Criminal Justice Subcommittee

Friday, January 19, 2024
12:30 PM – 3:30 PM
Sumner Hall (404 HOB)

Meeting Packet

Paul Renner
Speaker

Keith Truenow
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Friday, January 19, 2024 12:30 pm

End Date and Time: Friday, January 19, 2024 03:30 pm

Location: Sumner Hall (404 HOB)

Duration: 3.00 hrs

Consideration of the following proposed committee substitute(s):

PCS for HB 275 -- Offenses Involving Critical Infrastructure

Consideration of the following bill(s):

HB 117 Disclosure of Grand Jury Testimony by Gossett-Seidman
HB 533 DNA Samples from Inmates by Fabricio
HB 801 Alzheimer's Disease and Related Dementia Training for Law Enforcement Officers by Buchanan
HB 937 Purple Alert by Casello
HB 1131 Online Sting Operations Grant Program by Temple
HB 1135 Lewd or Lascivious Grooming by Yarkosky, Bankson
HB 1181 Juvenile Justice by Jacques
HB 1595 Controlled Substances by Plakon

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the “Visiting the House” tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/17/2024 3:56PM by Isenberg.Ben

PCS for HB 275

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 275 Offenses Involving Critical Infrastructure
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Padgett	Hall

SUMMARY ANALYSIS

According to the Cybersecurity and Infrastructure Security Agency within the United States Department of Homeland Security, critical infrastructure are "those assets, systems, and networks that provide functions necessary for our way of life," and that are "…considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety…"

PCS for HB 275 creates s. 812.141, F.S., to create new criminal offenses involving critical infrastructure, including:

- Improperly tampering with critical infrastructure when the owner or operator of such infrastructure has employed measures designed to exclude unauthorized persons and causing $200 or more of damage, punishable as a second degree felony;
- Trespassing on critical infrastructure, punishable as a third degree felony;
- Unauthorized access to a computer, computer system, computer network, or electronic device owned, operated, or used by a critical infrastructure entity, punishable as a third degree felony; and
- Physically tampering with or inserting a computer contaminant into a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by the critical infrastructure entity, punishable as a second degree felony.

The bill defines the term "critical infrastructure" to mean any of the following:

- An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical facility, mining facility, or rubber manufacturing or storage facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A wireless communications network, including towers, antennae, support structures, and ground equipment.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operating, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or facility or a civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

A person who is found in a civil action to have improperly tampered with critical infrastructure based on such a conviction is civilly liable to the owner or operator in an amount equal to three times the amount of: the actual damage sustained by the owner or operator due to any personal injury, wrongful death, or property damage caused by the act; or any claim made against the owner or operator for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Damage to Critical Infrastructure

According to the Cybersecurity and Infrastructure Security Agency (CISA) within the United States Department of Homeland Security, critical infrastructure are "those assets, systems, and networks that provide functions necessary for our way of life," and that are "…considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof."[1] CISA broadly classifies critical infrastructure into the following sectors: chemicals; commercial facilities; communications; critical manufacturing; dams; defense industrial bases; emergency services; energy; financial services; food and agriculture; government facilities; healthcare and public health; information technology; nuclear reactors, materials, and waste; transportation systems; and water and wastewater systems.[2]

Due to the vast number of critical infrastructure facilities, the difficulty in securing and monitoring such facilities, and the widespread effects that damage to such facilities can cause, critical infrastructure facilities have become a frequent target of both physical and cyber attacks in recent years.[3] In 2022, physical security incidents against electric infrastructure, such as vandalism, trespassing, and theft, increased 70 percent from the previous year.[4] In September 2022, six separate "intrusion events" occurred at Duke Energy electric substations in central Florida, resulting in several brief power outages.[5] On December 3, 2022, gunfire damaged an electrical substation in Moore County, North Carolina, leaving approximately 45,000 people without power and resulting in the death of one person.[6]

Florida Laws Prohibiting Damage to Critical Infrastructure

Under Florida law, there is not a specific criminal offense prohibiting a person from tampering with critical infrastructure. However, a person who tampers with such infrastructure either by intentionally causing damage or illegally entering on the property upon which the critical infrastructure is located could be prosecuted for committing other criminal offenses, such as criminal mischief or trespass.

Criminal Mischief

A person commits criminal mischief by willfully and maliciously injuring or damaging the property of another, including by vandalism or graffiti.[7] The penalty for criminal mischief generally corresponds to the value of the damage:

Value of Damage[8]	Penalty

[1] Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Security and Resilience*, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience (last visited Jan. 18, 2024).
[2] Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Sectors*, https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors (last visited Jan. 18, 2024).
[3] Dinah Voyles Pulver and Grace Hauck, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, USA Today (Dec. 30, 2022) https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/ (last visited Jan. 18, 2024).
[4] National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, https://www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure (last visited Jan. 18, 2024).
[5] Andrew Dorn and Evan Lambert, *Report shows 6 "intrusions" at power stations in Florida*, WDHN (Dec. 8, 2022), https://www.wdhn.com/news/report-shows-6-intrusions-at-power-stations-in-florida/ (last visited Jan. 18, 2024).
[6] John Nagy and Jonathan Bym, *Still no arrests, but warrants reveal more details on Moore County power grid attacks*, The News & Observer (Dec. 16, 2023), https://www.newsobserver.com./news/state/north-carolina/article283121923.html (last visited Jan. 18, 2024).
[7] S. 806.13(1)(a), F.S.
[8] S. 806.13(1)(b), F.S.

≤ $200	Second degree misdemeanor[9]
> $200 but ≤ $1,000	First degree misdemeanor[10]
> $1,000	Third degree felony[11]

Criminal mischief may also be enhanced to a third degree felony based on a prior criminal mischief conviction[12] or the nature of the property damaged, including when a person damages:

- Property that results in the interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs $1,000 or more in labor and supplies to restore.[13]
- A church, synagogue, mosque, or other place of worship, or a religious article therein, if the damage is valued at greater than $200.[14]
- A memorial[15] or historic property,[16] if the damage is valued at greater than $200.[17]
- A public telephone, regardless of the value of the damage.[18]
- A sexually violent predator detention or commitment facility, if the damage is valued at greater than $200.[19]

Trespass

A person commits the offense of trespass on property other than a structure[20] or conveyance,[21] punishable as a first degree misdemeanor, if he or she, without being authorized, licensed, or invited, willfully enters upon or remains in any property, other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or

[9] A second degree misdemeanor is punishable by up to 60 days in jail and a $500 fine. Ss. 775.082 or 775.083, F.S.
[10] A first degree misdemeanor is punishable by up to one year in jail and a $1,000 fine. Ss. 775.082 or 775.083, F.S.
[11] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[12] S. 806.13(1)(b)4., F.S.
[13] S. 806.13(1)(b)3., F.S.
[14] S. 806.13(2), F.S.
[15] "Memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- Florida Women's Hall of Fame.
- Florida Medal of Honor Wall.
- Florida Veterans' Hall of Fame.
- POW-MIA Chair of Honor Memorial.
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.
- Florida Law Enforcement Officers' Hall of Fame.
- Florida Holocaust Memorial.
- Florida Slavery Memorial.
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

S. 806.135(1)(b), F.S.
[16] "Historic property" means any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. S. 806.135(1)(a), F.S.
[17] S. 806.13(3), F.S.
[18] S. 806.13(4), F.S.
[19] S. 806.13(5), F.S.
[20] "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.
[21] "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

- If the property is the unenclosed curtilage[22] of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.[23]

A trespass offense is enhanced to a third degree felony if:

- A person becomes armed with a firearm or other dangerous weapon during the commission of the offense;[24] or
- The property trespassed upon is any of the following and the property complies with specified posting of notice requirements:
  - A construction site;[25]
  - Commercial horticulture property;[26]
  - An agricultural site for testing or research purposes;[27]
  - A certified domestic violence center;[28]
  - An agricultural chemicals manufacturing facility;[29] or
  - The operational area of an airport, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area.[30]

Offenses Against Computers

Under s. 815.06, F.S., a person commits an offense against users of computers, computer systems, computers networks, or electronic devices if he or she willfully, knowingly, and without authorization or exceeding authorization:

- Accesses or causes to be accessed any computer,[31] computer system,[32] computer network,[33] or electronic device[34] with knowledge that such access is unauthorized or the manner of use exceeds authorization;
- Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Introduces any computer containment into any computer, computer system, computer network, or electronic device; or
- Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including

[22] "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.
[23] S. 810.09(1)(a), F.S.
[24] S. 810.09(2)(c), F.S.
[25] S. 810.09(2)(d), F.S.
[26] S. 810.09(2)(e), F.S.
[27] S. 810.09(2)(f), F.S.
[28] S. 810.09(2)(g), F.S.
[29] S. 810.09(2)(i), F.S.
[30] S. 810.09(2)(j), F.S.
[31] "Computer" means an internally programmed, automatic device that performs data processing. S. 815.03(2), F.S.
[32] "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files. S. 815.03(7), F.S.
[33] "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities. S. 815.03(4), F.S.
[34] "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose. S. 815.03(9), F.S.

accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

Generally, a person who commits a violation of s. 815.06, F.S., commits a third degree felony. A person commits a second degree felony if he or she commits a violation of s. 815.06, F.S., that interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service.[35]

Additionally, under s. 815.061, F.S., a person commits a third degree felony if he or she willfully, knowingly and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.[36] A person commits a second degree felony if he or she willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility.[37]

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code (CPC) are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.[38] If an offense is unranked, the CPC specifies a default level on the OSRC depending on the felony degree of the offense.[39]

Effect of Proposed Changes

PCS for HB 275 creates s. 812.141, F.S., to create various new criminal offenses involving critical infrastructure.

Improperly Tampering with Critical Infrastructure

The bill prohibits a person from improperly tampering with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized persons, which may include physical or digital measures such as fences, barriers, or guard posts, or identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls, when such improper tampering results in damage that is $200 or greater to critical infrastructure. A violation of the prohibition is punishable as a second degree felony.

The bill defines the term "critical infrastructure" to mean any of the following:

- An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

[35] S. 815.06(3)(b)3., F.S. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S
[36] S. 815.061(2)(a), F.S.
[37] S. 815.061(2)(b), F.S.
[38] S. 921.0022, F.S.
[39] S. 921.0023, F.S.

- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground based equipment.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operating, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or facility or a civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

Under the bill, "improperly tampers" means, to intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the property, or any portion thereof, without permission or authority to do so;
- Otherwise moving, damaging, or destroying the property or any portion thereof, without permission or authority to do so; or
- The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure's digital systems.

The bill does not rank the offense of improperly tampering with critical infrastructure on the OSRC. As such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill specifies that a person who is found in a civil action to have improperly tampered with critical infrastructure based on such a conviction is civilly liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times:

- The actual damage sustained by the owner or operator due to any personal injury, wrongful death, or property damage caused by the act; or
- Any claim made against the owner or operator for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the criminal act, whichever is greater.

<u>Trespass on Critical Infrastructure</u>

The bill prohibits a person from willfully entering or remaining on physical critical infrastructure as to which specified notice against entering or remaining is given, without being authorized, licensed, or invited to do so. The bill specifies notice and posting requirements that critical infrastructure must comply with to obtain the trespass protections created by the bill as follows:

- For physical critical infrastructure that is one acre or less in area, a sign must be posted that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "This area is a designated critical infrastructure facility and anyone who trespasses on this property commits a felony."
- For physical critical infrastructure that is more than one acre in area, signs must be placed not more than 500 feet apart along and at each corner of the boundaries of the land, or, for land owned by a water control district that exists pursuant to ch. 298, F.S., or was created by special act of the Legislature, signs must be placed at or near the intersection of any district canal right-of-way and a road right-of-way.

Additionally, signs must be placed along the boundary line of posted land in a manner and in such a position as to be clearly noticeable from outside the boundary line.

Under the bill, a violation of trespass on physical critical infrastructure is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Offenses Against Computers

The bill prohibits a person from willfully, knowingly, and without authorization gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized. A violation of the prohibition is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Finally, the bill prohibits a person from physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to, a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure. A violation of the prohibition is a second degree felony. The bill does not rank the offense and as such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 812.141, F.S., relating to intentional damage to critical infrastructure.
Section 2: Provides an effective date of July 1, 2024.

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 may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to offenses involving critical infrastructure; creating s. 812.141, F.S.; defining the terms "critical infrastructure" and "improperly tampers"; providing criminal penalties for improperly tampering with critical infrastructure resulting in specified monetary damage; providing for civil liability upon a conviction for such violations; providing criminal penalties for trespass upon critical infrastructure; providing signage posting requirements; providing criminal penalties for the unauthorized access to or tampering with specified electronic devices or networks of critical infrastructure; providing an effective date.

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

Section 1. Section 812.141, Florida Statutes, is created to read:

812.141 Intentional damage to critical infrastructure.—

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

(a) "Critical infrastructure" means any of the following:

1. An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

2. A chemical or rubber manufacturing or storage facility.

3. A mining facility.

4. A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

5. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

6. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

7. Any portion of an aboveground oil or gas pipeline.

8. A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including, but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.

9. A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.

10. A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.

11. A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.

12. A transmission facility used by a federally licensed radio or television station.

13. A military base or military facility conducting

research and development of military weapons systems, subsystems, components, or parts.

14. A civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.

15. Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.

16. Dams and other water control structures.

(b) "Improperly tampers" means to intentionally and knowingly cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

1. Changing the physical location or physical or virtual condition of the property, or any portion thereof, without permission or authority to do so;

2. Otherwise moving, damaging, or destroying the property or any portion thereof, without permission or authority to do so; or,

3. The unauthorized access, introduction of malware, or any action that compromises the integrity or availability of the critical infrastructure's digital systems.

(2) A person who improperly tampers with critical infrastructure for which the owner or operator thereof has employed measures that are designed to exclude unauthorized

persons, which may include physical or digital measures such as fences, barriers, or guard posts, or identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls, and such improper tampering results in damage that is $200 or greater to critical infrastructure, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction for a violation of subsection (2) is liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the owner or operator due to any personal injury, wrongful death, or property damage caused by the act or an amount equal to three times any claim made against the owner or operator for any personal injury, wrongful death, or property damage caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

(4)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains on physical critical infrastructure as to which notice against entering or remaining in is given as provided in paragraph (b) commits the offense of trespass on critical infrastructure.

(b)1. For physical critical infrastructure that is:

a. One acre or less in area, a sign must be posted that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "This area is a designated critical infrastructure facility and anyone who trespasses on this property commits a felony."

b. More than one acre in area, signs must be placed not more than 500 feet apart along and at each corner of the boundaries of the land or, for land owned by a water control district that exists pursuant to chapter 298, or was created by special act of the Legislature, signs must be placed at or near the intersection of any district canal right-of-way and a road right-of-way.

2. Signs must be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line. The signs, in letters of not less than 2 inches in height, must read in substantially the following manner: "This area is a designated critical infrastructure facility and anyone who trespasses on this property commits a felony."

(c) A person who trespasses on physical critical infrastructure in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)(a) A person who willfully, knowingly, and without authorization gains access to a computer, computer system,

computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect July 1, 2024.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Criminal Justice Subcommittee

Representative Canady offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 812.141, Florida Statutes, is created to read:

812.141 Offenses involving critical infrastructure; improper tampering; civil remedies; trespass on critical infrastructure; computer offenses involving critical infrastructure.—

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

(a) "Critical infrastructure" means:

1. Any linear asset; or

2. Any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls:

a. An electrical power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

b. A chemical or rubber manufacturing or storage facility.

c. A mining facility.

d. A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

e. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

f. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

g. Any portion of an aboveground oil or gas pipeline.

h. A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including, but not limited to, law enforcement agencies, fire emergency medical

services, emergency management agencies, or any other governmental entity.

i. A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.

j. A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.

k. A facility used for the operation, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.

l. A transmission facility used by a federally licensed radio or television station.

m. A military base or military facility conducting research and development of military weapons systems, subsystems, components, or parts.

n. A civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.

o. Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data that are essential to the reliable operations, monitoring, and security of any critical infrastructure.

p. Dams and other water control structures.

(b) "Improperly tampers" means to knowingly and intentionally cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

1. Changing the physical location or physical or virtual condition of the critical infrastructure, or any portion thereof, without permission or authority to do so;

2. Otherwise moving, damaging, or destroying the critical infrastructure or any portion thereof, without permission or authority to do so; or,

3. Accessing without authorization, introducing malware, or taking other any action that compromises the integrity or availability of the critical infrastructure's digital systems.

(c) "Linear asset" means any electric distribution or transmission asset, gas distribution or transmission pipeline, communication wirelines, or railway and any attachments thereto.

(2) A person who improperly tampers with critical infrastructure resulting in damage to critical infrastructure that is $200 or more or in the interruption or impairment of the function of critical infrastructure which costs $200 or more in labor and supplies to restore, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction for a violation of subsection (2) is liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times the actual damage sustained by the owner or operator due to any property damage, personal

injury, or wrongful death, caused by the act or an amount equal to three times any claim made against the owner or operator for any property damage, personal injury, or wrongful death caused by the malfunction of the critical infrastructure resulting from the act, whichever is greater.

(4)(a) A person commits the offense of trespass on critical infrastructure, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she without being authorized, licensed, or invited, willfully enters upon or remains on:

1. A linear asset; or

2. Physical critical infrastructure as to which notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011.

(5)(a) A person who willfully, knowingly, and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to, a computer, computer system, computer

network, or electronic device that causes a disruption in any service delivered by any critical infrastructure commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) For purposes of this subsection, the terms "computer", "computer system", "computer network", and "electronic device" have the same meaning as in s. 815.03.

Section 2. This act shall take effect July 1, 2024.

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

Remove lines 5-10 and insert:

tampers" and "linear asset"; providing criminal penalties for improperly tampering with critical infrastructure resulting in specified monetary damage or cost to restore; providing for civil liability upon a conviction for such violations; providing criminal penalties for trespass upon critical infrastructure; providing notice

HB 117

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 Disclosure of Grand Jury Testimony
SPONSOR(S): Gossett-Seidman
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 905.24, F.S., requires grand jury proceedings to be kept secret. Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. A court may authorize disclosure of such testimony for the following purposes: ascertaining whether it is consistent with the testimony given by the witness before the court; determining whether the witness is guilty of perjury; or furthering justice.

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding. If the court orders the disclosure of grand jury testimony in a criminal or civil case, the testimony may only be disclosed to specified persons and can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever. A person who illegally discloses grand jury testimony commits a first-degree misdemeanor and such a violation constitutes criminal contempt of court.

HB 117 amends s. 905.27, F.S., to specify that when a court is considering whether to authorize the disclosure of grand jury testimony for the purpose of furthering justice, it may consider whether such disclosure would further a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who at the time was a minor;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

The bill specifies that nothing in the new disclosure provisions created by the bill hinders the court's ability to limit the disclosure of grand jury testimony, including, but not limited to, redaction.

Additionally, the bill prohibits the custodian of a grand jury record from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury.

The bill may have an indeterminate negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited and, as such, any additional costs will likely be absorbed within existing resources.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 905.24, F.S., requires grand jury proceedings to be kept secret. A grand jury's primary role is to determine whether sufficient evidence exists to justify indicting an accused individual.[1] To make such determinations, a grand jury also serves as an investigating body with subpoena powers.[2] In Florida, a grand jury indictment is only required to try a person for a capital offense; i.e., one where the death penalty may be given.[3] For all other offenses, the state attorney may choose to proceed by either filing an information[4] or seeking a grand jury indictment.[5] While an information is routinely used to charge individuals in Florida, grand juries are often utilized for controversial cases such as those involving alleged wrongdoing by public officials.[6]

Who May be Present During Grand Jury Sessions

Section 905.17, F.S., provides that no person shall be present at grand jury sessions except:

- The witness under examination;
- One attorney representing the witness;
- The state attorney and his or her assistant state attorneys;
- The court reporter or stenographer; and
- An interpreter.[7]

An attorney representing a witness under examination is permitted to advise and counsel the witness, but may not address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. A witness's attorney is subject to the prohibition against disclosing grand jury testimony or other evidence received by the grand jury under s. 905.27, F.S.[8]

Any stenographic records, notes, and transcriptions made by the court reporter or stenographer are filed with the clerk who must keep them in a sealed container not subject to public inspection. Such records, notes, and transcriptions are confidential and exempt from public record requirements under s. 119.071(1), F.S., and s. 24(a), art. I, Fla. Const., and may only be released upon a request from the grand jury for use by the grand jury or by order of the court pursuant to s. 905.27, F.S.[9]

Prohibitions on Grand Jury Testimony Disclosure and Exceptions

Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. A court may authorize disclosure of such testimony for the following purposes:

- Ascertaining whether it is consistent with the testimony given by the witness before the court;
- Determining whether the witness is guilty of perjury; or

[1] S. 905.16, F.S.
[2] S. 905.185, F.S.
[3] S. 15(a), art. I, Fla. Const.
[4] An "information" is a formal criminal charge made by a prosecutor without a grand-jury indictment. Black's Law Dictionary (3d pocket ed. 2006).
[5] S. 15(a), art. I, Fla. Const.; The Florida Bar, *The Grand Jury*, https://www.floridabar.org/news/resources/rpt-hbk/#1619193085264-69d9d83a-2799 (last visited Jan. 13, 2024).
[6] *Id*.
[7] S. 905.17(1), F.S.
[8] S. 905.17(2), F.S.
[9] S. 905.17(1), F.S.

