is actually filed, may raise due process concerns. In the early 1980s, sections 949.10 and 949.11, F.S., contained language that is similar to that of HB 89. These sections provided that the arrest of any person who was on probation was prima facie evidence of a violation of the terms and conditions of such probation. Upon such arrest, probation was immediately temporarily revoked and such person had to remain in custody until a hearing by the Parole and Probation Commission or the court. The statutes required the hearing to be held within 10 days from the date of the arrest, and provided that the failure of the commission or the court to hold the hearing within 10 days from the date of arrest resulted in the immediate release of such person from incarceration on the temporary revocation.

Although these sections of statute were repealed in 1982, they were analyzed by various courts. In *Miller v. Toles*, 442 So.2d 177 (Fla. 1983), an offender alleged that his due process rights were violated because he was not given a hearing until the eleventh day after being placed in custody. The Florida Supreme Court agreed and stated that:

> Without provision for expedited final hearings for a parolee or a probationer arrested for alleged commission of a felony, statutes governing subsequent felony arrest of felony parolee or probationer which deny the parolee or probationer arrested a preliminary probable cause hearing would be subject to constitutional attack as imposing an automatic forfeit of liberty interests upon arrest, not conviction, for a felony.

The Court acknowledged that probationers could be afforded lesser due process rights but stated that the quid pro quo for doing so was the expedited final hearing. The Court stated that without that provision, the statute would be subject to constitutional attack as imposing an automatic forfeit of liberty interests upon *arrest,* not *conviction,* for a felony.

Unlike the provisions of ss. 949.10 and 949,11, F.S., HB 89 only requires that a violation affidavit be *filed* within ten days of an offender's arrest (it would follow that the *hearing* would be more than 10 days after the offender's arrest). As such, the bill may raise due process concerns.

Additionally, there may be an issue of separation of powers to the extent that the court is assuming the role of the state (Department) by initiating the violation of probation process. Probation officers may feel obligated to file violation of probation affidavits at the direction of the court or because the court has already made an initial determination by ordering pretrial detention/release conditions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 903.046, F.S. currently provides that the court may consider the defendant's past or present conduct and record of convictions in determining the bail amount for the new criminal offense.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to pretrial proceedings; providing a short title; amending s. 948.06, F.S.; providing that at the first appearance of a probationer or an offender on community control arrested for a new offense for which the court finds the existence of probable cause, the court may order pretrial detention or pretrial release of the person with or without bail to await further hearing to determine the outcome of a violation hearing; providing for dismissal if no affidavit alleging a violation of probation or community control is filed within a specified period; exempting persons subject to hearings under specified provisions; providing an effective date.

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

Section 1. This act may be cited as the "Officer Andrew Widman Act."

Section 2. Paragraphs (c) through (f) of subsection (1) of section 948.06, Florida Statutes, are redesignated as paragraphs (d) through (g), respectively, and a new paragraph (c) is added to that subsection to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.--

(1)

(c) Notwithstanding s. 907.041, at the first appearance of a probationer or an offender on community control arrested for a

new offense for which the court finds the existence of probable cause, the court may order pretrial detention or pretrial release of the person with or without bail to await further hearing to determine the outcome of a violation hearing. If no affidavit alleging a violation of probation or community control is filed with the court within 10 days after arrest for the new offense, the order regarding pretrial detention or pretrial release on the uncharged violation of probation or community control shall be dismissed. This paragraph does not apply to a probationer or community controllee subject to a hearing on his or her danger to the community required under subsection (4) or paragraph (8)(e).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Street Racing
SPONSOR(S): Soto
TIED BILLS: **IDEN./SIM. BILLS:** SB 768

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee		Padgett	Cunningham
2)	Roads, Bridges & Ports Policy Committee			
3)	Transportation & Economic Development Appropriations Committee			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

Section 316.191(2)(a), F.S. provides that a person may not:

- drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;
- in any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition;
- knowingly ride as a passenger in any such race, competition, contest, test, or exhibition; or
- purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

A person who violates s. 316.191(2)(a), F.S. commits a first degree misdemeanor. In addition, the person must pay a fine of not less than $500 and not more than $1,000, and the person's driver's license is revoked for 1 year. A person who commits a second violation of this section within 5 years after the date of a prior violation that resulted in a conviction commits a first degree misdemeanor, must pay a fine of not less than $500 and not more than $1,000, and the person's driver's license is revoked for 2 years.