- Furthering justice.[10]

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding as authorized.[11]

When a court orders the disclosure of grand jury testimony for use in a criminal case, it may be disclosed to the:
- Prosecuting attorney of the court in which such criminal case is pending;
- Prosecuting attorney's assistants, legal associates, and employees;
- Defendant;
- Defendant's attorney; and
- Defendant's attorney's legal associates and employees.

When a court orders the disclosure of grand jury testimony for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and their attorneys' legal associates and employees. However, the grand jury testimony released by court order can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.[12]

Any person who illegally discloses grand jury testimony commits a first-degree misdemeanor[13] and such a violation constitutes criminal contempt of court.[14]

Jeffrey Epstein Grand Jury Testimony

In 2006, Palm Beach County police opened an investigation into Jeffrey Epstein regarding allegations of sexual abuse of minors. Following the investigation, Palm Beach County police asked the state attorney to charge Epstein with four felony charges including unlawful sexual activity with a minor and lewd and lascivious molestation. Although the state attorney had the authority to file such charges by an information, Epstein's case was instead sent to a grand jury.[15] The grand jury ultimately only found sufficient evidence to charge Epstein with one count of misdemeanor soliciting a prostitute.[16]

In 2021, the Palm Beach Post sued the state attorney and clerk's office in an attempt to obtain a court-ordered release of the grand jury testimony in Epstein's case, seeking the disclosure for the purpose of furthering justice, however, the presiding judge ruled against the Post and the testimony was not released.[17] The Palm Beach Post subsequently appealed this decision to the Fourth District Court of Appeal (DCA) which ultimately reversed and remanded the case for further proceedings in the trial court. The Fourth DCA ordered that upon remand the trial court conduct an *in camera* inspection[18] of the grand jury testimony and determine whether disclosing such testimony would further justice. The Fourth DCA further held that if the trial court found such disclosure would further justice that the trial court had the inherent authority to disclose such testimony.[19] The trial court has since ordered transcription of the grand jury testimony to assist in facilitating an effective review of the materials.[20]

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[10] S. 905.27(1), F.S.
[11] S. 905.27(2), F.S.
[12] *Id*.
[13] A first-degree misdemeanor under this section is punishable as provided in s. 775.083, or by a fine not exceeding $5,000, or both.
[14] S. 905.27(4-5), F.S.
[15] Holly Baltz, *Why was Jeffrey Epstein in 2006 charged only with picking up a prostitute? Where we stand*, Palm Beach Daily News, Feb. 10, 2023, https://news.yahoo.com/why-jeffrey-epstein-2006-charged-100257919.html?ref=upstract.com (last visited Jan.13, 2024).
[16] Soliciting another person to commit prostitution is a first-degree misdemeanor for a first violation. S. 796.07(5)(a), F.S.
[17] Terri Parker, *Palm Beach County Clerk of Courts working to unseal Jeffrey Epstein grand jury transcripts*, ABC 25 WPBF News, https://www.wpbf.com/article/palm-beach-county-clerk-courts-working-unseal-jeffrey-epstein-grand-jury-transcripts/38699982 (last visited Jan. 13, 2024).
[18] "*In camera* inspection" means a trial judge's private consideration of evidence. Black's Law Dictionary (3d pocket ed. 2006).
[19] *CA Florida Holdings, LLC v. Dave Aronberg and Joseph Abruzzo*, 4D22-293, (Fla. 4th DCA May 10, 2023).
[20] Order Directing Transcription of the Testimony in the Grand Jury Proceedings, *CA Florida Holdings, LLC v. Dave Aronberg and Joseph Abruzzo*, 50-2019CA-014681 (15th Cir. June 29, 2023).

Effected of Proposed Changes

HB 117 amends s. 905.27, F.S., to specify that when a court is considering whether to authorize the disclosure of grand jury testimony for the purpose of furthering justice, it may consider whether such disclosure would further a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who at the time was a minor;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

The bill specifies that nothing in the new disclosure provisions created by the bill hinders the court's ability to limit the disclosure of grand jury testimony, including, but not limited to, redaction.

The bill also includes the custodian of a grand jury record among the individuals who are prohibited from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 905.27, F.S., relating to testimony not to be disclosed; exceptions.
Section 2: Reenacts s. 905.17, F.S., relating to who may be present during session of grand jury.
Section 3: Provides an effective date of July 1, 2024.

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 may have an indeterminate negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited and, as such, any additional costs will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to disclosure of grand jury testimony; amending s. 905.27, F.S.; revising the list of persons prohibited from disclosing the testimony of a witness examined before a grand jury or other evidence it receives; creating an exception for a request by the media or an interested person to the prohibited publishing, broadcasting, disclosing, divulging, or communicating of any testimony of a witness examined before the grand jury, or the content, gist, or import thereof; providing criminal penalties; providing construction; making technical changes; reenacting s. 905.17(1) and (2), F.S., relating to who may be present during a session of a grand jury, to incorporate the amendment made to s. 905.27, F.S., in references thereto; providing an effective date.

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

Section 1. Section 905.27, Florida Statutes, is amended to read:

905.27 Testimony not to be disclosed; exceptions.—

(1) Persons present or appearing during a grand jury proceeding, including a grand juror, a state attorney, an assistant state attorney, a reporter, a stenographer, or an

interpreter, as well as the custodian of a grand jury record, may not ~~or any other person appearing before the grand jury shall not~~ disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:

(a) Ascertaining whether it is consistent with the testimony given by the witness before the court;

(b) Determining whether the witness is guilty of perjury; or

(c) Furthering justice, which can encompass furthering a public interest when the disclosure is requested pursuant to paragraph (2)(c).

(2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding in any of the following circumstances:~~.~~

(a) When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his

or her assistants, legal associates, and employees, and to the defendant and the defendant's attorney, and by the latter to his or her legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the criminal case and for no other purpose.

(b) When a court orders the ~~such~~ disclosure of such testimony ~~is ordered by a court~~ pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil ~~or criminal~~ case and for no other purpose ~~whatsoever~~.

(c) When a court orders the disclosure of such testimony pursuant to subsection (1) in response to a request by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, it may be disclosed so long as the subject of the grand jury inquiry is deceased, the grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who at the time was a minor, the testimony was previously disclosed by a court order, and the state attorney is provided notice of the request. This paragraph does not limit the court's ability to limit the disclosure of testimony, including, but not limited

to, redaction.

(3) ~~Nothing in~~ This section does not ~~shall~~ affect the attorney-client relationship. A client has ~~shall have~~ the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

(4) A person who violates ~~Persons convicted of violating~~ this section commits ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding $5,000, or both.

(5) A violation of this section constitutes ~~shall constitute~~ criminal contempt of court.

Section 2. For the purpose of incorporating the amendment made by this act to section 905.27, Florida Statutes, in references thereto, subsections (1) and (2) of section 905.17, Florida Statutes, are reenacted to read:

905.17 Who may be present during session of grand jury.—

(1) No person shall be present at the sessions of the grand jury except the witness under examination, one attorney representing the witness for the sole purpose of advising and consulting with the witness, the state attorney and her or his assistant state attorneys, designated assistants as provided for in s. 27.18, the court reporter or stenographer, and the

interpreter. The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.

(2) The witness may be represented before the grand jury by one attorney. This provision is permissive only and does not create a right to counsel for the grand jury witness. The attorney for the witness shall not be permitted to address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. The attorney for the witness shall be permitted to advise and counsel the witness and shall be subject to the provisions of s. 905.27 in the same manner as all who appear before the grand jury. An attorney or law firm may not represent more than one person or entity in an investigation before the same grand jury or successive grand juries in the same investigation.

Section 3. This act shall take effect July 1, 2024.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Criminal Justice Subcommittee

Representative Gossett-Seidman offered the following:

Amendment

Remove lines 46-72 and insert:

~~a court proceeding~~ any of the following circumstances:~~.~~

(a) When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his or her assistants, legal associates, and employees, and to the defendant and the defendant's attorney, and by the latter to his or her legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in

the defense or prosecution of the criminal case and for no other purpose.

(b) When a court orders the ~~such~~ disclosure of such testimony ~~is ordered by a court~~ pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil ~~or criminal~~ case and for no other purpose ~~whatsoever~~.

(c) When a court orders the disclosure of such testimony pursuant to subsection (1) in response to a request by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, it may be disclosed so long as the subject of the grand jury inquiry is deceased, the grand jury inquiry related to criminal or sexual activity between the subject of the grand jury investigation and a person who was a minor at the time of the alleged criminal or sexual activity, the testimony was previously disclosed by a

HB 533

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 533 DNA Samples from Inmates
SPONSOR(S): Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Leshko	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The statewide DNA database assists law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. The Florida Department of Law Enforcement (FDLE) administers the statewide DNA database, which is capable of classifying, matching, and storing analyses of such DNA samples and related data.

Multiple agencies share the responsibility of collecting DNA samples from qualifying offenders, including the Florida Department of Corrections (DOC), the Florida Department of Juvenile Justice (DJJ), sheriffs' offices, and county correctional facilities.

Under s. 943.325, F.S., qualifying offenders include both juveniles and adults who are:

- Committed to a county jail;
- Committed to or under the supervision of DOC or DJJ;
- Convicted of specified misdemeanor offenses; or
- Convicted of or arrested for any felony offense or attempted felony offense.

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested or incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. An incarcerated person and a juvenile in the custody of DJJ must submit a DNA sample at least 45 days before his or her presumptive release date.

HB 533 creates an unnumbered section of law, requiring each inmate in the custody of DOC to submit a DNA sample to DOC no later than September 30, 2024, if he or she has not previously provided a DNA sample pursuant to s. 943.325, F.S., relating to the Florida DNA database. The bill directs DOC to collect and process such samples in accordance with s. 943.325, F.S.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Statewide DNA Database

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells. Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile. DNA evidence may be collected from any biological material, such as hair, teeth, bones, skin cells, blood, semen, saliva, urine, feces, and other bodily substances.[1]

The statewide DNA database was established in 1989[2] to assist law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. The Florida Department of Law Enforcement (FDLE) administers the statewide DNA database, which is capable of classifying, matching, and storing analyses of DNA and other biological molecules and related data.[3]

DNA Sample Collection and Analysis

Multiple agencies share the responsibility of collecting DNA samples[4] from qualifying offenders, including the Florida Department of Corrections (DOC), the Florida Department of Juvenile Justice (DJJ), sheriffs' offices, and county correctional facilities.[5]

Under s. 943.325, F.S., qualifying offenders include both juveniles and adults who are:

- Committed to a county jail;
- Committed to or under the supervision of DOC or DJJ;
- Convicted of specified misdemeanor offenses; or
- Convicted of or arrested for any felony offense or attempted felony offense.[6]

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested or incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.[7]

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility.[8] An incarcerated person and a juvenile in the custody of DJJ must submit a DNA sample at least 45 days before his or her presumptive release date.[9]

The statewide database may contain DNA data obtained from the following types of biological samples:

- Crime scene samples.
- Samples required by law to be obtained from qualifying offenders.

[1] FindLaw, *How DNA Evidence Works*, https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html (last visited Jan. 17, 2024).
[2] Ch. 89-335, Laws of Fla.
[3] S. 943.325(4), F.S.
[4] "DNA sample" means a buccal or other approved biological specimen capable of undergoing DNA analysis. S. 943.325(2)(f), F.S.
[5] FDLE, *DNA Database*, https://www.fdle.state.fl.us/Forensics/Disciplines/DNA-Database (last visited Jan. 17, 2024).
[6] S. 943.325(2)(g), F.S.
[7] S. 943.325(7), F.S.
[8] S. 943.325(7)(b), F.S.
[9] S. 943.325(7)(c), F.S.

- Samples lawfully obtained during the course of a criminal investigation, including those from deceased victims or deceased suspects.
- Samples from unidentified human remains.
- Samples from persons reported missing.
- Samples voluntarily contributed by relatives of missing persons.
- Other samples approved by FDLE.[10]

The collection of DNA samples may be performed by any person using a collection kit approved by FDLE as directed in the kit or pursuant to other procedures approved by or acceptable to FDLE.[11] After collection, the DNA samples are forwarded to FDLE for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person from whom the sample was taken.[12]

When an analysis is complete it is entered into the statewide DNA database.[13] The analysis results allow for the comparison of DNA from unresolved cases to the DNA of both known offenders and that from other unresolved cases in an attempt to identify the perpetrator.[14] All accredited local government crime laboratories in Florida have access to the statewide DNA database in accordance with rules and agreements established by FDLE.[15]

FDLE specifies database procedures to maintain compliance with national quality assurance standards to ensure that DNA records will be accepted into the National DNA Index System. Results of any DNA analysis may only be released to criminal justice agencies.[16] Otherwise, the information is confidential and exempt from s. 119.07(1), F.S., and art. I, s. 24(a), of the Florida Constitution.[17]

FBI's Combined DNA Index System (CODIS)

The most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats or satellite tandem repeats (STRs).[18] In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index System (CODIS).[19] CODIS is now the general term used to describe the FBI's program of support for local, state, and national criminal justice DNA databases, as well as the software used to run these databases.[20]

National DNA Index System (NDIS)

The DNA Identification Act of 1994 (DNA Act)[21] authorized the government to establish a National DNA Index, and in 1998 the National DNA Index System (NDIS) was established. NDIS is the national level component of CODIS and contains DNA profiles contributed by federal, state, and local participating

[10] S. 943.325(6), F.S.
[11] Fla. Admin. Code. R. 11D-6.001 and 11D-6.003.
[12] S. 943.325(10-11), F.S.
[13] S. 943.325(13)(c), F.S.
[14] FDLE, *Submission FAQ DNA Database,* https://www.fdle.state.fl.us/Forensics/Submission-FAQ/DNA-Database (last visited Jan. 17, 2024).
[15] S. 943.325(4), F.S.
[16] Criminal justice agencies include the court, the Florida Department of Law Enforcement, the Department of Juvenile Justice, components of the Department of Children and Families, components of the Department of Financial Services, and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.
[17] S. 943.325(14), F.S.
[18] Kelly Lowenberg, *Applying the Fourth Amendment when DNA Collected for One Purpose is Tested for Another*, 79 U. Cin. L. Rev. 1289, 1293 (2011), https://law.stanford.edu/wp-content/uploads/2011/11/APPLYING-THE-FOURTH-AMENDMENT-WHEN-DNA-COLLECTED-FOR-ONE-PURPOSE.pdf (last visited Jan. 17, 2024).
[19] *Id.*
[20] FBI, *Frequently Asked Questions on CODIS and NDIS,* https://www.fbi.gov/how-we-can-help-you/dna-fingerprint-act-of-2005-expungement-policy/codis-and-ndis-fact-sheet (last visited Jan. 17, 2024).
[21] 34 U.S.C. § 12592.

forensic laboratories,[22] enabling law enforcement to exchange and compare DNA profiles electronically in an attempt to link a crime or a series of crimes to each other or to a known offender. If a match is identified, the laboratories involved exchange information to verify the match and establish coordination between the two agencies. This match can provide probable cause for law enforcement to obtain a warrant to collect a biological reference sample from an offender. A laboratory can then perform DNA analysis on the known biological sample and present the analysis as evidence in court.[23]

A state seeking to participate in NDIS must sign a memorandum of understanding with the FBI agreeing to the DNA Act's requirements, including record-keeping requirements and other procedures. To submit a DNA record to NDIS, a participating laboratory must adhere to federal law regarding expungement[24] procedures, and the DNA sample must:

- Be generated in compliance with the FBI Director's Quality Assurance Standards;
- Be generated by an accredited and approved laboratory;
- Be generated by a laboratory that undergoes an external audit every two years to demonstrate compliance with the FBI Director's Quality Assurance Standards;
- Be from an acceptable data category, such as:
    - Convicted offender;
    - Arrestee;
    - Detainee;
    - Forensic case;
    - Unidentified human remains;
    - Missing person; or
    - Relative of a missing person.
- Meet minimum CODIS requirements for the specimen category; and
- Be generated using an approved kit.[25]

Effect of Proposed Changes

HB 533 creates an unnumbered section of law, requiring each inmate in the custody of the Florida Department of Corrections (DOC) to submit a DNA sample to DOC no later than September 30, 2024, if he or she has not previously provided a DNA sample pursuant to s. 943.325, F.S. The bill directs DOC to collect and process such samples in accordance with s. 943.325, F.S.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law.
Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[22] All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Laboratory, and Puerto Rico participate in NDIS. *Supra* note 20.
[23] *Supra* note 20.
[24] *See* 34 U.S.C. § 12592(d)(2)(A)(i-ii) (requiring states to expunge a DNA record when a conviction is overturned or a charge is dismissed, results in an acquittal, or when no charge is filed).
[25] *Supra* note 20.

The bill is anticipated to have an insignificant negative fiscal impact on DOC and FDLE. DOC reported that as of November 20, 2023 there were only 48 inmates in Florida which had not had DNA samples collected.[26]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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/COMMITTEE SUBSTITUTE CHANGES

[26] FDLE, Agency Analysis of 2024 House Bill 533, p. 2 (Nov. 27, 2023)(on file with the House Criminal Justice Subcommittee).

A bill to be entitled

An act relating to DNA samples from inmates; requiring certain inmates to submit DNA samples; providing an effective date.

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

Section 1. Each inmate in the custody of the Department of Corrections who has not previously provided a DNA sample pursuant to s. 943.325, Florida Statutes, is required to submit a sample to the department no later than September 30, 2024. The department shall collect and process such samples pursuant to s. 943.325, Florida Statutes.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 801 Alzheimer's Disease and Related Dementia Training for Law Enforcement Officers
SPONSOR(S): Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** SB 208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Leshko	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Dementia is an overarching classification of diseases whose characteristic symptoms present as difficulties with memory, language, problem-solving, and other thinking skills. Alzheimer's disease is the most common form of dementia, accounting for an estimated 60 to 80 percent of all dementia cases. Alzheimer's disease is an incurable, progressive brain disorder that damages nerve cells in the brain, leading to memory loss and changes in the functions of the brain, with symptoms worsening gradually over time.

Sections 943.11 and 943.12, F.S., create the Criminal Justice Standards and Training Commission (CJSTC) within the Florida Department of Law Enforcement (FDLE) and require CJSTC to establish uniform minimum training standards for the training of officers in the various criminal justice disciplines. Section 943.13, F.S., requires all law enforcement officer applicants to complete a CJSTC-approved basic recruit training program. After obtaining certification and as a condition of continued employment or appointment, s. 943.135, F.S., requires law enforcement officers to receive at least 40 hours of CJSTC-approved continued employment training (CET) every four years.

Section 943.17296, F.S., requires each certified law enforcement officer to complete training in identifying and investigating elder abuse and neglect as a part of his or her basic recruit training or as CET. Such training must include instruction on the identification of and appropriate responses to persons suffering from dementia and on identifying and investigating elder abuse and neglect. The CJSTC, however, does not currently offer specific post-basic training on Alzheimer's disease or related forms of dementia.

HB 801 creates s. 943.17299, F.S., to require FDLE to establish an online, continued employment training component relating to Alzheimer's disease and related forms of dementia. The bill requires the training component to be developed in consultation with the Department of Elder Affairs and to include, but not be limited to, instruction on interacting with persons with Alzheimer's disease or a related form of dementia, including instruction on techniques for:

- Recognizing behavioral symptoms and characteristics;
- Effective communication;
- Employing alternatives to using physical restraints; and
- Identifying signs of abuse, neglect, or exploitation.

The bill specifies that completion of the training component may count toward the 40 hours of instruction required for continued employment or appointment as a law enforcement officer.

The bill is anticipated to have a negative fiscal impact on FDLE as FDLE estimates it will cost approximately $11,000 to develop and implement the online CET component.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Dementia

Dementia is an overarching classification of diseases whose characteristic symptoms present as difficulties with memory, language, problem-solving, and other thinking skills.[1] Dementia affects millions of people and is more common as people grow older, with about one-third of all people age 85 or older developing some form of dementia.[2]

Alzheimer's Disease

Alzheimer's disease is the most common form of dementia, accounting for an estimated 60 to 80 percent of all dementia cases.[3] Alzheimer's disease is an incurable, progressive brain disorder that damages nerve cells in the brain, leading to memory loss and changes in the functions of the brain, with symptoms worsening gradually over time. Individuals with Alzheimer's disease may develop changes in mood, personality, or behavior. A common behavior that individuals with Alzheimer's disease frequently develop is wandering.[4] Wandering occurs when a person leaves the safety of a responsible caregiver or a safe area and cannot retrace their steps, often becoming lost.[5] Approximately twelve to 60 percent of individuals with a cognitive disability wander and approximately five percent of wandering instances result in physical harm to the disabled person.[6]

There are an estimated 6.93 million people in the United States with Alzheimer's disease.[7] By 2060, the number of people with Alzheimer's disease in the U.S. is expected to double to a projected 13.85 million people.[8]

Florida has the second highest prevalence of Alzheimer's disease in the country. Currently, approximately 580,000 Floridians over the age of 65 have Alzheimer's disease; however, it is estimated that by 2025, that number will rise to 720,000.[9]

Law Enforcement and Alzheimer's Disease

Law enforcement officers regularly interact with individuals exhibiting Alzheimer's disease symptoms, such as confusion, disorientation, and wandering. Individuals with Alzheimer's disease often cannot ask for help and may not even recognize they need help. One researcher estimated that an average search-and-rescue operation for an individual with Alzheimer's disease lasts about 9 hours.[10]

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[1] Alzheimer's Association, *2023 Alzheimer's Disease Facts and Figures*, https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf (last visited Jan. 17, 2024).
[2] National Institute on Aging, *What Is Dementia? Symptoms, Types, and Diagnosis*, https://www.nia.nih.gov/health/alzheimers-and-dementia/what-dementia-symptoms-types-and-diagnosis (last visited Jan. 17, 2024).
[3] Alzheimer's Association, *supra* note 1, at 7.
[4] Alzheimer's Association, *supra* note 1, at 5.
[5] *Id*.
[6] Joseph Wherton, et al., *Wandering as a Sociomaterial Practice: Extending the Theorization of GPS Tracking in Cognitive Impairment,* 29 Qual. Health Res., (Sept. 14, 2018), https://journals.sagepub.com/doi/10.1177/1049732318798358#articleCitationDownloadContainer (last visited Jan. 17, 2024).
[7] Kumar B. Rajan, Ph.D., et al., *Population Estimate of People with Clinical AD and Mild Cognitive Impairment in the United States (2020-2060)*, 17 Alzheimers Dement. 12, (May 27, 2021).
[8] *Id*.
[9] Florida Department of Elder Affairs, *2023 Alzheimer's Disease Advisory Committee Annual Report*, https://elderaffairs.org/wp-content/uploads/ADAC-Report-2023.pdf (last visited Jan. 17, 2024).
[10] Federal Bureau of Investigation, Law Enforcement Bulletin, Robert Schaefer and Julie McNiff, *Awareness of Alzheimer's Disease*, https://leb.fbi.gov/articles/featured-articles/awareness-of-alzheimers-disease (last visited Jan. 17, 2024).

Law Enforcement Training

Sections 943.11 and 943.12, F.S., create the Criminal Justice Standards and Training Commission (CJSTC) within the Florida Department of Law Enforcement (FDLE) and require CJSTC to establish uniform minimum training standards for the training of officers in the various criminal justice disciplines.[11] Section 943.13, F.S., requires all law enforcement officer applicants to complete a CJSTC-approved basic recruit training program.[12]

After obtaining certification and as a condition of continued employment or appointment, s. 943.135, F.S., requires law enforcement officers to receive at least 40 hours of CJSTC-approved continued employment training (CET) every four years. The employing agency must document that the CET is job-related and consistent with the needs of the employing agency, and report training completion to the CJSTC through the Automated Training Management System.[13]

Current Florida law requires FDLE to develop CET relating to various special topics, such as training related to diabetic emergencies[14], autism spectrum disorder[15], and identifying and investigating elder abuse and neglect[16].

Section 943.17296, F.S., requires each certified law enforcement officer to complete training in identifying and investigating elder abuse and neglect as a part of his or her basic recruit training or as CET. Such training must include instruction on the identification of and appropriate responses to persons suffering from dementia and on identifying and investigating elder abuse and neglect.

The CJSTC, however, does not currently offer specific post-basic training on Alzheimer's disease or related forms of dementia.

Effect of Proposed Changes

HB 801, creates s. 943.17299, F.S., to require FDLE to establish an online, continued employment training component relating to Alzheimer's disease and related forms of dementia. The bill requires the training component to be developed in consultation with the Department of Elder Affairs and to include, but not be limited to instruction on interacting with persons with Alzheimer's disease or a related form of dementia, including instruction on techniques for:

- Recognizing behavioral symptoms and characteristics;
- Effective communication;
- Employing alternatives to using physical restraints; and
- Identifying signs of abuse, neglect, or exploitation.

The bill provides that completion of the training component may count toward the 40 hours of instruction required for continued employment or appointment as a law enforcement officer.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 943.17299, F.S., relating to continued employment training relating to Alzheimer's disease and related forms of dementia.
Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[11] S. 943.12(5), F.S.
[12] S. 943.13(9), F.S.
[13] FDLE, Agency Analysis of 2024 House Bill 801, p. 5 (Dec. 8, 2023)(on file with the House Criminal Justice Subcommittee).
[14] S. 943.1726, F.S.
[15] S. 943.1727, F.S.
[16] S. 943.17296, F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

FDLE reports that the bill will have a negative fiscal impact on FDLE as the anticipated total cost to develop and implement a new online, continued education training component relating to Alzheimer's disease and related forms of dementia will cost approximately $11,000.[17]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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/COMMITTEE SUBSTITUTE CHANGES

[17] FDLE, *supra* at note 13.

A bill to be entitled

An act relating to Alzheimer's disease and related dementia training for law enforcement officers; creating s. 943.17299, F.S.; requiring the Department of Law Enforcement to establish an online, continued employment training component relating to Alzheimer's disease and related forms of dementia; requiring that the training component be developed with the Department of Elderly Affairs; specifying instruction requirements for the training component; authorizing the completion of such training to count toward a certain requirement; providing an effective date.

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

Section 1. Section 943.17299, Florida Statutes, is created to read:

943.17299 Continued employment training relating to Alzheimer's disease and related forms of dementia.—The department shall establish an online, continued employment training component relating to Alzheimer's disease and related forms of dementia. The training component must be developed in consultation with the Department of Elderly Affairs and must include, but need not be limited to, instruction on interacting with persons with Alzheimer's disease or a related form of

dementia, including instruction on techniques for recognizing behavioral symptoms and characteristics, effective communication, employing the use of alternatives to physical restraints, and identifying signs of abuse, neglect, or exploitation. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135.

Section 2. This act shall take effect July 1, 2024.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Criminal Justice Subcommittee

Representative Buchanan offered the following:

Amendment (with title amendment)

Remove lines 23-34 and insert:

consultation with the Department of Elder Affairs and must include, but need not be limited to, instruction on interacting with persons with Alzheimer's disease or a related form of dementia, including instruction on techniques for recognizing behavioral symptoms and characteristics, effective communication, employing the use of alternatives to physical restraints, and identifying signs of abuse, neglect, or exploitation. Completion of the training component may count toward the 40 hours of instruction for continued employment or

appointment as a law enforcement officer required under s. 943.135.

Section 2. This act shall take effect October 1, 2024.

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

Remove line 9 and insert:

Department of Elder Affairs; specifying instruction

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 937 Purple Alert
SPONSOR(S): Casello
TIED BILLS: **IDEN./SIM. BILLS:** SB 640

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Yeager	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida's Purple Alert may be used to assist in locating missing adults suffering from a mental or cognitive disability. Under a Purple Alert, a local law enforcement agency may broadcast to the media, on lottery terminals, and to persons who subscribe to receive alert notifications information concerning a missing adult:

- Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or developmental disability as defined in s. 393.063, F.S.; a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm;
- Who cannot be returned to safety without law enforcement intervention; and
- Who does not meet the criteria for activation of a Silver Alert.

HB 937 amends s. 937.0205, F.S., to create two levels of activation under the Purple Alert: local and statewide. For cases involving an unidentifiable vehicle or a missing adult on foot, the bill limits dissemination of a Purple Alert to local distribution to the area where the person may reasonably be located. The bill requires local law enforcement agencies to develop their own policies for the activation of a local Purple Alert. Under the bill, when activating a local Purple Alert, local law enforcement agencies must:

- Contact media outlets in the affected area and surrounding jurisdictions;
- Inform all on-duty law enforcement officers of the missing adult report; and
- Communicate the report to any other law enforcement agency in the county of jurisdiction.

Under the bill, a law enforcement agency may only request the issuance of a statewide Purple Alert when the investigation indicates that there is an identifiable vehicle involved. In such cases, the Missing Endangered Person Information Clearinghouse must coordinate with the Florida Department of Transportation, the Florida Department of Highway Safety and Motor Vehicles, and the Department of the Lottery for the:

- Activation of dynamic message signs on state highways and immediate distribution of critical information to the public about the missing adult;
- Notification on lottery terminals, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets; and
- Notification to subscribers of the Purple Alert.

The bill may have an indeterminate positive fiscal impact on FDLE by limiting the activation of a statewide Purple Alert to when an identifiable vehicle is involved and may have an insignificant negative fiscal impact on local law enforcement agencies by requiring such agencies to adopt policies to implement a local Purple Alert.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Missing Person Investigations

Every state, county, or municipal law enforcement agency is required to submit information concerning missing endangered persons to the Florida Department of Law Enforcement's (FDLE) Missing Endangered Person Information Clearinghouse (MEPIC).[1] Located in the Enforcement and Investigative Support Bureau as part of the Investigations and Forensic Science Program of FDLE, MEPIC serves as the central repository of information regarding missing endangered persons.[2] MEPIC acts as a liaison between citizens, private organizations, and law enforcement officials regarding missing endangered persons information.[3] Upon receiving information about a missing endangered person, MEPIC disseminates the information to the appropriate local, regional, and statewide agencies in an effort to locate the missing person.[4] Section 937.0201, F.S., defines a "missing endangered person" to include:

- A missing child;
- A missing adult younger than 26 years of age;
- A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity;
- A missing adult who meets the criteria for activation of the Silver Alert;[5] and
- A missing adult who meets the criteria for activation of the Purple Alert.[6]

Section 937.021, F.S., requires a law enforcement agency that receives a credible report that an adult is missing to transmit the report for inclusion within the Florida Crime Information Center (FCIC), the National Crime Information Center (NCIC), and the National Missing and Unidentified Persons System (NamUs) databases within two hours.[7] A law enforcement agency that receives a report that a child is missing must immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency within the affected jurisdiction, and transmit the report to the FCIC, NCIC, and the NamUs database within two hours.[8]

Purple Alert

[1] S. 937.022(3)(b)1., F.S.
[2] S. 937.022(1), F.S.
[3] Florida Department of Law Enforcement: Missing Endangered Persons Information Clearinghouse, *About Us*, https://www.fdle.state.fl.us/MCICSearch/AboutUs.asp (last visited Jan. 17, 2024).
[4] *Id.*
[5] S. 937.0201(4)(d), F.S. The Silver Alert may be used to locate a person who is 60 years of age or older and suffers from an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia). In rare instances, a Silver Alert may also be activated when a person is 18 to 59 years old, has an irreversible deterioration of intellectual faculties, law enforcement h as determined the individual lacks the capacity to consent, and the use of dynamic message signs along major highways maybe the only means to rescue the missing person. Florida Department of Law Enforcement, *Silver Activation Steps*, https://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps (last visited Jan. 17, 2024).
[6] S. 937.0201(4), F.S.
[7] S. 937.021(4)(b), F.S. The FCIC consists of online databases that provide criminal justice agencies in Florida with informati on on wanted persons, missing persons, stolen vehicles and license plates, stolen guns and other personal property, and complete criminal records. It serves as Florida's point of contact with the NCIC in Washington, D.C., which provides information on wanted and missing persons, stolen property, and an index of criminal offenders nationwide. NamUs is a national centralized repository and resource center for missing, unidentified, and unclaimed person cases across the United States. Florida Department of Law Enforcement, *1989 Florida Directory of Automated Criminal Justice Information Systems*, https://www.ojp.gov/pdffiles1/Digitization/116893NCJRS.pdf (last visited Jan. 17, 2024); National Missing and Unidentified Persons System, *What is NamUs?*, https://namus.nij.ojp.gov/ (last visited Jan. 17, 2024).
[8] S. 937.021(4)(a), F.S.

Section 937.0205, F.S., establishes Florida's Purple Alert, which may be used to assist in locating missing adults suffering from a mental or cognitive disability.[9] FDLE, FDOT, FLHSMV, the Florida Department of the Lottery, and local law enforcement agencies implement the Purple Alert.[10]

Under a Purple Alert, a local law enforcement agency may broadcast to the media, on lottery terminals within the geographic regions where the missing adult may reasonably be located, and to persons who subscribe to receive alert notifications information concerning a missing adult:

- Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or developmental disability as defined in s. 393.063, F.S.;[11] a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm;
- Who cannot be returned to safety without law enforcement intervention; and
- Who does not meet the criteria for activation of a Silver Alert.[12]

The local law enforcement agency having jurisdiction may also request that a case be opened with FDLE's Missing Endangered Person Information Clearinghouse (MEPIC).[13] If the law enforcement investigation determines that the missing person is in an identifiable vehicle, MEPIC must coordinate with FDOT and FLHSMV for the activation of message signs on state highways and for the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert.[14] If a Purple Alert is activated and the person is missing in an identified vehicle, FDOT road signs will be activated and remain active for a maximum of six hours displaying information relevant to the missing person.[15]

The local law enforcement agency to which the missing adult is reported determines whether the case meets the criteria to activate a Purple Alert.[16] Currently, a Purple Alert is activated only when there is sufficient descriptive information about the missing adult and the circumstances surrounding his or her disappearance indicate that activation of the Purple Alert is likely to help locate the missing adult.[17] The dissemination of a Purple Alert and related information is limited to the geographic area where the missing adult could reasonably be located.[18] The local law enforcement agency determines the status of the Purple Alert, but the Purple Alert generally stays active until the missing person is recovered.[19]

Since the Purple Alert began July 1, 2022, and as of November 30, 2023, 331 Purple Alerts have been issued.[20] Of those, 100 (30 percent) involved persons who went missing in a vehicle, and 231 (70 percent) involved persons who went missing on foot.[21] Although s. 937.0205, F.S., appears to authorize local law enforcement agencies to issue their own Purple Alerts, all Purple Alerts are currently processed and issued by FDLE, regardless of whether a person is missing on foot or in an identifiable

[9] Florida Department of Law Enforcement, *Florida's Purple Alert Plan*, https://www.fdle.state.fl.us/PurpleAlerts/Purple-Alert-Plan.aspx#:~:text=The%20Florida%20Purple%20Alert%20is,or%20emotional%20disabilities%20that%20are (last visited Jan. 17, 2024); s. 937.0205(4)(a)1., F.S.; s. 937.0205(4)(a)2., F.S.
[10] S. 937.0205(3), F.S.
[11] Section 393.063(11), F.S., defines a developmental disability as a disorder or syndrome attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome that manifests before the age of 18 and is reasonably expected to continue indefinitely. Section 393.063(23), F.S., defines an intellectual disability as significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior, manifests before the age of 18, and can be reasonably expected to continue indefinitely.
[12] S. 937.0205(4)(a), F.S.
[13] S. 937.0205(4)(c), F.S.
[14] *Id.*
[15] Florida Department of Law Enforcement, *Purple Alert Frequently Asked Questions*, https://www.fdle.state.fl.us/PurpleAlerts/Frequently-Asked-Questions#how (last visited Jan. 17, 2024).
[16] *Id.*
[17] S. 937.0205(3)(d), F.S.
[18] S. 937.0205(3)(c), F.S.
[19] Florida Department of Law Enforcement, *supra* note 15.
[20] Florida Department of Law Enforcement, *2024 Florida Department of Law Enforcement Legislative Bill Analysis HB 937*, December 19, 2023 (on file with the House Criminal Justice Subcommittee).
[21] *Id.*

vehicle.[22] Under s. 937.0205(4)(b), F.S., local law enforcement agencies must notify subscribers to the Purple Alert of a missing person in their jurisdictions and may request the activation of lottery terminals and message signs on state highways to assist in locating a missing person. To receive a list of subscribers to the Purple Alert and to activate the lottery terminals and message signs on state highways, local law enforcement agencies must contact FDLE.[23] However, FDLE may only activate lottery terminals and message signs on state highways for a Purple Alert if an identifiable vehicle is involved.[24] In a case where a person is missing and an identifiable vehicle is not involved, FDLE may issue a "Be on the Lookout" (BOLO) message statewide.[25]

According to FDLE, when a person is missing on foot, public safety may be better served if the agency of jurisdiction develops and follows its own policies and issues a local Purple Alert. Increasing the number and frequency of alerts issued statewide for those not in a vehicle may likely have a desensitizing effect on the public and significantly decrease the effectiveness and gravity of the Purple Alert.

Effect of Proposed Changes

HB 937 amends s. 937.0205, F.S., to create two levels of activation under the Purple Alert: local and statewide. The bill clarifies that any Purple Alert involving a person who is missing on foot or in an unidentifiable vehicle must be processed and issued through policies developed by the local law enforcement agency of jurisdiction, rather than by FDLE.

For cases involving an unidentifiable vehicle or a missing adult on foot, the bill limits dissemination of a Purple Alert to local distribution to the area where the person may reasonably be located. The bill requires local law enforcement agencies to develop their own policies for the activation of a local Purple Alert that meets the requirements set forth in s. 937.021, F.S. Under the bill, when activating a local Purple Alert, local law enforcement agencies must:

- Contact media outlets in the affected area and surrounding jurisdictions;
- Inform all on-duty law enforcement officers of the missing adult report; and
- Communicate the report to any other law enforcement agency in the county of jurisdiction.

Under the bill, a law enforcement agency may only request the issuance of a statewide Purple Alert from FDLE's MEPIC when the investigation indicates that there is a motor vehicle with an identified license plate or other vehicle information involved. In such cases, the clearinghouse must coordinate with FDOT, FLHSMV, and the Department of the Lottery for the:

- Activation of dynamic message signs on state highways and immediate distribution of critical information to the public about the missing adult;
- Notification on lottery terminals, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets; and
- Notification to subscribers of the Purple Alert.

The bill authorizes the local law enforcement agency having jurisdiction of the missing adult case to request MEPIC to open a case if the agency determines either a local or statewide Purple Alert is necessary and appropriate. Additionally, the bill limits the current requirements for the Purple Alert process to include procedures to monitor the use, activation, and results of alerts and to develop information and education strategies to the statewide Purple Alert.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 937.0205, F.S., relating to Purple Alert.

[22] Email from Bobbie Smith, Director of Legislative Affairs, Florida Department of Law Enforcement, Re: Purple Alert (Jan. 16, 2024) (on file with the House Criminal Justice Subcommittee).
[23] *Id.*; S. 937.0205(4)(a-b), F.S.
[24] S. 937.0205(4)(b), F.S.
[25] Email from Bobbie Smith, *supra* note 22.

Section 2: Provides an effective date of July 1, 2024.

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:

The bill may have an indeterminate positive fiscal impact on FDLE by limiting the activation of a statewide Purple Alert to when an identifiable vehicle is involved, and may have an indeterminate negative fiscal impact on local law enforcement agencies by requiring such agencies to adopt policies to implement a local Purple Alert.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Currently, s. 937.0205(6), F.S., authorizes FDLE to adopt rules to implement and administer the Purple Alert. The bill does not affect that authorization.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Purple Alert; amending s. 937.0205, F.S.; requiring local law enforcement agencies to develop policies for a local activation of a Purple Alert for certain missing adults; specifying requirements for such policies; specifying duties of the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse in the event of a state Purple Alert; specifying conditions under which a local law enforcement agency may request the clearinghouse to open a case; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 937.0205, Florida Statutes, is amended to read:

937.0205 Purple Alert.—

(1) The Legislature finds that a standardized state system is necessary to aid in the search for a missing adult identified in subsection (4) ~~paragraph (4)(a)~~. The Legislature also finds that a coordinated local law enforcement and state agency response with prompt and widespread sharing of information will improve the chances of finding the person.

(2) It is the intent of the Legislature to establish the

Purple Alert, to be implemented in a manner that, to the extent practicable, safeguards the privacy rights and related health and diagnostic information of such missing adults.

(3) The Department of Law Enforcement, in cooperation with the Department of Transportation, the Department of Highway Safety and Motor Vehicles, the Department of the Lottery, and local law enforcement agencies, shall establish and implement the Purple Alert. At a minimum, the Purple Alert must:

(a) Be the only viable means by which the missing adult is likely to be returned to safety;

(b) Provide, to the greatest extent possible, for the protection of the privacy, dignity, and independence of the missing adult by including standards aimed at safeguarding these civil liberties by preventing the inadvertent or unnecessary broadcasting or dissemination of sensitive health and diagnostic information;

(c) Limit the broadcasting and dissemination of alerts and related information to the geographic areas where the missing adult could reasonably be, considering his or her circumstances and physical and mental condition, the potential modes of transportation available to him or her or suspected to be involved, and the known or suspected circumstances of his or her disappearance; and

(d) Be activated only when there is sufficient descriptive information about the missing adult and the circumstances

surrounding his or her disappearance to indicate that activating the alert is likely to help locate the missing adult.

(4) ~~(a)~~ Under a Purple Alert, ~~a local law enforcement agency may broadcast to the media and to persons who subscribe to receive alert notifications under this section information concerning~~ a missing adult is deemed to be an adult:

(a) ~~1.~~ Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or a developmental disability, as those terms are defined in s. 393.063; a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;

(b) ~~2.~~ Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency;

(c) ~~3.~~ Who cannot be returned to safety without law enforcement intervention; and

(d) ~~4.~~ Who does not meet the criteria for activation of a local Silver Alert or the Silver Alert Plan of the Department of Law Enforcement.