HB 97 increases the amount of the fine a person who commits a second violation of 316.191(2), F.S. within 5 years of a prior violation must pay to not less than $1,000 and not more than $3,000.

The bill provides that a person who commits a third violation of s. 316.191(a), F.S. within 5 years of the date of a prior violation must pay a fine of not less than $2,000 and not more than $5,000. The bill provides the person's driver's license must be revoked for 4 years.

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law
Section 316.191(2)(a), F.S. provides that a person may not:

- drive any motor vehicle, including any motorcycle, in any race[1], speed competition or contest, drag race[2] or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;
- in any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition;
- knowingly ride as a passenger in any such race, competition, contest, test, or exhibition; or
- purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

A person who violates s. 316.191(2)(a), F.S. commits a first degree misdemeanor[3]. In addition, the person must pay a fine of not less than $500 and not more than $1,000, and the person's driver's license is revoked for 1 year.[4] A person who commits a second violation within 5 years after the date of

---

[1] "Race" is defined to mean the use of one of more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in an immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of circumstances, can reasonably be interpreted as a challenge to race. Section 316.191(1)(c), F.S.

[2] "Drag race" is defined to mean the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicles within a certain distance or time limit. Section 316.191(1)(b), F.S.

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

[4] Section 316.191(2)(a), F.S.

a prior violation that resulted in a conviction[5] for a violation of this section commits a first degree misdemeanor, must pay a fine of not less than $500 and not more than $1,000, and the person's driver's license is revoked for 2 years.[6]

In 2007, the Fourth District Court of Appeal ruled that s. 316.191, F.S. was unconstitutionally vague because the statutory definition of racing could include both lawful and unlawful conduct.[7] For example, both speeding (illegal) and the act of passing a vehicle (legal) could be included under the definition since both acts could be an attempt to outgain or outdistance another motor vehicle. The court held that the critical distinction between the lawful and unlawful conduct was the element of competition or a challenge between two drivers.[8] Absent such language, the court held the s. 316.191, F.S. was unconstitutionally vague on its face.[9]

In the 2009 legislative session, s. 316.191, F.S. was amended to address the constitutional issues raised by the Fourth District Court of Appeal.[10]

Proposed Changes

HB 97 increases the amount of the fine a person who commits a second violation of 316.191(2), F.S. within 5 years of a prior violation must pay to not less than $1,000 and not more than $3,000.

The bill provides that a person who commits a third violation of s. 316.191(a), F.S. within 5 years of the date of a prior violation must pay a fine of not less than $2,000 and not more than $5,000. The bill provides the person's driver's license must be revoked for 4 years.

B. SECTION DIRECTORY:

Section 1: Provides the bill may be cited as the "Luis Rivera Ortega Street Racing Act."

Section 2: Amends s. 316.191, F.S., relating to racing on highways.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See fiscal comments.

2. Expenditures:

---

[5] "Conviction" is defined to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. Section 316.191(1)(a), F.S.
[6] Section 316.191(2)(b), F.S.
[7] State v. Wells. 965 So. 2d. 834 (Fla. 4th DCA, 2007).
[8] Id.
[9] Id.
[10] An amendment to HB 1021 was adopted which amended s. 316.191.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill increases the minimum and maximum fine amounts for second and third convictions for racing on highways within 5 years of a prior conviction of this section. It is possible that the increased fines could result in increased revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to street racing; creating the "Luis Rivera Ortega Street Racing Act"; amending s. 316.191, F.S.; revising penalties for violating provisions prohibiting certain speed competitions and exhibitions; providing an effective date.

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

Section 1. This act may be cited as the "Luis Rivera Ortega Street Racing Act."

Section 2. Section 316.191, Florida Statutes, is amended to read:

316.191 Racing on highways.--

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

(a) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(b) "Drag race" means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit.

(c) "Race" means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority

of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race.

(d) "Spectator" means any person who is knowingly present at and views a drag race, when such presence is the result of an affirmative choice to attend or participate in the race. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the racer and the individual, evidence of gambling or betting on the outcome of the race, and any other factor that would tend to show knowing attendance or participation.