(5) For a missing adult on foot or in an unidentified vehicle, local law enforcement agencies shall develop their own policies for activation of a local Purple Alert that meets the requirements set forth in s. 937.021 and shall:

(a) Contact media outlets in the affected area or

surrounding jurisdictions;

(b) Inform all on-duty law enforcement officers of the missing adult report; and

(c) Communicate the report to any other law enforcement agency in the county of jurisdiction.

(6) A state Purple Alert may be requested from the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse when the investigation indicates that there is a motor vehicle with an identified license plate or other vehicle information. The clearinghouse shall:

(a) Coordinate with the Department of Transportation and the Department of Highway Safety and Motor Vehicles for the activation of dynamic message signs on state highways and the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert;

(b) Coordinate with the Department of the Lottery to have the state Purple Alert broadcast on lottery terminals, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets; and

(c) Notify subscribers.

(7) If a local or state Purple Alert is determined to be necessary and appropriate, the local law enforcement agency having jurisdiction may also request that a case be opened with the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse.

~~(b) If a Purple Alert is determined to be necessary and appropriate, the local law enforcement agency having jurisdiction must notify the media and subscribers in the jurisdiction or jurisdictions where the missing adult is believed to or may be located. The local law enforcement agency having jurisdiction may also request that the Purple Alert notification be broadcast on lottery terminals within the geographic regions where the missing adult may reasonably be, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets.~~

~~(c) Under the Purple Alert, the local law enforcement agency having jurisdiction may also request that a case be opened with the Department of Law Enforcement's Missing Endangered Persons Information Clearinghouse. To enhance local or regional efforts when the investigation indicates that an identifiable vehicle is involved, the clearinghouse must coordinate with the Department of Transportation and the Department of Highway Safety and Motor Vehicles for the activation of dynamic message signs on state highways and the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert.~~

(8)~~(5)~~ The state Purple Alert process must include procedures to monitor the use, activation, and results of alerts and a strategy for informing and educating law enforcement, the media, and other stakeholders concerning the alert.

(9) ~~(6)~~ The Department of Law Enforcement may adopt rules to implement and administer this section.

Section 2. This act shall take effect July 1, 2024.

HB 1131

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1131 Online Sting Operations Grant Program
SPONSOR(S): Temple
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Butcher	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 943.041, F.S., creates the Crimes Against Children Criminal Profiling Program (CACP) within the Florida Department of Law Enforcement (FDLE). CACP provides investigative, training, and intelligence assistance to local law enforcement agencies while taking a proactive approach to investigating and preventing child sexual exploitation. Special Agents are qualified to investigate multi-jurisdictional operations and organized crimes against children in conjunction with local law enforcement agencies.

Local law enforcement agencies in Florida routinely conduct sting operations targeting online predators who may intend to commit crimes against children. A "sting operation" generally consists of an opportunity to commit a crime, a likely offender or group of offenders targeted by law enforcement, an undercover or hidden law enforcement officer or surrogate, and the eventual arrest of the likely offender or group of offenders.

Sting operations relating to online child sexual exploitation frequently involve an undercover law enforcement officer who poses as a child online for the purpose of identifying suspects who are communicating with or attempting to communicate with a child for the purpose of soliciting unlawful sexual activity. Such sting operations are generally localized efforts, and their utilization and effectiveness depend on how local officials allocate resources and personnel.

HB 1131 creates s. 943.0411, F.S., establishing the Online Sting Operations Grant Program within FDLE to award grants to local law enforcement agencies to support the creation of sting operations to target individuals online preying upon children or attempting to prey upon children.

The bill requires FDLE to annually award any funds specifically appropriated to the grant program to local law enforcement agencies to cover expenses related to computers, electronics, software, and other related necessary supplies. The bill specifies that grants must be provided to local law enforcement agencies if funds are appropriated for that purpose, and that the total amount of grants awarded may not exceed funding appropriated for the grant program.

The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The bill may have an indeterminate positive fiscal impact on local law enforcement agencies to the extent that such agencies apply for and receive funding under the grant program, enabling them to support the creation of sting operations to target online predators. However, the bill does not include a specific appropriation for the grant program.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sting Operations

Section 943.041, F.S., creates the Crimes Against Children Criminal Profiling Program (CACP) within the Florida Department of Law Enforcement (FDLE). CACP provides investigative, training, and intelligence assistance to local law enforcement agencies while taking a proactive approach to investigating and preventing child sexual exploitation.[1] Special Agents are qualified to investigate multi-jurisdictional operations and organized crimes against children in conjunction with local law enforcement agencies.[2]

A "sting operation" generally consists of an opportunity to commit a crime, a likely offender or group of offenders targeted by law enforcement, an undercover or hidden law enforcement officer or surrogate, and the eventual arrest of the likely offender or group of offenders.[3] Sting operations have the potential to result in large scale arrests and require planning and coordination from law enforcement to investigate, reduce, and prevent crimes.[4]

Sting operations relating to online child sexual exploitation frequently involve an undercover law enforcement officer who poses as a child online for the purpose of identifying suspects who are communicating with or attempting to communicate with a child for the purpose of soliciting unlawful sexual activity. Such sting operations are generally localized efforts, and their utilization and effectiveness depend on how local officials allocate resources and personnel.[5]

Local law enforcement agencies in Florida routinely conduct sting operations targeting online predators who may intend to commit crimes against children. In Leon County, the Capital City Human Trafficking Taskforce has arrested 16 people since its formation in late 2023.[6] The taskforce's undercover operations targeted individuals engaging in internet crimes against children, prostitution, and human trafficking.

On January 11, 2024, the Hillsborough County Sheriff's Office (HSCO) announced the arrest of 123 people over the course of three months, including online predators who thought they were communicating with children and young teens but were actually communicating with HCSO detectives.[7]

On October 10, 2023, the Polk County Sheriff's Office announced that its fourth undercover sting operation resulted in the arrest of six people alleged to have communicated online with persons they thought were children or guardians for the purpose of soliciting unlawful sexual activity with minors.[8]

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[1] FDLE, *Missing Children Information Clearinghouse*, https://www.fdle.state.fl.us/mcicsearch/crimesagainstchildren.asp (last visited Jan. 17, 2024).
[2] *Id.*
[3] Graeme R. Newman, *Sting Operations*, Center for Problem-Oriented Policing, (2007), https://cops.usdoj.gov/RIC/Publications/cops-p134-pub.pdf (last visited Jan. 17, 2024).
[4] *Id.*
[5] In 2023, the Florida Legislature allocated $427,250 from the General Revenue Fund to the South Florida Internet Crimes Agains t Children Task Force Program. See SB 2500 (2023).
[6] Elena Barrera, *Human trafficking taskforce arrests over a dozen individuals during undercover operation* (Jan. 11, 2024), Tallahassee Democrat, https://news.yahoo.com/human-trafficking-taskforce-arrests-over-020052310.html (last visited Jan. 17, 2024). The taskforce includes members from the Department of Homeland Security, the United States Attorney's Office for the Northern District of Florida, the State Attorney's Office for the Second Judicial Circuit, the Leon County Sheriff's Office, FDLE, the Tallahassee Police Department, the Federal Bureau of Investigations, the Internal Revenue Service, and the United States Marshals Service.
[7] HCSO, *Operation Renewed Hope*, https://teamhcso.com/News/PressRelease/69dfc87b-5961-4432-b0a4-b123d01d11cf/en-US (last visited Jan. 17, 2024).
[8] Polk County Sheriff's Office, *Six suspects arrested during "Operation Child Protector IV" focusing on online solicitation of minors* (Oct. 10, 2023), https://www.polksheriff.org/news-investigations/2023/10/10/six-suspects-arrested-during-operation-child-protector-iv-focusing-on-online-solicitation-of-minors (last visited Jan. 17, 2024). *See also* "Takedown with Chris Hansen," an investigative

Criminal Charges Frequently Resulting from Sting Operations

Sting operations targeting child predators online may frequently result in criminal charges for the offenses described below.

Certain Uses of Computer Services or Devices Prohibited

Under s. 847.0135(3), F.S., it is a third degree felony[9] for a person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child *or another person believed by the person to be a child*, to commit any illegal act described in chapter 794 (sexual battery), chapter 800 (lewd or lascivious offenses), or chapter 827 (child sexual performance), F.S., or to otherwise engage in any unlawful sexual conduct with a child *or with another person believed by the person to be a child*; or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in any sexual conduct.[10]

Traveling to Meet a Minor

Under s. 847.0135(4), F.S., it is a second degree felony[11] for a person who travels any distance either within Florida, to Florida, or from Florida by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child *or with another person believed by the person to be a child* after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child *or another person believed by the person to be a child*, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child; or
- Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in any sexual conduct.

Effect of Proposed Changes

HB 1131 creates s. 943.0411, F.S., establishing the Online Sting Operations Grant Program within FDLE to award grants to local law enforcement agencies to support the creation of sting operations to target individuals online preying upon children or attempting to prey upon children.

The bill requires FDLE to annually award any funds specifically appropriated to the grant program to local law enforcement agencies to cover expenses related to computers, electronics, software, and other related necessary supplies. The bill specifies that grants must be provided to local law

docuseries in which journalist Chris Hansen coordinates with law enforcement, including the Polk County Sheriff's Office, to conduct undercover sting operations that "catch" persons accused of soliciting unlawful sexual activity with minors. https://www.imdb.com/takedown-with-chris-hansen (last visited Jan. 17, 2024).

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

[10] A person who misrepresents his or her age in violating this subsection commits a second degree felony. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

[11] A second degree felony is punishable by up to 15 years in prison and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

enforcement agencies if funds are appropriated for that purpose, and that the total amount of grants awarded may not exceed funding appropriated for the grant program.

The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 943.0411, F.S., relating to Online Sting Operations Grant Program for local law enforcement agencies to protect children.
Section 2: Provides an effective date of July 1, 2024.

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 may have an indeterminate positive fiscal impact on local law enforcement agencies to the extent that such agencies apply for and receive funding under the grant program, enabling them to support the creation of sting operations to target online predators. However, the bill does not include a specific appropriation for the grant program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds under the new grant program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Online Sting Operations Grant Program; creating s. 943.0411, F.S.; creating the Online Sting Operations Grant Program within the Department of Law Enforcement to support local law enforcement agencies in creating certain sting operations to protect children; requiring the department to annually award grant funds to local law enforcement agencies; providing funding requirements; authorizing the department to establish criteria and set specific time periods for the acceptance of applications and the selection process for awarding grant funds; providing an effective date.

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

Section 1. Section 943.0411, Florida Statutes, is created to read:

943.0411 Online Sting Operations Grant Program for local law enforcement agencies to protect children.—

(1) There is created within the department the Online Sting Operations Grant Program to award grants to local law enforcement agencies to support their creation of sting operations to target individuals online preying upon children or attempting to do so.

(2) The department shall annually award to local law enforcement agencies any funds specifically appropriated for the grant program to cover expenses related to computers, electronics, software, and other related necessary supplies. Grants must be provided to local law enforcement agencies if funds are appropriated for that purpose by law. The total amount of grants awarded may not exceed funding appropriated for the grant program.

(3) The department may establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

Section 2. This act shall take effect July 1, 2024.

HB 1135

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1135 Lewd or Lascivious Grooming
SPONSOR(S): Yarkosky and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Leshko	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

It is estimated that in about half of all child sexual abuse cases the abuse is preceded by sexual grooming. Sexual grooming is a preparatory process in which a perpetrator selects a victim, gains access to and isolates the victim, develops trust with the victim and often other adults in the victim's life, and desensitizes the victim to sexual content and physical contact. Post-abuse, the offender may engage in maintenance strategies in order to facilitate future sexual abuse and to prevent disclosure.

The Florida Supreme Court has held that the terms "lewd" and "lascivious" mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act. Under s. 800.04(6), F.S., a person commits lewd or lascivious conduct by soliciting a person under 16 to commit a lewd or lascivious act. Lewd or lascivious conduct is a second-degree felony if the offender is 18 years of age or older.

Under s. 800.04(7), F.S., a person commits lewd or lascivious exhibition by intentionally performing any of the following acts in the presence of a person under 16: masturbating; exposing the genitals in a lewd or lascivious manner; or committing any other sexual act that does not involve actual physical or sexual contact with the victim. Lewd or lascivious exhibition is a second-degree felony if the offender is 18 years of age or older.

Under s. 847.0135(3), F.S., a person commits a third-degree felony if he or she knowingly uses a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the offender to be a child, to commit any illegal act described in chapter 794 (sexual battery), chapter 800 (lewdness/indecent exposure), or chapter 827 (abuse of children) or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the offender to be a child.

While there are several offenses in current law which prohibit a person from encouraging, enticing, soliciting, or inducing a minor to engage in sexual activity, lewd or lascivious behavior, or a sexual performance, current law does not specifically criminalize preparing or encouraging a child to engage in sexual activity through overtly sexually themed communications with the child or by engaging in certain conduct with or observed by the child.

HB 1135 amends s. 800.04, F.S., to prohibit a person 18 years of age or older from committing lewd or lascivious grooming by engaging in the process of preparing or encouraging a child to engage in sexual activity through overtly sexually themed communication with the child or in conduct with or observed by the child without permission from the child's parent or legal guardian. A violation of the prohibition is a second-degree felony.

The bill may have an indeterminate positive impact on jail and prison beds. *See* Fiscal Comments.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Grooming

It is estimated that in about half of all child sexual abuse cases the abuse is preceded by sexual grooming. Sexual grooming is a preparatory process in which a perpetrator selects a victim, gains access to and isolates the victim, develops trust with the victim and often other adults in the victim's life, and desensitizes the victim to sexual content and physical contact.[1] During the desensitization phase, the perpetrator typically introduces sexual content disguised as jokes or discussions, or through exposure to pornography or other explicit material,[2] and utilizes frequent non-sexual touch to desensitize the victim to physical contact. Post-abuse, the offender may engage in maintenance strategies in order to facilitate future sexual abuse and to prevent disclosure.[3]

Lewd and Lascivious Offenses

The Florida Supreme Court has held that the terms "lewd" and "lascivious" mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.[4, 5]

Section 800.04, F.S., criminalizes the following lewd or lascivious offenses committed on or in the presence of a person less than 16 years of age:

- Lewd or lascivious battery;
- Lewd or lascivious molestation;
- Lewd or lascivious conduct; and
- Lewd or lascivious exhibition.

Neither the victim's lack of chastity nor the victim's consent is a defense to lewd or lascivious offenses. Additionally, the perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense.[6]

Lewd or Lascivious Battery

A person commits lewd and lascivious battery by:

- Engaging in sexual activity[7] with a person 12 years of age or older but younger than 16; or
- Encouraging, forcing, or enticing any person under 16 to engage in:
  - Sadomasochistic abuse;
  - Sexual bestiality;
  - Prostitution; or
  - Any other act involving sexual activity.[8]

[1] Psychology Today, *How to Recognize the Sexual Grooming of a Minor*, (July 7, 2023) https://www.psychologytoday.com/us/blog/protecting-children-from-sexual-abuse/202010/how-to-recognize-the-sexual-grooming-of-a-minor (last visited Jan. 16, 2024).
[2] Helping Survivors, *Sexual Grooming*, https://helpingsurvivors.org/grooming/ (last visited Jan. 16, 2024).
[3] Psychology Today, *supra*, at note 1.
[4] *Chesebrough v. State*, 255 So.2d 675, 677 (Fla. 1971).
[5] Whether an act or conduct is lewd or lascivious is a factual issue to be decided on a case-by-case basis. *Andrews v. State*, 130 So. 3d 788, 790 (Fla. 1st DCA 2014).
[6] S. 800.04(2-3), F.S.
[7] Sexual activity means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object. S. 800.04(1)(d), F.S.
[8] S. 800.04(4)(a), F.S.

Lewd or lascivious battery is generally a second-degree felony,[9] unless the offender is 18 years of age or older and was previously convicted of lewd or lascivious battery or another specified offense,[10] in which case the offense is reclassified as a first-degree felony.[11, 12]

Lewd or Lascivious Molestation

A person commits lewd or lascivious molestation by:

- Intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person under 16; or
- Forcing or enticing a person under 16 to so touch the perpetrator.[13]

The penalty for lewd or lascivious molestation varies depending on the offender's age, the victim's age, and the circumstances surrounding the commission of the offense as follows:

- If the offender is 18 years of age or older and the victim is less than 12 years of age, the offense is a life felony.[14, 15]
- If the offender is less than 18 years of age and the victim is less than 12 years of age, the offense is a second-degree felony.[16]
- If the offender is 18 years or age or older and the victim is 12 years of age or older but less than 16 years of age, the offense is a second-degree felony.[17]
- If the offender is less than 18 years of age and the victim is 12 years of age or older but less than 16 years of age, the offense is a third-degree felony.[18, 19]
- If the offender is 18 years of age or older and the victim is 12 years of age or older but less than 16 years of age and the offender has previously been convicted of lewd or lascivious molestation or another specified offense,[20] the offense is a first-degree felony.[21]

Lewd or Lascivious Conduct

A person commits lewd or lascivious conduct by:

- Intentionally touching a person under 16 in a lewd or lascivious manner; or
- Soliciting a person under 16 to commit a lewd or lascivious act.[22]

Lewd or lascivious conduct is a second-degree felony if the offender is 18 years of age or older[23] and a third-degree felony if the offender is younger than 18 years of age.[24, 25]

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[9] S. 800.04(4)(b), F.S.; A second-degree felony is punishable by up to 15 years' imprisonment and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[10] Other offenses include a violation of: ss. 787.01(2) or 787.02(2), F.S., when the victim was a minor and, in the course of committing that violation, the defendant committed sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S.; s. 787.02(3)(a)2. or 3., F.S.; ch. 794, F.S., excluding s. 794.011(10), F.S.; s. 825.1025, F.S.; or s. 847.0135(5), F.S.
[11] S. 800.04(4)(c), F.S.; A first-degree felony is punishable by up to 30 years' imprisonment and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[12] Both a second-degree and first-degree felony lewd or lascivious battery are ranked as a level 8 offense on the Criminal Punishment Code's offense severity ranking chart (OSRC).
[13] S. 800.04(5)(a), F.S.
[14] A life felony is punishable by life imprisonment and a $15,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[15] Ranked as a level 9 offense on the OSRC.
[16] Ranked as a level 7 offense on the OSRC.
[17] Ranked as a level 7 offense on the OSRC.
[18] A third-degree felony is punishable by up to five years' imprisonment and a $5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[19] Ranked as a level 6 offense on the OSRC.
[20] Other offenses include a violation of: ss. 787.01(2) or 787.02(2), F.S., when the victim was a minor and, in the course of committing that violation, the defendant committed sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S.; s. 787.02(3)(a)2. or 3., F.S.; ch. 794, F.S., excluding s. 794.011(10), F.S.; s. 825.1025, F.S.; or s. 847.0135(5), F.S.
[21] Ranked as a level 7 offense on the OSRC.
[22] S. 800.04(6)(a), F.S.
[23] Ranked as a level 6 offense on the OSRC.
[24] S. 800.04(6)(b)–(c), F.S.
[25] Ranked as a level 5 offense on the OSRC.

Lewd or Lascivious Exhibition

A person commits lewd or lascivious exhibition by performing any of the following acts in the presence of a person under 16:

- Intentionally masturbating;
- Intentionally exposing the genitals in a lewd or lascivious manner;
- Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.[26]

Lewd or lascivious exhibition is a second-degree felony if the offender is 18 years of age or older[27] or a third-degree felony if the offender is less than 18 years of age.[28, 29]

Lewd or Lascivious Written Solicitation of Certain Minors

Section 794.053, F.S., prohibits a person 24 years of age or older from soliciting a person who is 16 or 17 years of age in writing to commit a lewd or lascivious act as a third-degree felony.[30]

Sexual Performance by a Child

Section 827.071(2), F.S., prohibits a person from using a child in a sexual performance[31] if, knowing the content and character thereof, he or she employs, authorizes, or induces a child to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. A violation of this prohibition is a second-degree felony.[32]

Prohibited Acts in Connection with Obscene Materials

Under s. 847.0133, F.S., a person commits a third-degree felony if he or she knowingly sells, rents, loans, gives away, distributes, transmits, or shows any obscene material to a minor.[33]

Under this section, "obscene material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose.

Section 847.001(12), F.S., defines "obscene" as the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;[34] and

[26] S. 800.04(7)(a), F.S.
[27] Ranked as a level 5 offense on the OSRC.
[28] S. 800.04(7)(b)–(c), F.S.
[29] Ranked as a level 4 offense on the OSRC.
[30] Ranked as a level 3 offense on the OSRC.
[31] Section 827.071(1)(m), F.S., defines "sexual performance" as any performance or part thereof which includes sexual conduct by a child.
[32] Ranked as a level 6 offense on the OSRC.
[33] This offense is unranked on the OSRC, and as such, defaults to the statutorily assigned level as described in s. 921.0023, F.S. Accordingly, because the offense is punishable as a third-degree felony it will be ranked as a level 1 offense on the OSRC.
[34] "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct." S. 847.001(19), F.S.