(2) ~~(a)~~ A person may not:

(a) ~~1.~~ Drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;

(b) ~~2.~~ In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition;

(c) ~~3.~~ Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition; or

(d) ~~4.~~ Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

(3)(a) Any person who violates subsection (2) ~~any provision of this paragraph~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates subsection (2) ~~any provision of this paragraph~~ shall pay a fine of not less than $500 and not more than $1,000, and the department shall revoke the driver license of a person so convicted for 1 year. A hearing may be requested pursuant to s. 322.271.

(b) Any person who commits a second violation of subsection (2) ~~violates paragraph (a)~~ within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) ~~this subsection~~ commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall pay a fine of not less than $1,000 ~~$500~~ and not more than $3,000 ~~$1,000~~. The department shall also revoke the driver license of that person for 2 years. A hearing may be requested pursuant to s. 322.271.

(c) Any person who commits a third violation of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall pay a fine of not less than $2,000 and not more than $5,000. The department

shall also revoke the driver license of that person for 4 years. A hearing may be requested pursuant to s. 322.271.

(d) ~~(c)~~ In any case charging a violation of subsection (2) ~~paragraph (a)~~, the court shall be provided a copy of the driving record of the person charged and may obtain any records from any other source to determine if one or more prior convictions of the person for a violation of subsection (2) ~~paragraph (a)~~ have occurred within 5 years prior to the charged offense.

(4) ~~(3)~~(a) A person may not be a spectator at any drag race prohibited under subsection (2).

(b) A person who violates ~~the provisions of~~ paragraph (a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(5) ~~(4)~~ Whenever a law enforcement officer determines that a person was engaged in a drag race or race, as described in subsection (1), the officer may immediately arrest and take such person into custody. The court may enter an order of impoundment or immobilization as a condition of incarceration or probation. Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the motor vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the motor vehicle.

(a) Notwithstanding any provision of law to the contrary, the impounding agency shall release a motor vehicle under the conditions provided in s. 316.193(6)(e), (f), (g), and (h), if

the owner or agent presents a valid driver license at the time of pickup of the motor vehicle.

(b) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the motor vehicle or, if the motor vehicle is leased or rented, by the person leasing or renting the motor vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply.

(c) Any motor vehicle used in violation of subsection (2) may be impounded for a period of 30 business days if a law enforcement officer has arrested and taken a person into custody pursuant to this subsection and the person being arrested is the registered owner or coowner of the motor vehicle. If the arresting officer finds that the criteria of this paragraph are met, the officer may immediately impound the motor vehicle. The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment for violation of this subsection in accordance with procedures established by the department. ~~The provisions of~~ Paragraphs (a) and (b) shall be applicable to such impoundment.

(6) ~~(5)~~ Any motor vehicle used in violation of subsection (2) by any person within 5 years after the date of a prior conviction of that person for a violation under subsection (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act. This subsection shall only be applicable if the owner of the motor vehicle is the person charged with violating ~~violation of~~ subsection (2).

(7) ~~(6)~~ This section does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 247 Driving or Boating Under the Influence
SPONSOR(S): Weinstein
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

HB 247 provides two additional exemptions to the general rule that in order to arrest a person for a misdemeanor offense, the arresting law enforcement officer must have either witnessed the occurrence of the offense or obtained an arrest warrant prior to making the arrest. The bill would add the offenses of driving under the influence (DUI) and boating under the influence (BUI) to the list of exceptions where an arrest warrant is not required.

The bill does not change the elements of the offenses of DUI or BUI that the state must prove beyond a reasonable doubt for criminal prosecution.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 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 and dating violence situations as well as violations of pretrial release conditions in domestic violence cases; misdemeanor luring or enticing a child and child abuse; aggravated assault upon a law enforcement officer, firefighter and other listed persons; battery; criminal mischief or graffiti-related offenses; and 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.

Warrantless arrest for a violation of chapter 316, F.S.[1], which includes the offense of DUI, is specifically addressed in s. 901.15, F.S. as follows:

> A law enforcement officer may arrest a person without a warrant when:
> (5) A violation of chapter 316 has been committed in the presence of the officer. Such an arrest may be made immediately or in fresh pursuit. Any law enforcement officer, upon receiving information relayed to him or her from a fellow officer stationed on the ground or in the air that a driver of a vehicle has violated chapter 316, may arrest the driver for violation of

[1] Chapter 316, F.S. contains Florida traffic laws.

those laws when reasonable and proper identification of the vehicle and the violation has been communicated to the arresting officer.

Proposed Changes

The bill provides that an officer may arrest a person without a warrant if there is probable cause to believe the person has committed the offenses of driving under the influence or boating under the influence.

The bill does not change the elements of the offenses of DUI or BUI that the state must prove beyond a reasonable doubt for criminal prosecution.

B. SECTION DIRECTORY:

Section 1: Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 2: Provides effective date of 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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to driving or boating under the influence; 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 has committed any of specified driving or boating under the influence violations; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (9) of 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:

(9) There is probable cause to believe that the person has committed:

(d) A violation of s. 316.193 or s. 327.35.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 259 Capital Felonies
SPONSOR(S): Weinstein
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment. After hearing evidence, the jury renders an advisory sentence to the judge based on whether sufficient aggravating circumstances exist, whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and based on these considerations, whether the defendant should be sentenced to life imprisonment or death. The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.

The bill adds to the list of aggravating circumstances that can be considered by the jury and judge in the sentencing phase of a capital case that the capital felony was committed by a person subject to an injunction for protection against repeat violence, sexual violence or dating violence or a foreign domestic violence injunction, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

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:

Capital sentencing: Section 921.141, F.S., is Florida's death penalty statute. When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment. [1] After hearing evidence, the jury renders an advisory sentence to the judge based on the following factors:

- Whether sufficient aggravating circumstances exist;
- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on these considerations, whether the defendant should be sentenced to life imprisonment or death. [2]

The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances. .[3]

The aggravating factors that may be considered are limited by statute. Section 921.141(5), F.S., provides:

(5) AGGRAVATING CIRCUMSTANCES.--Aggravating circumstances shall be limited to the following:

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit,

[1] s. 921.141(1), F.S.
[2] s. 921.141(2), F.S.
[3] s. 921.141(3), F.S.

any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

Mitigating factors are not limited by statute but may include:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.

- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.[4]

Protective injunctions: Section 784.046, F.S. provides criteria for the issuance by a judge of an injunction for protection against repeat violence,[5] sexual violence[6] or dating violence[7] upon the filing of a petition by the victim. When it appears to the court that an immediate and present danger of violence exists, the court may issue a temporary injunction which may be granted without the respondent being present.[8]The temporary injunction is effective for not more than 15 days unless the judge finds that there is good cause to continue the injunction. A full hearing must be held before the temporary injunction expires. Any final injunction issued after the full hearing remains in effect until it is modified or dissolved by the judge.[9]

Section 741.315, F.S. provides that an injunction for protection against domestic violence issued by a court of a foreign state must be accorded full faith and credit by the courts of this state and enforced by a law enforcement agency as if it were the order of a Florida court.

Changes made by bill: The bill amends s. 921.141, F.S. to include an additional aggravating circumstance that can be considered by the jury and judge in the sentencing phase of a capital case when the capital felony was committed by a person subject to an injunction issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

B. SECTION DIRECTORY:

Section 1: Amends s. 921.141, F.S. relating to sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

---

[4] s. 91.141(6), F.S.

[5] "Repeat violence" is defined to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

[6] Sexual violence" is defined to mean any one incident of:
1. Sexual battery, as defined in chapter 794;
2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787;
4. Sexual performance by a child, as described in chapter 827; or
5. Any other forcible felony wherein a sexual act is committed or attempted,

regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

[7] "Dating violence" is defined to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:
1. A dating relationship must have existed within the past 6 months;
2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

[8] s. 784.046(6), F.S.

[9] s. 784.046(7)(c), F.S.

1. Revenues:

   None.

2. Expenditures:

   If the additional aggravating factor created by the bill results in more death penalty prosecutions, there may be additional workload for the State Attorneys and Public Defenders who handle death penalty trials. The additional aggravating factor created by the bill may also result in more defendants receiving a death sentence. This may cause an additional workload for the Attorney General's office that handles the direct appeal and any postconviction litigation on behalf of the state as well as the Public Defender's office and Capital Collateral Regional Counsel who represents a death row inmate on direct appeal and postconviction litigation respectively. There may also be an additional workload on the courts in the trial and appellate process of death penalty cases.