- Taken as a whole, lacks serious literary, artistic, political, or scientific value.[35]

Prohibited Computer Usage

Under s. 847.0135(3), F.S., a person commits a third-degree felony if he or she knowingly uses a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child[36] or another person believed by the offender to be a child, to commit any illegal act described in chapter 794 (sexual battery), chapter 800 (lewdness/indecent exposure), or chapter 827 (abuse of children) or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the offender to be a child; or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed by the offender to be the same, to consent to such child's participation in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct.[37]

Transmission of Material Harmful to Minors

Section 847.0138, F.S., prohibits a person, in this state or in any jurisdiction other than this state, from knowingly transmitting or believing that he or she is transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor, as a third-degree felony.[38]

Section 847.001(7), F.S., defines "harmful to minors" as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement[39] when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.[40]

While there are several offenses in current law which prohibit a person from encouraging, enticing, soliciting, or inducing a minor to engage in sexual activity, lewd or lascivious behavior, or a sexual performance, current law does not specifically criminalize preparing or encouraging a child to engage in sexual activity through overtly sexually themed communications with the child or by engaging in certain conduct with or observed by the child.

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code[41] are listed in a single offense severity ranking chart (OSRC),[42] which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the

[35] A mother's breastfeeding of her baby is not under any circumstance "obscene."
[36] "Child" means any person, whose identity is known or unknown, younger than 18 years of age. S. 847.001(10), F.S.
[37] Ranked as a level 7 offense on the OSRC.
[38] Ranked as a level 5 offense on the OSRC.
[39] Section 847.001(20), F.S., defines "sexual excitement" as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.
[40] A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."
[41] All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.
[42] S. 921.0022, F.S.

offense.[43, 44] A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.[45, 46] The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.[47]

Effect of Proposed Changes

HB 1135 amends s. 800.04, F.S., to prohibit a person 18 years of age or older from committing lewd or lascivious grooming by engaging in the process of preparing or encouraging a child to engage in sexual activity through overtly sexually themed communication with the child or in conduct with or observed by the child without permission from the child's parent or legal guardian. A violation of the prohibition is a second-degree felony.

The bill does not rank the offense on the OSRC, and as such, the offense defaults to the statutorily assigned level as described in s. 921.0023, F.S. Accordingly, because the offense is punishable as a second-degree felony it will be ranked as a level 4 offense on the OSRC.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
Section 2: Provides an effective date of October 1, 2024.

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.

[43] S. 921.0022(2), F.S.
[44] Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.
[45] Ss. 921.0022 and 921.0024, F.S.
[46] A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.
[47] If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive impact on jail and prison beds by creating a new felony offense for lewd or lascivious grooming of a child, which may result in more jail and prison admissions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to lewd or lascivious grooming; amending s. 800.04, F.S.; creating the offense of lewd or lascivious grooming; providing criminal penalties; providing an effective date.

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

Section 1. Subsection (8) of section 800.04, Florida Statutes, is renumbered as subsection (9), and a new subsection (8) is added to that section, to read:

800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.—

(8) LEWD OR LASCIVIOUS GROOMING.—

(a) A person who engages in the process of preparing or encouraging a child to engage in sexual activity through overtly sexually themed communication with the child or in conduct with or observed by the child without permission from the child's parent or legal guardian commits lewd or lascivious grooming.

(b) A person 18 years of age or older who commits lewd or lascivious grooming commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2024.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Criminal Justice Subcommittee

Representative Yarkosky offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 800.045, Florida Statutes, is created to read:

800.045 Lewd or lascivious grooming.—

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

(a) "Inappropriate communication or conduct" means any verbal, written, or electronic communication or any conduct in which a person describes, depicts, or demonstrates sexual conduct or sexual excitement.

(b) "Sexual activity" has the same meaning as in s. 800.04.

(c) "Sexual conduct" and the term "sexual excitement" have the same meanings as in s. 847.001.

(d) "Sexual performance" has the same meaning as in s. 827.071.

(2) A person 18 years of age or older who engages in a pattern of inappropriate communication or conduct directed toward a person less than 16 years of age for the purpose of preparing, encouraging, or enticing such person to engage in any unlawful sexual activity, sexual conduct, or sexual performance commits lewd or lascivious grooming, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (c) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description

119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.

319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine

		turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.

440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
794.053	3rd	Lewd or lascivious written solicitation of a person 16 or 17 years of age by a person 24 years of age or older.
800.045(2)	3rd	Lewd or lascivious grooming.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.

812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
812.081(2)	3rd	Theft of a trade secret.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.

817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.
817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a

			counterfeit payment instrument with intent to defraud.
80			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
81			
	836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.
82			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
83			
	860.15(3)	3rd	Overcharging for repairs and parts.
84			
	870.01(2)	3rd	Riot.
85			
	870.01(4)	3rd	Inciting a riot.
86			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1.,

			(2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
87			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.
88			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
89			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
90			

893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an

			animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
96			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
97			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
98			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

918.13(1)	3rd	Tampering with or fabricating physical evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

Section 3. This act shall take effect October 1, 2024.

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

Remove everything before the enacting clause and insert: An act relating to lewd or lascivious grooming; creating s. 800.045, F.S.; defining terms; creating the offense of lewd or lascivious grooming; providing criminal penalties; amending s. 921.0022, F.S.; ranking the offense created by the bill on the

offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

HB 1181

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1181 Juvenile Justice
SPONSOR(S): Jacques
TIED BILLS: **IDEN./SIM. BILLS:** SB 1274

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1181 amends several statutes relating to the Department of Juvenile Justice (DJJ), the juvenile justice system, and juvenile firearm possession and use. Specifically, the bill:

- Amends s. 790.22, F.S., to increase the criminal penalty if a minor under 18 years of age unlawfully possesses a firearm from a first degree misdemeanor to a third degree felony and imposes a five day minimum period of secure detention.
- Amends s. 985.12, F.S., to:
  - Change the term "civil citation" to "delinquency citation;"
  - Prohibit a juvenile charged with an offense involving the use or possession of a firearm from being issued a delinquency citation; and
  - Authorize civil citation or similar prearrest diversion programs existing before July 1, 2024 to continue to operate as a delinquency citation program if such program has been approved by the local State Attorney.
- Amends s. 985.25, F.S., to:
  - Require a juvenile who violates the terms of his or her electronic monitoring to be held in secure detention until a detention hearing; and
  - Require a juvenile who is on probation for committing a felony firearm offense to be held in secure detention for up to 21 days if he or she is taken into custody for violating his or her probation.
- Amends s. 985.255, F.S., to:
  - Require a court to *consider*, rather than use, the results of DJJ's risk assessment instrument in making a determination of whether to continue to detain a juvenile; and
  - Authorize a court to continue to detain a juvenile in secure detention if the court finds probable cause that he or she committed murder or specified offenses involving the use or possession of a firearm.
- Amends s. 985.433, F.S., to:
  - Require a juvenile who is adjudicated delinquent by a court for committing any offense or attempted offense involving the use of a firearm to be placed on conditional release for one year following his or her release from a juvenile commitment program; and
  - Prohibit a court from withholding adjudication if a juvenile previously had adjudication withheld for specified offenses and requiring a court to adjudicate such a juvenile delinquent and sentence the juvenile to a DJJ residential program.
- Creates s. 985.438, F.S, to authorize DJJ to create a "graduated response matrix" by administrative rule.
- Amends s. 985.46, F.S., to provide minimum standards and requirements for conditional release.
- Amends s. 985.601, F.S., to require DJJ to establish a class on the consequences of committing firearm offenses.
- Amends s. 985.711, F.S., to increase the penalty to a second degree felony for introducing contraband into a DJJ facility and to prohibit a person from introducing any currency, cigarettes, or tobacco products into a DJJ facility.
- Amends s. 1002.221, F.S., to authorize a juvenile's educational records to be introduced in court proceedings.

The bill may have a positive fiscal impact on DJJ expenditures by increasing the number of juveniles that are required to be held in secure detention and expanding the number of juveniles that are eligible for DJJ supervision and services. The bill may have a positive fiscal impact to local government expenditures by increasing the number of juveniles that are required to be held in secure detention.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Detention

Background

In Florida, the Department of Juvenile Justice (DJJ) administers the juvenile justice system. When a child is alleged to have committed a delinquent act, DJJ must review the sufficiency of the probable cause affidavit or report and complete an intake screening to make an initial determination whether detention care is necessary.[1] Detention care is the temporary care of a child in secure detention[2] or supervised release detention care[3] pending a court adjudication or disposition of his or her case.[4]

Section 985.24, F.S., requires the use of detention care to be based primarily upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including illegal firearm possession;
- Presents history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed a specified offense of contempt of court; or
- Requests protection from imminent bodily harm.[5]

Initial Detention

DJJ utilizes the Detention Risk Assessment Instrument (DRAI) to make the initial determination of the need for detention.[6] The tool was developed after considering the latest statistical analysis techniques and risk-prediction methods in Florida's juvenile criminal justice setting[7] and is designed to determine the likelihood that a child will fail to appear in court or commit a new offense within a short window of time.[8] The DRAI uses a point system, based on factors such as:

- The current alleged offense;
- Prior referrals to DJJ, including whether the child has another case pending;
- Prior delinquency history, including whether the child has previously failed to appear for court hearings or escaped from supervision;
- Whether the child has unlawfully possessed or used a firearm; and
- The child's age.[9]

[1] In counties that do not have an assessment center, the law enforcement officer calls a DJJ "on-call screener" to assess the juvenile's risk and determine if detention is necessary. Office of the State Court's Administrator, *Florida's Juvenile Delinquency Benchbook* (June 2021), https://www.flcourts.org/content/download/752754/file/Delinquency%20Benchbook%20-%20Final%20June%2029,%202021.pdf (last visited Jan. 18, 2024).
[2] "Secure detention" means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement. S. 985.03(18)(a), F.S.
[3] "Supervised release detention" means temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters. Supervised release detention may include other requirements imposed by the court. S. 985.03(18)(b), F.S.
[4] S. 985.03(18), F.S.
[5] S. 985.24(1), F.S.
[6] S. 985.245(1), F.S.
[7] Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument* (effective July 1, 2019), https://www.djj.state.fl.us/research/detention-risk-assessment-instrument (last visited Jan. 18, 2024).
[8] Florida Department of Juvenile Justice, *Detention Risk Assessment Instrument-Frequently Asked Questions*, https://www.djj.state.fl.us/research/detention-risk-assessment-instrument/frequently-asked-questions (last visited Jan.18, 2024).
[9] S. 985.245(2)(b), F.S.

A child is required to be placed into secure detention after being taken into custody if the child is a "prolific juvenile offender" under s. 985.255(1)(f), F.S., or if the child is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.[10]

Detention Hearing

A child taken into custody and placed in detention care must be given a hearing within 24 hours to determine the existence of probable cause that the child has committed the delinquent act or violation of law for which he or she is charged and the need for continued detention.[11] The court determines the need for continued detention based on the results of the DRAI and may order a continued detention status if the DRAI indicates secure or supervised release detention.[12]

Length of Detention

Section 985.26, F.S., controls the time period for which a court can order a child to be placed in detention care. Generally, a child may not be held in detention care for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.[13] However, when good cause is shown that the nature of the charge requires additional time for prosecution or defense of the case or if the totality of the circumstances, including the preservation of public safety, warrant an extension, the court may extend the length of detention for an additional 21 days if the child is charged with an offense that, if committed by an adult, would be a:

- Capital felony;
- Life felony;
- First-degree felony;
- Second-degree felony;
- Third degree felony involving violence against any person; or
- Any other offense involving the use or possession of a firearm.[14]

The court may order additional extensions of secure detention, in up to 21-day increments, but only after conducting a hearing prior to the expiration of the child's current secure detention period and making written findings that there is a need for the child's continued secure detention.[15] If a court extends the period of secure detention, it must ensure that an adjudicatory hearing in the child's case commences as soon as is reasonably possible and must prioritize the disposition of any child's case who has been held in secure detention for 60 days or more.[16]

Effect of Proposed Changes – Juvenile Detention

Initial Detention

The bill amends s. 985.25, F.S., to require a court to place a juvenile who is on supervised release detention care and who is arrested for violating the terms of his or her electronic monitoring supervision in secure detention until a detention hearing.

The bill also amends s. 985.25, F.S., to require a juvenile who is on probation for an underlying felony firearm offense and who is taken into custody for violating the conditions of his or her probation in any manner that does not involve a new law violation to be held in secure detention to allow the state attorney to review the violation. Under the bill, if the state attorney notifies the court that commitment to a DJJ program will be sought, the juvenile must remain in secure detention for 21 days. Upon a motion by the state attorney, the juvenile may be held for an additional 21 day period if the court finds that the totality of the circumstances, including the preservation of public safety, warrants such an extension. If

[10] S. 985.25(1)(b), F.S.
[11] Ss. 985.255(1) and (3)(a), F.S.
[12] *Id.*
[13] S. 985.26(2)(a), F.S.
[14] S. 985.26(2)(b), F.S.
[15] *Id.*
[16] *Id.*

the court releases the juvenile from secure detention, the bill requires the juvenile to placed on supervised release with electronic monitoring.

Detention Hearing

The bill amends s. 985.255, F.S., to require a court to *consider*, rather than use, the results of the DRAI to in determining whether to continue to detain a juvenile. The bill also explicitly authorizes a court to order a detention placement that is more or less restrictive than that indicated by the results of the DRAI.

Length of Detention

The bill amends s. 985.255, F.S., to authorize a court to continue to detain a juvenile in secure detention if the court finds probable cause that a juvenile committed one or more of the following offenses:

- Murder in the first degree under s. 782.04(1)(a)., F.S.;
- Murder in the second degree under s. 782.04(2), F.S.;
- Armed robbery under s. 812.13(2)(a), F.S., that involves the use or possession of a firearm as defined in s. 790.001, F.S.;
- Armed carjacking under s. 812.133(2)(a), F.S., that involves the use or possession of a firearm as defined in s. 790.001, F.S.;
- Having a firearm while committing a felony under s. 790.07(2), F.S.;
- Armed burglary under s. 810.02(2)(b), F.S., that involves the use or possession of a firearm as defined in s. 790.001, F.S.;
- Delinquent in possession of a firearm under s. 790.23(1)(b), F.S.; or
- An attempt to commit any offense listed in this paragraph under s. 777.04, F.S.

The bill creates a presumption that a juvenile who commits any of the offenses listed above is a risk to public safety and a danger to the community and requires a court to hold such a juvenile in secure detention prior to his or her adjudicatory hearing unless the court finds by clear and convincing evidence that such a juvenile does not pose a risk to public safety or is a danger to the community. If a juvenile is held in secure detention for committing the offenses listed above and an adjudicatory hearing is not held within 60 days, the bill requires the court to hold a review hearing within each successive seven day period until the juvenile's adjudicatory hearing or until the juvenile is placed on supervised release with electronic monitoring.

Under the bill, if a court makes a finding that the juvenile does *not* pose a risk to public safety or is *not* a danger to the community and the court decides to release the juvenile from secure detention, the court must place the juvenile on supervised release detention care with electronic monitoring and enter a written order listing the juvenile's prior adjudications, prior dispositions, and prior violations of pretrial release orders. Such written order must be provided to the victim, to the law enforcement agency that arrested the juvenile, and to the law enforcement agency with primary jurisdiction over the juvenile's primary residence.

The bill amends s. 985.26, F.S., to conform to the changes made by the bill to s. 985.255(1)(g) and (h), F.S.

Disposition Hearings

Background

After a juvenile is found to have committed a delinquent act, the court must hold a disposition hearing.[17] A juvenile disposition hearing is comparable to criminal sentencing. The court must review DJJ's predisposition report which recommends the most appropriate placement and treatment plan.[18] The court may deviate from DJJ's recommendations but must include appropriate written findings in the disposition order.[19]

A juvenile disposition order is similar to a judgment and sentence in criminal court. Under s. 985.433, F.S., if the court finds that a child should be adjudicated delinquent, the court may order the child into:

- Residential commitment with DJJ at a specified restrictive level;[20]
- Residential commitment with DJJ at a specified restrictive level, followed by community-based sanctions;[21] or
- A probation program which must include a penalty component, such as community-based sanctions,[22, 23] and a rehabilitative component.[24]

Community-based sanctions may include, but are not limited to:

- Participation in substance abuse treatment;
- Participation in a day-treatment program;
- Restitution in money or in kind;
- A curfew;
- Revocation or suspension of the child's driver license;
- Community service; and
- Appropriate educational programs.[25]

Effect of Proposed Changes – Disposition Hearings

The bill amends s. 985.433, F.S., to require that any juvenile who is adjudicated by the court and committed to a DJJ program for an offense or attempted offense involving a firearm be placed on conditional release for a period of one year after his or her release from such commitment program. The conditional release program must include electronic monitoring by DJJ for the first six months following the juvenile's release, at times and under terms and conditions set by DJJ.

Under the bill, if a juvenile is found to have committed an offense that involves the use or possession of a firearm, other than a violation of s. 790.22(3), F.S., or an offense during the commission of which the juvenile possessed a firearm, and the court has decided not to commit the juvenile to a DJJ residential commitment program, the court must:

- Place the juvenile on probation for a period of at least one year;
- Require the juvenile to be supervised by electronic monitoring during his or her term of probation;
- Order the juvenile to serve a minimum period of detention of 30 days in a secure detention facility, with credit for time served in secure detention prior to disposition; and
- Require the juvenile to perform 100 hours of community service or paid work as determined by DJJ.

In addition to these penalties, the court may revoke or suspend the juvenile's driver license for up to one year.

[17] S. 985.433, F.S.
[18] S. 985.433(7)(a), F.S.
[19] S. 985.433(7)(b), F.S.
[20] *Id.*
[21] S. 985.433(7)(c), F.S.
[22] S. 985.433(8), F.S.
[23] S. 985.435(2), F.S.
[24] S. 985.435(3), F.S.
[25] *Id.*

The bill requires a court, if a juvenile previously received a withhold of adjudication of delinquency for committing specified offenses, to adjudicate a juvenile delinquent and sentence a juvenile to a DJJ residential program. These offenses include:

- Armed robbery involving the use of a firearm under s. 812.13(2)(a), F.S.;
- Armed carjacking under s. 812.133(2)(a), F.S., involving the use or possession of a firearm as defined in s. 790.001, F.S.;
- Having a firearm while committing a felony under s. 790.07(2), F.S.;
- Armed burglary under s. 810.02(2)(b), F.S., involving the use or possession of a firearm as defined in s. 790.001, F.S.;
- Delinquent in possession of a firearm under s. 790.23(1)(b), F.S.; or
- An attempt to commit any offense listed in this paragraph under s. 777.04, F.S.

Juvenile Probation

Background

Post-commitment Probation/Conditional Release

Under s. 985.435, F.S., a court may sentence a juvenile who was adjudicated delinquent and committed to a DJJ program to serve a term of postcommitment probation following his or her release from such a program. DJJ retains jurisdiction over the juvenile on postcommitment probation until he or she reaches 19 years of age.[26] If a juvenile on postcommitment probation violates the terms of such probation, DJJ or the state attorney may file a petition alleging a violation of probation and the juvenile may, in some circumstances, have his or her probation revoked by the court and be recommitted to a DJJ program.[27]

As an alternative to postcommitment probation, a court may sentence a juvenile who was adjudicated delinquent and committed to a DJJ program to be placed on conditional release following his or her release from the DJJ program. DJJ retains jurisdiction over a juvenile on conditional release supervision until he or she reaches 21 years of age.[28] A juvenile who is under conditional release supervision remains "committed" to DJJ even though he or she is no longer in a residential DJJ program.[29] Thus, if a juvenile is on conditional release supervision and violates the terms of his or her release, DJJ may initiate a transfer staffing and recommit the juvenile to a DJJ program without an order from a court.[30]

Violation of Probation

If a juvenile who is on probation violates the terms of his or her probation, both DJJ and the state attorney are authorized to file a petition with the court alleging such a violation.[31]

Alternative Consequences

A probation program may include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new law violations. The alternative consequence component is designed to provide swift and appropriate consequences to any noncompliance with technical conditions of probation. Examples of technical violations include missing classes at school or missing curfew. When responding to these violations, some juvenile probation officers (JPOs) are able to use an Effective Response Matrix to ensure the most appropriate responses are considered prior to a formal violation being filed. This can include increased community supervision, community service, truancy court and other rehabilitative alternatives.

[26] S. 985.0301(5)(b), F.S.
[27] S. 985.439(4)(d), F.S.
[28] S. 985.0301(5)(b)2., F.S.
[29] S. 985.46(4), F.S.
[30] S. 985.441(4), F.S.
[31] S. 985.439, F.S.

Effect of Proposed Changes – Juvenile Probation

Postcommitment Probation/Conditional Release

The bill amends ss. 985.101, 985.245, 985.439, 985.46, 985.48, 985.4815, F.S., to repeal all references to postcommitment probation, thus eliminating postcommitment probation as a sentencing option. As such, a court will only have the option of sentencing a juvenile to conditional release supervision following commitment in a DJJ program.