   It is not possible to calculate any fiscal impact on the Department of Corrections if this bill results in defendants being given a death sentence that would have otherwise been given a life sentence. According to the Department of Corrections, an inmate who is executed serves an average of 12.5 years on death row prior to execution.[10] However, the Department of Corrections does not distinguish between different types of sentences (for example, between a life sentence and a death sentence) in making per diem cost determinations. The department maintains per diem costs by type of facility. Death sentences are served in three maximum security prisons which also house inmates that are serving sentences of a particular term of years and inmates serving life sentences. Therefore, it is not possible to determine whether inmates sentenced to death would cost the department more than if the inmate had been sentenced to life while they are incarcerated. However, if the bill does result in inmates being executed instead of incarcerated for the rest of their life, there may be some savings to the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

[10] http://www.dc.state.fl.us/oth/deathrow/index.html

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted the bill adds an aggravating factor to the death penalty statute when the capital felony was committed by a person subject to an injunction issued pursuant to s. 784.046, F.S. Section 784.046, F.S. relates generally to a petition for protection from repeat violence, sexual violence, or dating violence. *Domestic violence* injunctions are referenced in chapter 741. The bill refers to section 741.315, F.S. which relates to protective orders issued in other states but not in this state. If the intent was to create an aggravating circumstance for a person who was the subject of a domestic violence injunction issued in this state, a reference to section 741.30 should be included in the bill.

The bill has an effective date of July 1, 2010. It may be preferable to have a later effective date to provide sufficient time to train judges, prosecutors and defense counsel on the changes made by the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to capital felonies; amending s. 921.141, F.S.; providing that it shall be an aggravating circumstance for the purpose of determining sentence if a capital felony was committed by a person subject to an injunction or protection order against the petitioner who obtained that injunction or order or any of certain related persons; providing an effective date.

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

Section 1. Paragraph (p) is added to subsection (5) of section 921.141, Florida Statutes, to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.--

(5) AGGRAVATING CIRCUMSTANCES.--Aggravating circumstances shall be limited to the following:

(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 Parole Interview Dates for Certain Inmates
SPONSOR(S): Evers and others
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

This bill extends the period between parole interview dates from 5 to 7 years for inmates convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or for inmates serving a 25-year minimum mandatory sentence. This would result in the Parole Commission being required to meet less frequently to consider whether to grant parole to such inmates.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Parole is not available for most crimes that were committed on or after October 1, 1983.[1] There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,826 Florida inmates still eligible for parole consideration with about 450 under supervision in the community.[2]

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a hearing examiner reviews the inmate's file and makes an initial recommendation. The date of the initial interview depends upon the length and type of the parole-eligible sentence. For example, an inmate with a minimum mandatory sentence of 7 to 15 years is not eligible to have an initial interview sooner than 12 months prior to expiration of the minimum mandatory portion of the sentence. An inmate may request one review of the initial PPRD within 60 days after notification.

If the PPRD is more than 2 years after the date of the initial interview a hearing examiner must interview the inmate to review the PPRD within 2 years after the initial interview and every 2 years thereafter. The statute also provides for less frequent reviews for inmates whose PPRD is more than 5 years from the date of the initial interview or if an inmate was convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S.[3] In such cases, the interview and subsequent interview may be conducted every 5 years if the commission makes a written finding that it is not reasonable to expect that parole will be granted. For any inmate within 7 years of their tentative release date, the commission may establish a reinterview date prior to the 5 year schedule.

---

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

[2] Parole Commission 2010 Analysis of HB 261.

[3] Section 947.16(4)(g), F.S.

These interviews are limited to determining whether or not information has been gathered which might affect the PPRD.[4] The department is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as current progress reports, psychological reports, and disciplinary reports.[5] In consultation with the department, the commission has developed guidelines defining unsatisfactory institutional record and has defined what constitutes a satisfactory release plan and verification of the plan prior to release.[6]

After the interview is conducted the hearing examiner sends their report and recommendation to the commission. The inmate's case is then added to the docket of the next available parole hearing date where the commission will hear testimony and make a final decision regarding the possibility of parole. Inmates are not permitted to attend parole hearings. At parole hearings victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission. The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings. If a victim or the victim's family is unable to attend a hearing Victim Services can address the commission on their behalf.