The bill also amends s. 985.46, F.S., to provide minimum standards for conditional release supervision. A juvenile on conditional release supervision:

- Must participate in an educational progam;
- Must observe a curfew;
- Is prohibited from having contact with victims, co-defendants, or known gang members;
- Is prohibited from using controlled substances; and
- Is prohibited from possessing a firearm.

Under the bill, a violation of the terms of conditional release supervision must be resolved using the "graduated response matrix" as created by the bill. The bill requires DJJ to recommit a juvenile who fails to move into compliance to a residential facility.

Violation of Probation

The bill amends s. 985.439, F.S., to require a state attorney, upon receiving notice of a violation of probation from DJJ, to either file the violation within five days or provide written reasons to the court and DJJ why he or she is not filing the violation of probation.

Alternative Consequences

The bill creates s. 985.438, F.S., to require DJJ to create by rule a statewide "graduated response matrix" (GRM) to address technical violations of probation as part of the alternative consequence component of a juvenile's probation. The GRM "must be based upon the principle that sanctions must reflect the seriousness of the violation, provide immediate accountability for violations, the assessed criminogenic needs and risks of the child, the child's age and maturity level." As such, the GRM is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of probation.

The bill requires the GRM to provide sanctions for a juvenile who commits a technical violation of his or her probation based on the juvenile's risk to reoffend and must include, but not be limited to:

- Increased contacts.
- Increased drug tests.
- Curfew reductions.
- Increased community service.
- Additional evaluations.
- Addition of electronic monitoring.

The bill amends s. 985.435, F.S., to require the alternative consequence component of a juvenile's probation to be aligned with the GRM, and amends s. 985.439, F.S., to remove provisions authorizing the creation of local alternative consequences programs.

Possession or Use of Firearms or Specified Weapons by a Minor

Background

Possessing or Discharging Firearms on School Property

Section 790.115, F.S., prohibits a person from willfully and knowingly possessing or discharging any firearm at a school-sanctioned event or on the property of any school,[32] school bus, or school bus stop.[33] Generally, a violation is punishable as a third degree felony.[34] A person who discharges a firearm at a school-sanctioned event or on the property of any school, school bus, or school bus stop commits a second degree felony.[35] A minor under 18 years of age who is charged with possessing or discharging a firearm on school property must be detained in secure detention unless the state attorney authorizes the release of the minor, and such minor must be given a detention hearing within 24 hours.[36] The court may order the minor to be held in secure detention for a period of 21 days.[37]

Use of Certain Guns or Weapons by a Minor Under 16

Section 790.22(1), F.S., prohibits a minor under the age of 16 from using a BB gun, air or gas-operated gun, or electric weapon or device[38] unless he or she is under the supervision of and in the presence of an adult who is acting with the consent of the minor's parent.

Possession of a Firearm by a Minor

Section 790.22(3), F.S., prohibits a minor under 18 years of age from possessing a firearm, other than an unloaded firearm at his or her home unless:

- The minor is engaged in a lawful hunting activity and:
  - Is at least 16 years of age; or
  - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and:
  - Is at least 16 years of age; or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from a lawful hunting or recreational shooting event.

A first violation is punishable as a first degree misdemeanor.[39] A second or subsequent violation is punishable as a third degree felony.[40]

A court is required to sentence a minor who unlawfully possesses a firearm as follows:

- For a first violation, a court must require a minor to perform 100 hours of community service, and may require a minor to serve up to five days in secure detention and may suspend a minor's driver license for up to one year.[41]
- For a second or subsequent violation, a court must require a minor to serve up to 21 days in a secure detention facility, must order a minor to perform at least 100 but not more than 250 hours of community service, and may suspend a minor's driver license for up to two years.[42]

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[32] "School" means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic. S. 790.115(2)(a), F.S.

[33] A person may carry a firearm at a school or school-related location:

- In a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
- In a case to a career center having a firearms training range; or
- In a vehicle pursuant to s. 790.25(5), F.S., except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges. S. 790.115(2)(a)1.–3., F.S.

[34] S. 790.115(b), (c), and (e), F.S.

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

[36] S. 790.115(4), F.S.

[37] *Id.*

[38] "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury. S. 790.001(7), F.S.

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

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

[41] S. 790.22(5)(a), F.S.

[42] S. 790.22(5)(b), F.S.

Under s. 790.22(8), F.S., unless a state attorney authorizes his or her release, a juvenile must be held in secure detention and provided a detention hearing within 24 hours if he or she is found to have committed an offense that involves the use or possession of a firearm, or is charged for any offense during the commission of which the juvenile possessed a firearm. A court may continue to hold such a juvenile in secure detention if the court finds by clear and convincing evidence that the juvenile is a clear and present danger to himself or herself or the community.[43]

Under s. 790.22(9) and (10), F.S., if a juvenile is found to have committed an offense that involves the use or possession of a firearm other than a violation of s. 790.22(3), F.S., or an offense during the commission of which the juvenile possessed a firearm, and the juvenile is not committed to a DJJ residential commitment program, the court must sentence such a juvenile as follows:

- For a first offense, the court must order the juvenile to serve a minimum period of detention of 15 days in a secure detention facility, require the juvenile to perform 100 hours of community service, and revoke or suspend the juvenile's driver license for up to one year. In addition, the court may place such a juvenile on community control or in a nonresidential commitment program.
- For a second or subsequent offense, the court must order the juvenile to serve a mandatory period of detention of at least 21 days in a secure detention facility, require the juvenile to perform at least 100 but not more than 250 hours of community service, and must revoke or suspend the juvenile's driver license for up to two years. In addition, the court may place such a juvenile on community control or in a nonresidential commitment program.

Effect of Proposed Changes – Possession or Use of Firearms or Specified Weapons by a Minor

Possessing or Discharging Firearms on School Property

The bill amends s. 790.115, F.S., to delete the provision requiring a minor be held in secure detention for possessing or discharging a firearm on school property, which is duplicative of the provision in s. 985.25(1)(b), F.S., which requires a minor to be placed in secure detention care until a detention hearing if he or she is charged with any offense involving the possession or use of a firearm.

Use of Certain Guns or Weapons by a Minor Under 16

HB 1181 amends s. 790.22(1), F.S., to authorize a minor under the age of 16 to use a BB gun, air or gas-operated gun, or electric weapon or device under adult supervision if a minor's guardian, in addition to a minor's parent, consents to such use.

Possession of a Firearm by a Minor

The bill amends s. 790.22(5), F.S., to revise the penalties and minimum sentencing requirements for a minor who unlawfully possesses a firearm by:

- Increasing the penalty for a *first* violation from a first degree misdemeanor to a third degree felony;
- Requiring, rather than authorizing, a court to sentence a minor to five days in secure detention for a first violation;
- Requiring, rather than authorizing, a court to sentence a minor to serve 21 days in a secure detention facility, with credit for time served prior to disposition of the juvenile case, for a second or subsequent violation;
- Authorizing a minor to substitute paid work hours, as determined by DJJ, for community service hours; and
- Requiring a court, for a third or subsequent violation, to adjudicate the minor delinquent and commit such a minor to a DJJ residential program.

The bill amends s. 790.22(8), F.S., by deleting that subsection and moving the substance of that subsection to s. 985.255(1)(h), F.S.

[43] S. 790.22(8), F.S.

The bill amends s. 790.22(9), and (10), F.S., by deleting those subsections and moving the substance of those subsections to s. 985.433(8), F.S.

The bill amends s. 985.601, F.S., to require DJJ to establish a class focused on the risk and consequences of youthful firearm offending, and requires DJJ to provide such a class to any juvenile who is found to have committed any offense involving the use or possession of a firearm.

Juvenile Civil Citation Programs

Background

Generally, a "diversion" program designed to keep a juvenile from entering the juvenile justice system through the traditional legal process by placing him or her on a less restrictive track that affords more opportunities for rehabilitation and restoration.[44] The goal of diversion is to maximize the opportunity for a juvenile's success and minimize the likelihood of recidivism.[45]

Section 985.12, F.S., requires each judicial circuit to create a civil citation or similar prearrest diversion program and develop policies and procedures for such a program, which must specify the following:

- The misdemeanor offenses that qualify a juvenile for participation in the program;
- The eligibility criteria for the program;
- The program's implementation and operation;
- The program's requirements, including, but not limited to, the completion of community service hours, payment of restitution, if applicable, and intervention services indicated by a needs assessment of the juvenile, approved by the department, such as family counseling, urinalysis monitoring, and substance abuse and mental health treatment services; and
- A program fee, if any, to be paid by a juvenile participating in the program. If the program imposes a fee, the clerk of the court of the applicable county must receive a reasonable portion of the fee.[46]

The state attorney in each judicial circuit is responsible for administering the civil citation program.[47] A sheriff, police department, county, municipality, locally authorized entity, or public or private educational institution may operate an independent civil citation or similar prearrest diversion program if such a program was operating as of October 1, 2018, and if the state attorney determines that the independent program is substantially similar to the civil citation or similar prearrest diversion program developed by the circuit.[48]

Section 985.126, F.S., requires each diversion program,[49] which includes a civil citation program, to submit specified data about each participant in a diversion program to DJJ. DJJ is required to publish such data on its website semiannually.[50]

Effect of Proposed Changes – Juvenile Civil Citation Programs

The bill amends s. 985.12, F.S., to rename "civil citation" programs "delinquency citation" programs. The bill makes conforming changes to ss. 943.051, 985.11, and 1006.07, F.S., to reflect the name change.

The bill makes other changes to the delinquency citation program by:

[44] Florida Department of Juvenile Justice, *Glossary*, https://www.djj.state.fl.us/youth-families/glossary (last visited Jan. 18, 2024).
[45] Center for Health & Justice, A National Survey of Criminal Justice Diversion Programs and Initiatives, https://www.centerforhealthandjustice.org/tascblog/Images/documents/Publications/CHJ%20Diversion%20Report_web.pdf (last visited Jan. 18, 2024).
[46] S. 985.12(2)(b), F.S.
[47] S. 985.12(2)(c), F.S.
[48] *Id.*
[49] "Diversion program" means a program under ss. 985.12, 985.125, 985.155, or 985.16, F.S., or a program to which a referral is made by a state attorney under s. 985.15, F.S. S. 943.0582, F.S.
[50] S. 985.126(4), F.S.

- Prohibiting a delinquency citation from being issued for an offense that involves the use or possession of a firearm;
- Authorizing a delinquency citation program to require a juvenile to complete classes established by DJJ or the entity responsible for administering the delinquency citation program;
- Authorizing a civil citation or similar prearrest diversion program that existed before July 1, 2024 to continue to operate as a delinquency citation program if such program is approved by the state attorney and complies with the statutory requirements for a delinquency citation program; and
- Deleting a provision that authorizes, but does not require, a judicial circuit to model its civil citation program on a program created by another entity that operates such a program.

The bill amends s. 985.126, F.S., to require DJJ to provide a quarterly report to be published on its website listing the entities that use delinquency citations for less than 70 percent of first-time misdemeanor offenses. The bill also requires DJJ to submit the quarterly report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Driver License Suspension

Background

Under ss. 985.433(8), 985.35(4)(a) and 985.435(2)(d), F.S., a court has the authority to revoke or suspend a juvenile's driver license, regardless of whether the court adjudicates a juvenile delinquent or withholds such an adjudication.

Effect of Proposed Changes – Driver License Suspension

The bill amends s. 985.455, F.S., to authorize a court, upon a finding of a compelling circumstance that warrants such an exception, to direct the Department of Highway Safety and Motor Vehicles to issue a license for driving privileges restricted to business[51] or employment purposes only if the court previously suspended a juvenile's driver license as part of the disposition in a juvenile case.[52]

Introduction of Contraband into a DJJ Facility

Background

Section 985.711, F.S., generally prohibits a person from introducing specified contraband articles into or upon the grounds of a juvenile detention facility or commitment program. The penalty for introducing such contraband articles varies depending on the type of contraband introduced. A person commits:

- A first degree misdemeanor for introducing:
  - Any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6., F.S., that is intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program.
  - Any vapor-generating electronic device as defined in s. 386.203, F.S., that is intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program.
- A third degree felony for introducing any unauthorized article of food or clothing.
- A second degree felony for introducing:
  - Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
  - Any controlled substance as defined in s. 893.02(4), F.S., marijuana as defined in s. 381.986, F.S., hemp as defined in s. 581.217, F.S., industrial hemp as defined in

[51] "A driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. S. 322.271(1)(c)1., F.S.

[52] "A driving privilege restricted to employment purposes only" means a driving privilege that is limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation. S. 322.271(1)(c)2., F.S.

s. 1004.4473, F.S., or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.

Effect of Proposed Changes – Introduction of Contraband into a DJJ Facility

The bill amends s. 985.711, F.S., to make the penalty for introducing *any* type of contraband into a juvenile detention facility or commitment program a second degree felony. The bill also adds the following to the list of contraband articles enumerated in s. 985.711, F.S.:

- Any currency or coin given or transmitted, or intended to be given or transmitted, to any youth in any juvenile detention facility or commitment program.
- Any cigarettes, as defined in s. 210.01(1), F.S., or tobacco products, as defined in s. 210.25, F.S., given, or intended to be given, to any youth in a juvenile detention facility or commitment program.

Education Records

Background

Section 1002.221, F.S., generally prohibits the release of a student's education records without the written consent of the student or parent, except as permitted by the Family Educational Rights and Privacy Act (FERPA) under 20 U.S.C. §1232(g). In accordance with the provisions of FERPA, a student's education records *may* be released without the written consent of the student or parent to parties to an interagency agreement among DJJ, the school, law enforcement authorities, and other agencies.[53] However, under Florida law, such records are inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of a juvenile.

Effect of Proposed Changes – Education Records

The bill amends s. 1002.221, F.S., to delete the provision in current law that makes education records inadmissible in a court proceeding and specifically authorizes such education records to be used for juvenile proceedings initiated under ch. 984 and 985, F.S. By authorizing education records to be used in juvenile proceedings without the consent of a parent or responsible adult, DJJ will be able to more accurately determine whether a juvenile who is placed on probation by a court is complying with the terms of his or her probation by regularly attending school and meeting other educational requirements.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 790.115, F.S., relating to possessing or discharging weapons or firearms at a school-sponsored event or on property prohibited; penalties; exceptions.
Section 2: Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.
Section 3: Amends s. 985.101, F.S., relating to taking a child into custody.
Section 4: Amends s. 985.12, F.S., relating to civil citation or similar prearrest diversion programs.
Section 5: Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.
Section 6: Amends s. 985.126, F.S., relating to diversion programs; data collection; denial of participation or expunged record.
Section 7: Amends s. 985.245, F.S., relating to risk assessment instrument.
Section 8: Amends s. 985.25, F.S., relating to detention intake.
Section 9: Amends s. 985.255, F.S., relating to detention criteria; detention hearing.
Section 10: Amends s. 985.26, F.S., relating to length of detention.
Section 11: Amends s. 985.433, F.S., relating to disposition hearings in delinquency cases.

[53] S. 1002.221(2)(c), F.S.

Section 12: Amends s. 985.435, F.S., relating to probation and postcommitment probation; community service.
Section 13: Creates s. 985.438, F.S., relating to graduated response matrix.
Section 14: Amends s. 985.439, F.S., relating to violation of probation or postcommitment probation.
Section 15: Amends s. 985.455, F.S., relating to other dispositional issues.
Section 16: Amends s. 985.46, F.S., relating to conditional release.
Section 17: Amends s. 985.48, F.S., relating to juvenile sexual offender commitment programs; sexual abuse intervention networks.
Section 18: Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.
Section 19: Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.
Section 20: Amends s. 985.711, F.S., relating to introduction, removal, or possession of certain articles unlawful; penalty.
Section 21: Amends s. 1002.221, F.S., relating to K-12 education records; public records exemption.
Section 22: Amends s. 943.051, F.S., criminal justice information; collection and storage; fingerprinting.
Section 23: Amends s. 985.11, F.S., fingerprinting and photographing.
Section 24: Amends s. 1006.07, F.S., relating to district school board duties relating to student discipline for school safety.
Section 25: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive fiscal impact on DJJ expenditures by increasing the number of juveniles that are required to held into secure detention and expanding the number of juveniles that are eligible for DJJ supervision and services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive fiscal impact to local government expenditures by increasing the number of juveniles that are required to be held in secure detention.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DJJ with sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to juvenile justice; amending s. 790.115, F.S.; removing a provision requiring specified treatment of minors charged with possessing or discharging a firearm on school property; amending s. 790.22, F.S.; revising penalties for minors committing specified firearms violations; removing provisions concerning minors charged with or convicted of certain firearms offenses; amending s. 985.101, F.S.; conforming provisions to changes made by the act; amending s. 985.12, F.S.; redesignating civil citation programs as prearrest delinquency citation programs; revising program requirements; providing that certain existing programs meeting certain requirements shall be deemed authorized; amending s. 985.125, F.S.; conforming provisions to changes made by the act; amending s. 985.126, F.S.; requiring the Department of Juvenile Justice to publish a quarterly report concerning entities using delinquency citations for less than a specified amount of eligible offenses; amending s. 985.245, F.S.; conforming provisions to changes made by the act; amending s. 985.25, F.S.; requiring that youths who are arrested for certain electronic monitoring violations be placed in secure detention until a detention hearing; requiring that a

child on probation for an underlying felony firearm offense who is taken into custody be placed in secure detention; providing for renewal of secure detention periods in certain circumstances; amending s. 985.255, F.S.; providing that when there is probable cause that a child committed one of a specified list of offenses that he or she is presumed to be a risk to public safety and danger to the community and must be held in secure a detention before an adjudicatory hearing; providing requirements for release of such a child despite the presumption; revising language concerning the use of risk assessments; amending s. 985.26, F.S.; revising requirements for holding a child in secure detention for more than 21 days; amending s. 985.433, F.S.; requiring conditional release conditions for children released after confinement for specified firearms offenses; requiring specified sanctions for certain children adjudicated for certain firearms offenses who are not committed to a residential program; providing that children who previously have had adjudication withheld for certain offenses my not have adjudication withheld for specified offenses; amending s. 985.435, F.S.; conforming provisions to changes made by the act; creating s. 985.438, F.S.; requiring the Department of Juvenile Justice to create

and administer a graduated response matrix to hold youths accountable to the terms of their court ordered probation and the terms of their conditional release; providing requirements for the matrix; amending s. 985.439, F.S.; requiring a state attorney to file a probation violation within a specified period or inform he court and the Department of Juvenile Justice why such violation is not filed; removing provisions concerning an alternative consequence program; allowing placement of electronic monitoring for probation violations in certain circumstances; amending s. 985.455, F.S.; authorizing a court to make an exception to an order of revocation or suspension of driving privileges in certain circumstances; amending s. 985.46, F.S.; revising legislative intent concerning conditional release; revising the conditions of conditional release; providing for assessment of conditional release violations and possible recommitment of violators; amending ss. 985.48 and 985.4815, F.S.; conforming provisions to changes made by the act; amending s. 985.601, F.S.; requiring the Department of Juvenile justice to establish a specified class for firearms offenders; amending s. 985.711, F.S.; revising provisions concerning introduction of contraband into department

facilities; revising criminal penalties for violations; amending s. 1002.221, F.S.; revising provisions concerning educational records for certain purposes; amending ss. 943.051, 985.11, and 1006.07, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (4) of section 790.115, Florida Statutes, is amended to read:

790.115 Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.—

~~(4) Notwithstanding s. 985.24, s. 985.245, or s. 985.25(1), any minor under 18 years of age who is charged under this section with possessing or discharging a firearm on school property shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a probable cause hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention for a period of 21 days, during which time the minor shall receive medical, psychiatric, psychological, or substance abuse examinations pursuant to s. 985.18, and a written report shall be completed.~~

Section 2. Subsections (1), (5), (8), (9), and (10) of section 790.22, Florida Statutes, are amended, and subsection (3) of that section is republished, to read:

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

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, or electric weapons or devices, by any minor under the age of 16 years is prohibited unless such use is under the supervision and in the presence of an adult who is acting with the consent of the minor's parent or guardian.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by

the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

(5)~~(a)~~ A minor who violates subsection (3) commits a felony ~~misdemeanor~~ of the third ~~first~~ degree; for a first offense, shall ~~may~~ serve a period of ~~detention of up to~~ 5 days in a secure detention facility, with credit for time served in secure detention prior to disposition~~;~~ and~~, in addition to any other penalty provided by law,~~ shall be required to perform 100 hours of community service or paid work as determined by the department. For a second violation of subsection (3), a minor shall serve 21 days in a secure detention facility, with credit for time served in secure detention before disposition; and shall be required to perform not less than 100 nor more than 250 hours of community service or paid work as determined by the department. For a third or subsequent violation of subsection (3), a minor shall be adjudicated delinquent and committed to a residential program. In addition to the penalties for a first offense and a second or subsequent offense under subsection (3)~~;~~ ~~and~~:

(a)~~1.~~ If the minor is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year for a first offense and up to 2 years for a second or subsequent offense.

(b)~~2.~~ If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year for a first offense and up to 2 years for a second or subsequent offense.

(c)~~3.~~ If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible for a first offense and up to 2 years for a second or subsequent offense.