If parole is granted, the commission determines the terms and conditions of parole. Statutorily, conditions of parole are not specific, except for provisions that require:

- The offender to submit to random substance abuse testing, if the offender's conviction was for a controlled substance violation.
- The offender to not knowingly associate with other criminal gang members or associates, if the offender's conviction was for a crime that involved criminal gang activity.
- The offender to pay debt due and owing to the state under s. 960.17, F.S., or attorney's fees and costs due and owing to the state under s. 938.29, F.S.[7]
- The offender to pay victim restitution.[8]
- The offender to apply for services from the Agency for Persons with Disabilities, if the offender has been diagnosed as mentally retarded.[9]

Proposed Changes

HB 261 would extend the period between parole interview dates from 5 to 7 years for inmates convicted of murder, attempted murder, sexual battery, or attempted sexual battery, or for inmates serving a 25-year minimum mandatory sentence. This would result in the commission being required to meet less frequently to consider whether to grant parole to such inmates.

B. SECTION DIRECTORY: Section 1. Amends s. 947.16, F.S.; an act relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 2. Amends s. 947.174, F.S.; an act relating to subsequent interviews.

Section 3. Amends s. 947.1745, F.S.; an act relating to establishment of effective parole release date.

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

---

[4] Section 947.174(1)(c), F.S.

[5] Section 947.174(3), F.S.

[6] Section 947.174(5), F.S.

[7] Section 947.18, F.S.

[8] Section 947.181, F.S.

[9] Section 947.185, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   While the commission did not discern any fiscal savings in its analysis, it would appear the agency would experience a workload reduction.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Judges, prosecutors, and law enforcement officers will not have to expend resources to attend or provide input for the parole hearings as often.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Victims and their families or other interested parties would not be required to travel as frequently to testify at parole hearings.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

On June 1, 1997, the Legislature enacted ch. 97-289, Laws of Florida, which changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years. According

to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.[10]

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[10] Tuff v. State, 732 So.2d 461 (3rd DCA 1999).

A bill to be entitled

An act relating to parole interview dates for certain inmates; amending ss. 947.16, 947.174, and 947.1745, F.S.; extending from 5 to 7 years the period between parole interview dates for inmates convicted of violating specified provisions or serving a mandatory minimum sentence under a specified provision; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 947.16, Florida Statutes, is amended to read:

947.16 Eligibility for parole; initial parole interviews; powers and duties of commission.--

(4) A person who has become eligible for an initial parole interview and who may, according to the objective parole guidelines of the commission, be granted parole shall be placed on parole in accordance with the provisions of this law; except that, in any case of a person convicted of murder, robbery, burglary of a dwelling or burglary of a structure or conveyance in which a human being is present, aggravated assault, aggravated battery, kidnapping, sexual battery or attempted sexual battery, incest or attempted incest, an unnatural and lascivious act or an attempted unnatural and lascivious act, lewd and lascivious behavior, assault or aggravated assault when a sexual act is completed or attempted, battery or aggravated battery when a sexual act is completed or attempted, arson, or

any felony involving the use of a firearm or other deadly weapon or the use of intentional violence, at the time of sentencing the judge may enter an order retaining jurisdiction over the offender for review of a commission release order. This jurisdiction of the trial court judge is limited to the first one-third of the maximum sentence imposed. When any person is convicted of two or more felonies and concurrent sentences are imposed, then the jurisdiction of the trial court judge as provided herein applies to the first one-third of the maximum sentence imposed for the highest felony of which the person was convicted. When any person is convicted of two or more felonies and consecutive sentences are imposed, then the jurisdiction of the trial court judge as provided herein applies to one-third of the total consecutive sentences imposed.

(g) The decision of the original sentencing judge or, in her or his absence, the chief judge of the circuit to vacate any parole release order as provided in this section is not appealable. Each inmate whose parole release order has been vacated by the court shall be reinterviewed within 2 years after the date of receipt of the vacated release order and every 2 years thereafter, or earlier by order of the court retaining jurisdiction. However, each inmate whose parole release order has been vacated by the court and who has been:

1. Convicted of murder or attempted murder;

2. Convicted of sexual battery or attempted sexual battery; or

3. Sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082,

shall be reinterviewed once within 7 ~~5~~ years after the date of receipt of the vacated release order and once every 7 ~~5~~ years thereafter, if the commission finds that it is not reasonable to expect that parole would be granted during the following years and states the bases for the finding in writing. For any inmate who is within 7 years of his or her tentative release date, the commission may establish a reinterview date prior to the 7-year ~~5-year~~ schedule.