~~(b) For a second or subsequent offense, a minor who violates subsection (3) commits a felony of the third degree and shall serve a period of detention of up to 21 days in a secure detention facility and shall be required to perform not less than 100 nor more than 250 hours of community service, and:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may~~

~~direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

~~(8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor is charged with an offense that involves the use or possession of a firearm, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 985.26(1)-(5), if the court finds that the minor meets the~~

~~criteria specified in s. 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection which states the period of detention and the relevant demographic information, including, but not limited to, the gender, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge for determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.~~

~~(9) Notwithstanding s. 985.245, if the minor is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Juvenile Justice, in addition to any other punishment provided by law,~~

~~the court shall order:~~

~~(a) For a first offense, that the minor shall serve a minimum period of detention of 15 days in a secure detention facility; and~~

~~1. Perform 100 hours of community service; and may~~

~~2. Be placed on community control or in a nonresidential commitment program.~~

~~(b) For a second or subsequent offense, that the minor shall serve a mandatory period of detention of at least 21 days in a secure detention facility; and~~

~~1. Perform not less than 100 nor more than 250 hours of community service; and may~~

~~2. Be placed on community control or in a nonresidential commitment program.~~

~~The minor shall not receive credit for time served before adjudication. For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.~~

~~(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):~~

~~(a) For a first offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.~~

~~(b) For a second or subsequent offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to~~

~~extend the period of suspension or revocation by an additional period for up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

Section 3. Paragraph (d) of subsection (1) of section 985.101, Florida Statutes, is amended to read:

985.101 Taking a child into custody.—

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

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

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

Section 4. Section 985.12, Florida Statutes, is amended to read:

985.12 Prearrest delinquency ~~Civil~~ citation ~~or similar prearrest diversion~~ programs.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the creation and implementation of delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ programs at the judicial circuit level promotes public safety, aids interagency cooperation, and provides the greatest chance of success for delinquency ~~civil~~ citation a~~nd similar prearrest diversion~~ programs. The Legislature further finds that the widespread use of delinquency ~~civil~~ citation ~~and similar prearrest diversion~~ programs has a positive effect on the criminal justice system by immediately holding youth accountable for their actions and contributes to an overall reduction in the crime rate and recidivism in the state. The Legislature encourages but does not mandate that counties, municipalities, and public or private educational institutions participate in a delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program created by their judicial circuit under this section.

(2) JUDICIAL CIRCUIT DELINQUENCY ~~CIVIL~~ CITATION ~~OR SIMILAR PREARREST DIVERSION~~ PROGRAM DEVELOPMENT, IMPLEMENTATION, AND OPERATION.—

(a) A delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program for misdemeanor offenses shall be established in each judicial circuit in the state. The state attorney and public defender of each circuit, the clerk of the court for each

county in the circuit, and representatives of participating law enforcement agencies in the circuit shall create a delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program and develop its policies and procedures. In developing the program's policies and procedures, input from other interested stakeholders may be solicited. The department shall annually develop and provide guidelines on best practice models for delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ programs to the judicial circuits as a resource.

(b) Each judicial circuit's delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program must specify all of the following:

1. The misdemeanor offenses that qualify a juvenile for participation in the program. Offenses involving the use or possession of a firearm are not eligible for delinquency citation.~~;~~

2. The eligibility criteria for the program.~~;~~

3. The program's implementation and operation.~~;~~

4. The program's requirements, including, but not limited to, the completion of community service hours, payment of restitution, if applicable, classes established by the department or the delinquency citation entity, and intervention services indicated by a needs assessment of the juvenile, approved by the department, such as family counseling, urinalysis monitoring, and substance abuse and mental health

treatment services.~~; and~~

5. A program fee, if any, to be paid by a juvenile participating in the program. If the program imposes a fee, the clerk of the court of the applicable county must receive a reasonable portion of the fee.

(c) The state attorney of each circuit shall operate a delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program in each circuit. A sheriff, police department, county, municipality, locally authorized entity, or public or private educational institution may ~~continue~~ to operate an independent delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program ~~that is in operation as of October 1, 2018,~~ if the independent program is reviewed by the state attorney of the applicable circuit and he or she determines that the independent program is substantially similar to the delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program developed by the circuit. If the state attorney determines that the independent program is not substantially similar to the delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program developed by the circuit, the operator of the independent ~~diversion~~ program may revise the program and the state attorney may conduct an additional review of the independent program. A civil citation or similar prearrest diversion program existing before July 1, 2024, shall be deemed a delinquency citation program authorized by this section if the civil citation or similar prearrest

diversion program has been approved by the state attorney of the circuit in which it operates and it complies with the requirements in paragraph (2)(b).

~~(d) A judicial circuit may model an existing sheriff's, police department's, county's, municipality's, locally authorized entity's, or public or private educational institution's independent civil citation or similar prearrest diversion program in developing the civil citation or similar prearrest diversion program for the circuit.~~

(d) ~~(c)~~ If a juvenile does not successfully complete the delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program, the arresting law enforcement officer shall determine if there is good cause to arrest the juvenile for the original misdemeanor offense and refer the case to the state attorney to determine if prosecution is appropriate or allow the juvenile to continue in the program.

(e) ~~(f)~~ Each delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program shall enter the appropriate youth data into the Juvenile Justice Information System Prevention Web within 7 days after the admission of the youth into the program.

(f) ~~(g)~~ At the conclusion of a juvenile's delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program, the state attorney or operator of the independent program shall report the outcome to the department. The issuance of a delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program notice is not

considered a referral to the department.

(g) ~~(h)~~ Upon issuing a delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program notice, the law enforcement officer shall send a copy of the delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program notice to the parent or guardian of the child and to the victim.

Section 5. Section 985.125, Florida Statutes, is amended to read:

985.125 ~~Prearrest or~~ Postarrest diversion programs.—

(1) A law enforcement agency ~~or school district~~, in cooperation with the state attorney, may establish a ~~prearrest or~~ postarrest diversion program.

(2) As part of the ~~prearrest or~~ postarrest diversion program, a child who is alleged to have committed a delinquent act may be required to surrender his or her driver license, or refrain from applying for a driver license, for not more than 90 days. If the child fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver license for a period that may not exceed 90 days.

Section 6. Subsections (5) and (6) of section 985.126, Florida Statutes, are renumbered as subsections (6) and (7), respectively, subsections (3) and (4) of that section are amended, and a new subsection (5) is added to that section, to read:

985.126 Diversion programs; data collection; denial of participation or expunged record.—

(3)(a) ~~Beginning October 1, 2018,~~ Each diversion program shall submit data to the department which identifies for each minor participating in the diversion program:

1. The race, ethnicity, gender, and age of that minor.

2. The offense committed, including the specific law establishing the offense.

3. The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the minor for the offense.

4. Other demographic information necessary to properly register a case into the Juvenile Justice Information System Prevention Web, as specified by the department.

(b) ~~Beginning October 1, 2018,~~ Each law enforcement agency shall submit to the department data for every youth charged for the first-time, who is charged with a misdemeanor, and who was ~~that identifies for each minor who was eligible for a diversion program, but was instead~~ referred to the department, provided a notice to appear, or arrested:

1. The data required pursuant to paragraph (a).

2. Whether the minor was offered the opportunity to participate in a diversion program. If the minor was:

a. Not offered such opportunity, the reason such offer was not made.

b. Offered such opportunity, whether the minor or his or her parent or legal guardian declined to participate in the diversion program.

(c) The data required pursuant to paragraph (a) shall be entered into the Juvenile Justice Information System Prevention Web within 7 days after the youth's admission into the program.

(d) The data required pursuant to paragraph (b) shall be submitted on or with the arrest affidavit or notice to appear.

(4) ~~Beginning January 1, 2019,~~ The department shall compile and semiannually publish the data required by subsection (3) on the department's website in a format that is, at a minimum, sortable by judicial circuit, county, law enforcement agency, race, ethnicity, gender, age, and offense committed.

(5) The department shall provide a quarterly report to be published on its website and distributed to the Governor, President of the Senate, and Speaker of the House of Representatives listing the entities that use delinquency citations for less than 70 percent of first-time misdemeanor offenses.

Section 7. Subsection (4) of section 985.245, Florida Statutes, is amended to read:

985.245 Risk assessment instrument.—

(4) For a child who is under the supervision of the department through probation, supervised release detention, conditional release, ~~postcommitment probation,~~ or commitment and

who is charged with committing a new offense, the risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department.

Section 8. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

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

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into detention care shall be made by the department under ss. 985.24 and 985.245(1).

(b) The department shall base the decision whether to place the child into detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245, except that a child shall be placed in secure detention care until the child's detention hearing if the child meets the criteria specified in s. 985.255(1)(f)~~, is charged with possessing or discharging a firearm on school property in violation of s. 790.115,~~ or is charged with any other offense involving the possession or use

of a firearm.

(c) If the final score on the child's risk assessment instrument indicates detention care is appropriate, but the department otherwise determines the child should be released, the department shall contact the state attorney, who may authorize release.

(d) If the final score on the risk assessment instrument indicates detention is not appropriate, the child may be released by the department in accordance with ss. 985.115 and 985.13.

(e) Notwithstanding any other provision of law, a youth who is arrested for violating the terms of his or her electronic monitoring supervision or his or her supervised release shall be placed in secure detention until a detention hearing.

(f) Notwithstanding any other provision of law, a child on probation for an underlying felony firearm offense as defined in chapter 790 and who is taken into custody under s. 985.101 for violating conditions of probation not involving a new law violation shall be held in secure detention to allow the state attorney to review the violation. If, within 21 days, the state attorney notifies the court that commitment will be sought, then the child shall remain in secure detention pending proceedings under s. 985.439 until the initial 21-day period of secure detention has expired. Upon motion of the state attorney, the child may be held for an additional 21-day period if the court

finds that the totality of the circumstances, including the preservation of public safety, warrants such extension. Any release from secure detention shall result in the child being held on supervised release with electronic monitoring pending proceedings under s. 985.439.

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

Section 9. Paragraph (a) of subsection (1) and subsection (3) of section 985.255, Florida Statutes, are amended, and paragraphs (g) and (h) are added to subsection (1) of that section, to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order a continued detention status if:

(a) The result of the risk assessment instrument pursuant to s. 985.245 indicates secure or supervised release detention or the court makes the findings required under paragraph (3)(b).

(g) The court finds probable cause at the detention hearing that the child committed one or more of the following offenses:

1. Murder in the first degree under s. 782.04(1)(a).

2. Murder in the second degree under s. 782.04(2).

3. Armed robbery under s. 812.13(2)(a) that involves the use or possession of a firearm as defined in s. 790.001.

4. Armed carjacking under s. 812.133(2)(a) that involves the use or possession of a firearm as defined in s. 790.001.

5. Having a firearm while committing a felony under s. 790.07(2).

6. Armed burglary under s. 810.02(2)(b) that involves the use or possession of a firearm as defined in s. 790.001.

7. Delinquent in possession of a firearm under s. 790.23(1)(b).

8. An attempt to commit any offense listed in this paragraph under s. 777.04.

(h) For a child who meets the criteria in paragraph (g):

1. There is a presumption that the child is a risk to public safety and danger to the community and such child must be held in secure detention prior to an adjudicatory hearing, unless the court enters a written order that the child would not pose a risk to public safety or a danger to the community if he or she were placed on supervised release detention care.

2. The written order releasing a child from secure detention must be based on clear and convincing evidence why the child does not present a risk to public safety or a danger to the community and must list the child's prior adjudications,

dispositions, and prior violations of pretrial release orders. The court releasing a child from secure detention under this subparagraph shall place the child on supervised release detention care with electronic monitoring until the child's adjudicatory hearing.

3. If an adjudicatory hearing has not taken place after 60 days of secure detention for a child held in secure detention under this paragraph, the court must prioritize the efficient disposition of cases and hold a review hearing within each successive 7-day review period until the adjudicatory hearing or the child is placed on supervised release with electronic monitoring under subparagraph 2.

4. If the court, under this section, releases a child to supervised release detention care, the court must provide a copy of the written notice to the victim, to the law enforcement agency that arrested the child, and to the law enforcement agency with primary jurisdiction over the child's primary residence.

(3)(a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. The court shall consider ~~use~~ the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for

continued detention. If the child is a prolific juvenile offender who is detained under s. 985.26(2)(c), the court shall consider ~~use~~ the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) only to determine whether the prolific juvenile offender should be held in secure detention.

(b) ~~If~~ The court may order ~~orders~~ a placement more or less restrictive than indicated by the results of the risk assessment instrument, and, if the court does so, shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in ~~s. 790.22(8) or~~ s. 985.27, when a child is placed into detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be

held within 3 calendar days after the child's initial detention placement.

Section 10. Paragraph (b) of subsection (2) of section 985.26, Florida Statutes, is amended to read:

985.26 Length of detention.—

(2)

(b) The court may order the child held in secure detention beyond 21 days based on the nature of the charge under the following circumstances:

1. Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case or that the totality of the circumstances, including the preservation of public safety, warrants an extension, the court may extend the length of secure detention care for up to an additional 21 days if the child is charged with an offense which, if committed by an adult, would be a capital felony, a life felony, a felony of the first degree or the second degree, a felony of the third degree involving violence against any individual, or any other offense involving the possession or use of a firearm. Except as otherwise provided for certain offenses and as set forth in subparagraph 2., the court may continue to extend the period of secure detention care in increments of up to 21 days each by conducting a hearing before the expiration of the current period to determine the need for continued secure detention of the child. At the hearing, the court must make the

required findings in writing to extend the period of secure detention. If the court extends the time period for secure detention care, it shall ensure an adjudicatory hearing for the case commences as soon as is reasonably possible considering the totality of the circumstances. The court shall prioritize the efficient disposition of cases in which the child has served 60 or more days in secure detention care.

2. Any child held in secure detention under s. 985.255(1)(g).

a. There is a presumption that the child is a risk to public safety and danger to the community and such child must be held in secure detention prior to an adjudicatory hearing, unless the court enters a written order that the child would not pose a risk to public safety or a danger to the community if he or she were placed on supervised release detention care.

b. The written order releasing a child from secure detention must be based on clear and convincing evidence why the child does not present a risk to public safety or a danger to the community and must list the child's prior adjudications, dispositions and prior violations of pretrial release orders. The court releasing a child from secure detention under this subparagraph shall place the child on supervised release detention care with electronic monitoring until the child's adjudicatory hearing.

c. If an adjudicatory hearing has not taken place after 60

days of secure detention for a child held in secure detention under this paragraph, the court must hold a review hearing within each successive 7-day review period until the adjudicatory hearing or the child is placed on supervised release with electronic monitoring under sub-subparagraph b.

d. If the court, under this subparagraph, releases a child to supervised release detention care, the court must provide a copy of the written notice to the victim, the law enforcement agency that arrested the child, and the law enforcement agency with primary jurisdiction over the child's primary residence.

Section 11. Paragraph (d) is added to subsection (7) of section 985.433, Florida Statutes, and subsections (8) and (9) of that section are amended, to read:

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

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

(d) Any child adjudicated by the court and committed to the department under a restrictiveness level defined in s. 985.03(44) for any offense or attempted offense involving a firearm must be placed on conditional release, as defined in s. 985.03, for a period of 1 year after release from the commitment program. Such term of conditional release shall include electronic monitoring of the child by the department for the initial 6 months at times and under terms and conditions set by the department.

(8) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution in money or in kind, a curfew, revocation or suspension of the driver license of the child, community service, and appropriate educational programs as determined by the district school board.

(a) Where a child is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of s. 790.22(3), or is found to have committed an offense during the commission of which the child possessed a firearm, and the court has decided not to commit the child to a residential program, the court shall order, in addition to any other punishment provided by law:

1. For a first offense, a child shall:

a. Serve a period of detention of 30 days in a secure detention facility, with credit for time served in secure detention prior to disposition.

b. Perform 100 hours of community service or paid work as determined by the department.

c. Be placed on probation for a period of at least 1 year. Such term of probation shall include electronic monitoring of the child by the department at times and under terms and conditions set by the department.

2. In addition to these penalties, the court may impose the following restrictions upon the child's driving privileges:

a. If the child is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the child's driver license or driving privilege for up to 1 year.

b. If the child's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.

c. If the child is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold

issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the child would otherwise have become eligible.

For the purposes of this paragraph, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

(b) A child who has previously had adjudication withheld for any of the following offenses shall not be eligible for a second or subsequent withhold of adjudication on a listed offense, and must be adjudicated delinquent and committed to a residential program:

1. Armed robbery involving a firearm under s. 812.13(2)(a).

2. Armed carjacking under s. 812.133(2)(a) involving the use or possession of a firearm as defined in s. 790.001.

3. Having a firearm while committing a felony under s. 790.07(2).

4. Armed burglary under s. 810.02(2)(b) involving the use or possession of a firearm as defined in s. 790.001.

5. Delinquent in possession of a firearm under s. 790.23(1)(b).

6. An attempt to commit any offense listed in this paragraph under s. 777.04.

(9) After appropriate sanctions for the offense are determined, including any minimum sanctions required by this section, the court shall develop, approve, and order a plan of probation that will contain rules, requirements, conditions, and rehabilitative programs, including the option of a day-treatment probation program, that are designed to encourage responsible and acceptable behavior and to promote both the rehabilitation of the child and the protection of the community.

Section 12. Subsections (1), (3), and (4) of section 985.435, Florida Statutes, are amended to read:

985.435 Probation ~~and postcommitment probation~~; community service.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, place the child in a probation program ~~or a postcommitment probation program~~. Such placement must be under the supervision of an authorized agent of the department or of any other person or agency specifically authorized and appointed by the court, whether in the child's own home, in the home of a relative of the child, or in some other suitable place under such reasonable conditions as the court may direct.

(3) A probation program must also include a rehabilitative program component such as a requirement of participation in

substance abuse treatment or in a school or career and technical education program. The nonconsent of the child to treatment in a substance abuse treatment program in no way precludes the court from ordering such treatment. Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of ~~postcommitment~~ probation, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances.

(4) A probation program must ~~may also~~ include an alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. The alternative consequence component must be aligned with the department's graduated response matrix as described in s. 985.438 ~~Each judicial circuit shall develop, in consultation with judges, the state attorney, the public defender, the regional counsel, relevant law enforcement agencies, and the department, a written plan specifying the alternative consequence component which must be based upon the principle that sanctions must reflect the seriousness of the violation, the assessed criminogenic needs and risks of the child, the child's age and maturity level, and how effective the sanction or incentive will be in moving the child to compliant behavior.~~

~~The alternative consequence component is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation, as well as incentives used to move the child toward compliant behavior, must be detailed in the disposition order~~.

Section 13. Section 985.438, Florida Statutes, is created to read:

985.438 Graduated response matrix.—

(1) The department shall create and administer a statewide plan to hold youths accountable to the terms of their court ordered probation and the terms of their conditional release. The plan must be based upon the principle that sanctions must reflect the seriousness of the violation, provide immediate accountability for violations, the assessed criminogenic needs and risks of the child, the child's age and maturity level. The plan is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of probation.

(2) The graduated response matrix shall outline sanctions for youth based on their risk to reoffend and shall include, but not be limited to:

(a) Increased contacts.

(b) Increased drug tests.

(c) Curfew reductions.

(d) Increased community service.

(e) Additional evaluations.

(f) Addition of electronic monitoring.

(3) The graduated response matrix shall be adopted in rule by the department.

Section 14. Section 985.439, Florida Statutes, is amended to read:

985.439 Violation of probation ~~or postcommitment probation~~.—

(1)(a) This section is applicable when the court has jurisdiction over a child on probation ~~or postcommitment probation~~, regardless of adjudication.

(b) If the conditions of the probation program ~~or the postcommitment probation program~~ are violated, the department or the state attorney may bring the child before the court on a petition alleging a violation of the program. A child who violates the conditions of probation ~~or postcommitment probation~~ must be brought before the court if sanctions are sought.

(c) Upon receiving notice of a violation of probation from the department, the state attorney must file the violation within 5 days or provide in writing to the department and the court a reason as to why he or she is not filing.

(2) A child taken into custody under s. 985.101 for

violating the conditions of probation shall be screened and detained or released based on his or her risk assessment instrument score.

(3) If the child denies violating the conditions of probation ~~or postcommitment probation~~, the court shall, upon the child's request, appoint counsel to represent the child.

(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation ~~or postcommitment probation~~, the court shall enter an order revoking, modifying, or continuing probation ~~or postcommitment probation~~. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the child is found to have violated the conditions of probation ~~or postcommitment probation~~, the court may:

(a) Place the child in supervised release detention with electronic monitoring.

(b) If the violation of probation is technical in nature and not a new violation of law, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.

~~1. Alternative consequence programs shall be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit,~~

~~the state attorney, and the public defender.~~

~~2. Alternative consequence programs may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, a county or municipality, or another entity selected by the department.~~

~~3. Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.~~

(c) Modify or continue the child's probation program ~~or postcommitment probation program~~.

(d) Revoke probation ~~or postcommitment probation~~ and commit the child to the department.

(e) Allow the department to place a youth on electronic monitoring for a violation of probation if it determines doing so will preserve and protect public safety.