Section 2. Paragraph (b) of subsection (1) of section 947.174, Florida Statutes, is amended to read:

947.174 Subsequent interviews.--

(1)

(b) For any inmate convicted of murder, attempted murder, sexual battery, attempted sexual battery, or who has been sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082, and whose presumptive parole release date is more than 7 ~~5~~ years after the date of the initial interview, a hearing examiner shall schedule an interview for review of the presumptive parole release date. Such interview shall take place once within 7 ~~5~~ years after the initial interview and once every 7 ~~5~~ years thereafter if the commission finds that it is not reasonable to expect that parole will be granted at a hearing during the following years and states the bases for the finding in writing. For any inmate who is within 7 years of his or her tentative release date, the commission may establish an interview date prior to the 7-year ~~5-year~~ schedule.

Section 3. Subsection (6) of section 947.1745, Florida Statutes, is amended to read:

947.1745 Establishment of effective parole release date.--If the inmate's institutional conduct has been satisfactory, the presumptive parole release date shall become the effective parole release date as follows:

(6) Within 90 days before the effective parole release date interview, the commission shall send written notice to the sentencing judge of any inmate who has been scheduled for an effective parole release date interview. If the sentencing judge is no longer serving, the notice must be sent to the chief judge of the circuit in which the offender was sentenced. The chief judge may designate any circuit judge within the circuit to act in the place of the sentencing judge. Within 30 days after receipt of the commission's notice, the sentencing judge, or the designee, shall send to the commission notice of objection to parole release, if the judge objects to such release. If there is objection by the judge, such objection may constitute good cause in exceptional circumstances as described in s. 947.173, and the commission may schedule a subsequent review within 2 years, extending the presumptive parole release date beyond that time. However, for an inmate who has been:

(a) Convicted of murder or attempted murder;

(b) Convicted of sexual battery or attempted sexual battery; or

(c) Sentenced to a 25-year minimum mandatory sentence previously provided in s. 775.082,

the commission may schedule a subsequent review under this subsection once every 7 ~~5~~ years, extending the presumptive parole release date beyond that time if the commission finds that it is not reasonable to expect that parole would be granted at a review during the following years and states the bases for the finding in writing. For any inmate who is within 7 years of his or her release date, the commission may schedule a subsequent review prior to the 7-year ~~5-year~~ schedule. With any subsequent review the same procedure outlined above will be followed. If the judge remains silent with respect to parole release, the commission may authorize an effective parole release date. This subsection applies if the commission desires to consider the establishment of an effective release date without delivery of the effective parole release date interview. Notice of the effective release date must be sent to the sentencing judge, and either the judge's response to the notice must be received or the time period allowed for such response must elapse before the commission may authorize an effective release date.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 297 Vehicle Crashes Involving Death
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Section 316.027(1)(b), F.S. provides that the driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. Any person who willfully violates this subsection commits a first degree felony.

A law enforcement officer may arrest a person who commits a crime if the officer obtains an arrest warrant signed by a judge. At the time of the issuance of the warrant, the judge may set a bond amount or, in some circumstances, require the arrestee be held until first appearance for determination of a bond amount. A person arrested on a warrant with a predetermined bond amount may immediately bond out of jail following an arrest by posting the bond amount.

A law enforcement officer may arrest a person who commits a felony without a warrant if the officer reasonably believes a felony has been committed. In this case, the arrestee is generally held until first appearance for a determination of probable cause and bail amount. In some jurisdictions, a bond schedule with predetermined bond amounts for certain offenses is agreed to and provided by judicial officers to the county detention facility. If an arrestee meets the requirements of the bond schedule, the arrestee may bond out of jail for the predetermined bond amount. This eliminates the need for an arrestee to make a first appearance before a judge.

The bill provides that a person arrested for failure to stop a vehicle at the scene of an accident involving death or injury must be held in custody until first appearance for a determination of bail. This would prevent judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death or injury from setting a predetermined bond amount in an arrest warrant. The bill would also prevent local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Section 316.027(b), F.S. provides that the driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062[1]. Any person who willfully violates this subsection commits a first degree felony[2].

Section 901.02, F.S. provides a law enforcement officer may arrest a person who commits a crime if the officer obtains an arrest warrant signed by a judge. At the time of the issuance of the warrant, the judge may set a bond amount[3] or, in some circumstances[4], require the arrestee be held until first appearance[5] for determination of a bond amount[6]. A person arrested on a warrant with a

---

[1] Section 316.062, F.S. provides that a driver of a vehicle involved in a crash resulting in death or serious bodily injury or damage to any vehicle or other property driven or attended by any person must provide his or her name, address, and the registration number of the vehicle he or she is driving, and must provide a driver's license to a police officer or other person involved in the crash. Section 316.062, F.S. provides the driver of any vehicle involved in a crash must report the incident to the nearest police department.

[2] A first degree felony is punishable by imprisonment for up to 30 years and a maximum $10,000 fine. Sections 775.082, 775.083, F.S.

[3] A bond amount can also include the amount of "no bond." A defendant is held with no bond if warrant is issued for an offense where the defendant has committed a dangerous crime, there is a substantial probability the defendant committed the crime, the facts of the crime indicate the defendant has a disregard for the safety of the community, and the defendant poses such a harm to the community that no conditions of release can reasonably protect the community (e.g. homicide, robbery, sexual battery, etc.). 907.041(4)(c)5, F.S.

[4] Section 741.2901(3), F.S. provides that a defendant arrested for domestic violence shall be held in custody until brought before the court for admittance to bail under Chapter 903. At first appearance the court must consider the safety of the victim if the defendant is released.

[5] Florida Rule of Criminal Procedure 3.130 requires the state to bring an arrestee before a judge for a first appearance within 24 hours of arrest. At first appearance, a judge determines if there is probable cause to hold the arrestee, provides the arrestee notice of the charges against them, and advises the arrestee of his or her rights. If an arrestee is eligible for bail, the judge conducts a hearing in accordance with s. 903.046, F.S.

[6] Section 903.046, F.S. provides criteria a judge may consider in determining a bail amount.

predetermined bond amount may immediately bond out of jail following an arrest by posting the bond amount.

A law enforcement officer may arrest a person who commits a felony without a warrant if the officer reasonably believes a felony has been committed.[7] In this case, the arrestee is generally held until first appearance for a determination of probable cause and bail amount. In some jurisdictions, a bond schedule with predetermined bond amounts for certain offenses is agreed to and provided by judicial officers to the county detention facility. If an arrestee meets the requirements of the bond schedule, the arrestee may bond out of jail for the predetermined bond amount. This eliminates the need for an arrestee to make a first appearance before a judge.

Proposed Changes

The bill provides that a person arrested for failure to stop a vehicle at the scene of an accident involving death or injury must be held in custody until first appearance for a determination of bail. This would prevent judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death or injury from setting a predetermined bond amount in an arrest warrant. The bill would also prevent local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.027, relating to crash in involving death or personal injuries.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   There could be a potential jail bed impact since defendants arrested under the provisions of the bill would be required to remain in jail until first appearance. Since first appearance must occur within 24 hours of arrest, the impact is likely to be minimal.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[7] Section 901.15

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to vehicle crashes involving death; amending s. 316.027, F.S.; requiring that a defendant arrested for leaving the scene of a crash involving death must be held in custody until brought before a judge for admittance to bail; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 316.027, Florida Statutes, is amended to read:

316.027 Crash involving death or personal injuries.--

(1)

(b) The driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. A defendant arrested for a violation of this paragraph shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903. Any person who willfully violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who willfully commits such a violation ~~violates this paragraph~~ while driving under the influence as set forth in s. 316.193(1) shall be sentenced to a mandatory minimum term of imprisonment of 2 years.

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

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

PUBLIC SAFETY
&
DOMESTIC SECURITY POLICY COMMITTEE

TUESDAY, JANUARY 12, 2010
10:00 A.M. – 12:00 P.M.
404 HOB
MEETING PACKET
ADDENDUM A

Larry Cretul
Speaker

Kevin C. Ambler
Chair

PUBLIC SAFETY
&
DOMESTIC SECURITY POLICY COMMITTEE

TUESDAY, JANUARY 12, 2010
10:00 A.M. – 12:00 P.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 Planas offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1) of section 316.027, Florida Statutes, is amended to read:

316.027 Crash involving death or personal injuries.—

(1)

(b) The driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and must remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. A person who is arrested for a violation of this paragraph and who has previously been convicted of a violation of s. 316.027, s. 316.061, s. 316.191, s. 316.192, s. 316.193, or s. 322.34 shall be held in custody

Amendment No. 1

until brought before the court for admittance to bail in accordance with chapter 903. Any person who willfully violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who willfully commits such a violation ~~violates this paragraph~~ while driving under the influence as set forth in s. 316.193(1) shall be sentenced to a mandatory minimum term of imprisonment of 2 years.

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