(5) Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of ~~postcommitment~~ probation, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances.

Section 15. Subsection (5) is added to section 985.455, Florida Statutes, to read:

985.455 Other dispositional issues.—

(5) If the court orders revocation or suspension of a

child's driver license as part of a disposition, the court may, upon finding a compelling circumstance to warrant an exception, direct the Department of Highway Safety and Motor Vehicles to issue a license for driving privileges restricted to business or employment purposes only, as defined in s. 322.271.

Section 16. Subsections (2), (3), and (5) of section 985.46, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

985.46 Conditional release.—

(2) It is the intent of the Legislature that:

(a) Commitment programs include rehabilitative efforts on preparing committed juveniles for a successful release to the community.

(b) Conditional release transition planning begins as early in the commitment process as possible.

(c) Each juvenile committed to a residential commitment shall receive conditional release services ~~program be assessed to determine the need for conditional release services~~ upon release from the commitment program unless the youth is directly released by the court.

(3) For juveniles referred or committed to the department, the function of the department may include, but shall not be limited to, supervising each juvenile on conditional release when ~~assessing each juvenile placed in a residential commitment program to determine the need for conditional release services~~

~~upon release from the program, supervising the juvenile when~~ released into the community from a residential commitment facility of the department, providing such counseling and other services as may be necessary for the families and assisting their preparations for the return of the child. Subject to specific appropriation, the department shall provide for outpatient sexual offender counseling for any juvenile sexual offender released from a residential commitment program as a component of conditional release.

(5) Conditional release supervision shall contain, at a minimum, the following conditions:

(a) ~~(5)~~ Participation in the educational program by students of compulsory school attendance age pursuant to s. 1003.21(1) and (2)(a) is mandatory for juvenile justice youth on conditional release ~~or postcommitment probation~~ status. A student of noncompulsory school-attendance age who has not received a high school diploma or its equivalent must participate in an educational program or career and technical education course of study. A youth who has received a high school diploma or its equivalent and is not employed must participate in workforce development or other career or technical education or attend a community college or a university while in the program~~, subject to available funding~~.

(b) A curfew.

(c) A prohibition on contact with victims, co-defendants,

or known gang members.

(d) A prohibition on use of controlled substances.

(e) A prohibition on possession of firearms.

(6) A youth who violates the terms of his or her conditional release shall be assessed using the graduated response matrix as described in s. 985.438. A youth who fails to move into compliance shall be recommitted to a residential facility.

Section 17. Paragraph (c) of subsection (1) of section 985.48, Florida Statutes, is amended to read:

985.48 Juvenile sexual offender commitment programs; sexual abuse intervention networks.—

(1) In order to provide intensive treatment and psychological services to a juvenile sexual offender committed to the department, it is the intent of the Legislature to establish programs and strategies to effectively respond to juvenile sexual offenders. In designing programs for juvenile sexual offenders, it is the further intent of the Legislature to implement strategies that include:

(c) Providing intensive ~~postcommitment~~ supervision of juvenile sexual offenders who are released into the community with terms and conditions which may include electronic monitoring of a juvenile sexual offender for the purpose of enhancing public safety.

Section 18. Paragraph (a) of subsection (6) of section

985.4815, Florida Statutes, is amended to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(6)(a) The information provided to the Department of Law Enforcement must include the following:

1. The information obtained from the sexual offender under subsection (4).

2. The sexual offender's most current address and place of permanent, temporary, or transient residence within the state or out of state, and address, location or description, and dates of any current or known future temporary residence within the state or out of state, while the sexual offender is in the care or custody or under the jurisdiction or supervision of the department in this state, including the name of the county or municipality in which the offender permanently or temporarily resides, or has a transient residence, and address, location or description, and dates of any current or known future temporary residence within the state or out of state; and, if known, the intended place of permanent, temporary, or transient residence, and address, location or description, and dates of any current or known future temporary residence within the state or out of state upon satisfaction of all sanctions.

3. The legal status of the sexual offender and the scheduled termination date of that legal status.

4. The location of, and local telephone number for, any

department office that is responsible for supervising the sexual offender.

5. An indication of whether the victim of the offense that resulted in the offender's status as a sexual offender was a minor.

6. The offense or offenses at adjudication and disposition that resulted in the determination of the offender's status as a sex offender.

7. A digitized photograph of the sexual offender, which must have been taken within 60 days before the offender was released from the custody of the department or a private correctional facility by expiration of sentence under s. 944.275, or within 60 days after the onset of the department's supervision of any sexual offender who is on probation, ~~postcommitment probation,~~ residential commitment, nonresidential commitment, licensed child-caring commitment, community control, conditional release, parole, provisional release, or control release or who is supervised by the department under the Interstate Compact Agreement for Probationers and Parolees. If the sexual offender is in the custody of a private correctional facility, the facility shall take a digitized photograph of the sexual offender within the time period provided in this subparagraph and shall provide the photograph to the department.

Section 19. Subsection (11) of section 985.601, Florida Statutes, is renumbered as subsection (12), and a new subsection

(11) is added to that section, to read:

985.601 Administering the juvenile justice continuum.—

(11) The department shall establish a class focused on the risk and consequences of youthful firearm offending which shall be provided by the department to any youth adjudicated or had adjudication withheld for any offense involving the use or possession of a firearm.

Section 20. Section 985.711, Florida Statutes, is amended to read:

985.711 Introduction, removal, or possession of certain articles unlawful; penalty.—

(1)(a) Except as authorized through program policy or operating procedure or as authorized by the facility superintendent, program director, or manager, a person may not introduce into or upon the grounds of a juvenile detention facility or commitment program, or take or send, or attempt to take or send, from a juvenile detention facility or commitment program, any of the following articles, which are declared to be contraband under this section:

1. Any unauthorized article of food or clothing given or transmitted, or intended to be given or transmitted, to any youth in a juvenile detention facility or commitment program.

2. Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.

3. Any controlled substance as defined in s. 893.02(4),

marijuana as defined in s. 381.986, hemp as defined in s. 581.217, industrial hemp as defined in s. 1004.4473, or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.

4. Any firearm or weapon of any kind or any explosive substance.

5. Any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6., intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program. As used in this subparagraph, the term "portable communication device" does not include any device that has communication capabilities which has been approved or issued by the facility superintendent, program director, or manager.

6. Any vapor-generating electronic device as defined in s. 386.203, intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program.

7. Any currency or coin given or transmitted, or intended to be given or transmitted, to any youth of any juvenile detention facility or commitment program.

8. Any cigarettes, as defined in s. 210.01(1) or tobacco products, as defined in s. 210.25, given, or intended to be given, to any youth in a juvenile detention facility or commitment program.

(b) A person may not transmit contraband to, cause contraband to be transmitted to or received by, attempt to transmit contraband to, or attempt to cause contraband to be transmitted to or received by, a juvenile offender into or upon the grounds of a juvenile detention facility or commitment program, except as authorized through program policy or operating procedures or as authorized by the facility superintendent, program director, or manager.

(c) A juvenile offender or any person, while upon the grounds of a juvenile detention facility or commitment program, may not be in actual or constructive possession of any article or thing declared to be contraband under this section, except as authorized through program policy or operating procedures or as authorized by the facility superintendent, program director, or manager.

(2)~~(a) Any person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)1. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(b) Any person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)5. or subparagraph (1)(a)6. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(c) In all other cases,~~ A person who violates this section commits a felony of the second degree, punishable as provided in

s. 775.082, s. 775.083, or s. 775.084.

Section 21. Paragraph (c) of subsection (2) of section 1002.221, Florida Statutes, is amended to read:

1002.221 K-12 education records; public records exemption.—

(2)

(c) In accordance with the FERPA and the federal regulations issued pursuant to the FERPA, an agency or institution, as defined in s. 1002.22, may release a student's education records without written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies. Information provided pursuant to an interagency agreement may be used for proceedings initiated under chapter 984 or chapter 985 ~~in furtherance of an interagency agreement is intended solely for use in determining the appropriate programs and services for each juvenile or the juvenile's family, or for coordinating the delivery of the programs and services, and as such is inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of the juvenile~~.

Section 22. Paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is amended to read:

943.051 Criminal justice information; collection and

storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a delinquency ~~civil~~ citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(2).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or

firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 23. Paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is amended to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a delinquency ~~civil~~ citation ~~or is participating in a similar diversion program~~ pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(2).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be

open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 24. Paragraph (n) of subsection (2) of section 1006.07, Florida Statutes, is amended to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year. Each code shall be organized and written in language that is understandable to students and parents and shall be discussed at the beginning of every school year in student classes, school advisory council meetings, and parent and teacher association or organization meetings. Each code shall be based on the rules governing student conduct and discipline adopted by the district school board and shall be

made available in the student handbook or similar publication. Each code shall include, but is not limited to:

(n) Criteria for recommending to law enforcement that a student who commits a criminal offense be allowed to participate in a prearrest delinquency citation ~~civil citation or similar prearrest diversion~~ program as an alternative to expulsion or arrest. All prearrest delinquency citation ~~civil citation or similar prearrest diversion~~ programs must comply with s. 985.12.

Section 25. This act shall take effect July 1, 2024.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Criminal Justice Subcommittee

Representative Jacques offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) of section 790.115, Florida Statutes, is amended to read:

790.115 Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.—

~~(4) Notwithstanding s. 985.24, s. 985.245, or s. 985.25(1), any minor under 18 years of age who is charged under this section with possessing or discharging a firearm on school property shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given~~

~~a probable cause hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention for a period of 21 days, during which time the minor shall receive medical, psychiatric, psychological, or substance abuse examinations pursuant to s. 985.18, and a written report shall be completed.~~

Section 2. Subsections (1), (5), (8), (9), and (10) of section 790.22, Florida Statutes, are amended, and subsection (3) of that section is republished, to read:

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

(1) The use for any purpose whatsoever of BB guns, air or gas-operated guns, or electric weapons or devices, by any minor under the age of 16 years is prohibited unless such use is under the supervision and in the presence of an adult who is acting with the consent of the minor's parent <u>or guardian</u>.

(3) A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless:

(a) The minor is engaged in a lawful hunting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult.

(b) The minor is engaged in a lawful marksmanship

competition or practice or other lawful recreational shooting activity and is:

1. At least 16 years of age; or

2. Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.

(c) The firearm is unloaded and is being transported by the minor directly to or from an event authorized in paragraph (a) or paragraph (b).

(5)~~(a)~~ A minor who violates subsection (3) commits a felony ~~misdemeanor~~ of the third ~~first~~ degree; for a first offense, shall ~~may~~ serve a period of ~~detention of up to~~ 5 days in a secure detention facility, with credit for time served in secure detention prior to disposition~~;~~ and~~, in addition to any other penalty provided by law,~~ shall be required to perform 100 hours of community service or paid work as determined by the department. For a second violation of subsection (3), a minor shall serve 21 days in a secure detention facility, with credit for time served in secure detention prior to disposition; and shall be required to perform not less than 100 nor more than 250 hours of community service or paid work as determined by the department. For a third or subsequent violation of subsection (3), a minor shall be adjudicated delinquent and committed to a residential program. In addition to the penalties for a first offense and a second or subsequent offense under subsection (3)~~;~~ ~~and~~:

(a)~~1.~~ If the minor is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year for a first offense and up to 2 years for a second or subsequent offense.

(b)~~2.~~ If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year for a first offense and up to 2 years for a second or subsequent offense.

(c)~~3.~~ If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible for a first offense and up to 2 years for a second or subsequent offense.

~~(b) For a second or subsequent offense, a minor who violates subsection (3) commits a felony of the third degree and shall serve a period of detention of up to 21 days in a secure detention facility and shall be required to perform not less than 100 nor more than 250 hours of community service, and:~~

~~1. If the minor is eligible by reason of age for a driver~~

~~license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

~~(8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor is charged with an offense that involves the use or possession of a firearm, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure~~

~~detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 985.26(1)-(5), if the court finds that the minor meets the criteria specified in s. 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection which states the period of detention and the relevant demographic information, including, but not limited to, the gender, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge for determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.~~

~~(9) Notwithstanding s. 985.245, if the minor is found to~~

~~have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Juvenile Justice, in addition to any other punishment provided by law, the court shall order:~~

~~(a) For a first offense, that the minor shall serve a minimum period of detention of 15 days in a secure detention facility; and~~

~~1. Perform 100 hours of community service; and may~~

~~2. Be placed on community control or in a nonresidential commitment program.~~

~~(b) For a second or subsequent offense, that the minor shall serve a mandatory period of detention of at least 21 days in a secure detention facility; and~~

~~1. Perform not less than 100 nor more than 250 hours of community service; and may~~

~~2. Be placed on community control or in a nonresidential commitment program.~~

~~The minor shall not receive credit for time served before adjudication. For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals~~

~~on a regular basis with trauma patients and gunshot wounds.~~

~~(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):~~

~~(a) For a first offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.~~

~~(b) For a second or subsequent offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court may direct the~~

~~Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

Section 3. Paragraph (d) of subsection (1) of section 985.101, Florida Statutes, is amended to read:

985.101 Taking a child into custody.—

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

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

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

Section 4. Section 985.12, Florida Statutes, is amended to read:

985.12 Prearrest delinquency ~~Civil~~ citation ~~or similar prearrest diversion~~ programs.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the creation and implementation of any prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ programs at the judicial circuit level promotes public safety, aids interagency cooperation, and provides the greatest chance of success for prearrest delinquency ~~civil~~ citation a~~nd similar prearrest diversion~~ programs. The Legislature further finds that the widespread use of prearrest delinquency ~~civil~~ citation ~~and similar prearrest diversion~~ programs has a positive effect on the criminal justice system by immediately holding youth accountable for their actions and contributes to an overall reduction in the crime rate and recidivism in the state. The Legislature encourages but does not mandate that counties, municipalities, and public or private educational institutions participate in a prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program created by their judicial circuit under this section.

(2) JUDICIAL CIRCUIT DELINQUENCY ~~CIVIL~~ CITATION ~~OR SIMILAR PREARREST DIVERSION~~ PROGRAM DEVELOPMENT, IMPLEMENTATION, AND OPERATION.—

(a) A prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program for misdemeanor offenses shall be established in each judicial circuit in the state. The state attorney and public defender of each circuit, the clerk of the court for each county in the circuit, and representatives of participating law enforcement agencies in the circuit shall create a prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program and develop its policies and procedures. In developing the program's policies and procedures, input from other interested stakeholders may be solicited. The department shall annually develop and provide guidelines on best practice models for prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ programs to the judicial circuits as a resource.

(b) Each judicial circuit's prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program must specify all of the following:

1. The misdemeanor offenses that qualify a juvenile for participation in the program. Offenses involving the use or possession of a firearm do not qualify for a prearrest delinquency citation program.~~;~~

2. The eligibility criteria for the program.~~;~~

3. The program's implementation and operation.~~;~~

4. The program's requirements, including, but not limited to, the completion of community service hours, payment of restitution, if applicable, classes established by the department or the prearrest delinquency citation program, and intervention services indicated by a needs assessment of the juvenile, approved by the department, such as family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.~~; and~~

5. A program fee, if any, to be paid by a juvenile participating in the program. If the program imposes a fee, the clerk of the court of the applicable county must receive a reasonable portion of the fee.

(c) The state attorney of each circuit shall operate a prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program in each circuit. A sheriff, police department, county, municipality, locally authorized entity, or public or private educational institution may ~~continue to~~ operate an independent prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program ~~that is in operation as of October 1, 2018,~~ if the independent program is reviewed by the state attorney of the applicable circuit and he or she determines that the independent program is substantially similar to the prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program developed by the circuit. If the state

attorney determines that the independent program is not substantially similar to the prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program developed by the circuit, the operator of the independent ~~diversion~~ program may revise the program and the state attorney may conduct an additional review of the independent program. A civil citation or similar prearrest diversion program existing before July 1, 2024, shall be deemed a delinquency citation program authorized by this section if the civil citation or similar prearrest diversion program has been approved by the state attorney of the circuit in which it operates and it complies with the requirements in paragraph (2)(b).

~~(d) A judicial circuit may model an existing sheriff's, police department's, county's, municipality's, locally authorized entity's, or public or private educational institution's independent civil citation or similar prearrest diversion program in developing the civil citation or similar prearrest diversion program for the circuit.~~

(d)~~(e)~~ If a juvenile does not successfully complete the prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program, the arresting law enforcement officer shall determine if there is good cause to arrest the juvenile for the original misdemeanor offense and refer the case to the state attorney to determine if prosecution is appropriate or allow the juvenile to continue in the program.

(e)~~(f)~~ Each prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program shall enter the appropriate youth data into the Juvenile Justice Information System Prevention Web within 7 days after the admission of the youth into the program.

(f)~~(g)~~ At the conclusion of a juvenile's prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program, the state attorney or operator of the independent program shall report the outcome to the department. The issuance of a prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program notice is not considered a referral to the department.

(g)~~(h)~~ Upon issuing a prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program notice, the law enforcement officer shall send a copy of the prearrest delinquency ~~civil~~ citation ~~or similar prearrest diversion~~ program notice to the parent or guardian of the child and to the victim.

Section 5. Section 985.125, Florida Statutes, is amended to read:

985.125 ~~Prearrest or~~ Postarrest diversion programs.—

(1) A law enforcement agency ~~or school district~~, in cooperation with the state attorney, may establish a ~~prearrest or~~ postarrest diversion program.

(2) As part of the ~~prearrest or~~ postarrest diversion

program, a child who is alleged to have committed a delinquent act may be required to surrender his or her driver license, or refrain from applying for a driver license, for not more than 90 days. If the child fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver license for a period that may not exceed 90 days.

Section 6. Subsections (5) and (6) of section 985.126, Florida Statutes, are renumbered as subsections (6) and (7), respectively, subsections (3) and (4) of that section are amended, and a new subsection (5) is added to that section, to read:

985.126 Prearrest and postarrest diversion programs; data collection; denial of participation or expunged record.—

(3)(a) ~~Beginning October 1, 2018,~~ Each diversion program shall submit data to the department which identifies for each minor participating in the diversion program:

1. The race, ethnicity, gender, and age of that minor.

2. The offense committed, including the specific law establishing the offense.

3. The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the minor for the offense.

4. Other demographic information necessary to properly register a case into the Juvenile Justice Information System

Prevention Web, as specified by the department.

(b) ~~Beginning October 1, 2018,~~ Each law enforcement agency shall submit to the department data for every minor charged for the first-time, who is charged with a misdemeanor, and who was ~~that identifies for each minor who was eligible for a diversion program, but was instead~~ referred to the department, provided a notice to appear, or arrested:

1. The data required pursuant to paragraph (a).

2. Whether the minor was offered the opportunity to participate in a diversion program. If the minor was:

a. Not offered such opportunity, the reason such offer was not made.

b. Offered such opportunity, whether the minor or his or her parent or legal guardian declined to participate in the diversion program.

(c) The data required pursuant to paragraph (a) shall be entered into the Juvenile Justice Information System Prevention Web within 7 days after the youth's admission into the program.

(d) The data required pursuant to paragraph (b) shall be submitted on or with the arrest affidavit or notice to appear.

(4) ~~Beginning January 1, 2019,~~ The department shall compile and semiannually publish the data required by subsection (3) on the department's website in a format that is, at a minimum, sortable by judicial circuit, county, law enforcement agency, race, ethnicity, gender, age, and offense committed.

(5) The department shall provide a quarterly report to be published on its website and distributed to the Governor, President of the Senate, and Speaker of the House of Representatives listing the entities that use prearrest delinquency citations for less than 70 percent of first-time misdemeanor offenses.

Section 7. Subsection (4) of section 985.245, Florida Statutes, is amended to read:

985.245 Risk assessment instrument.—

(4) For a child who is under the supervision of the department through probation, supervised release detention, conditional release, ~~postcommitment probation,~~ or commitment and who is charged with committing a new offense, the risk assessment instrument may be completed and scored based on the underlying charge for which the child was placed under the supervision of the department.

Section 8. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

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

(a) During the period of time from the taking of the child

into custody to the date of the detention hearing, the initial decision as to the child's placement into detention care shall be made by the department under ss. 985.24 and 985.245(1).

(b) The department shall base the decision whether to place the child into detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245, except that a child shall be placed in secure detention care until the child's detention hearing if the child meets the criteria specified in s. 985.255(1)(f)~~, is charged with possessing or discharging a firearm on school property in violation of s. 790.115,~~ or is charged with any other offense involving the possession or use of a firearm.

(c) If the final score on the child's risk assessment instrument indicates detention care is appropriate, but the department otherwise determines the child should be released, the department shall contact the state attorney, who may authorize release.

(d) If the final score on the risk assessment instrument indicates detention is not appropriate, the child may be released by the department in accordance with ss. 985.115 and 985.13.

(e) Notwithstanding any other provision of law, a child who is arrested for violating the terms of his or her electronic monitoring supervision or his or her supervised release shall be

placed in secure detention until his or her detention hearing.

(f) Notwithstanding any other provision of law, a child on probation for an underlying felony firearm offense in chapter 790 and who is taken into custody under s. 985.101 for violating conditions of probation not involving a new law violation shall be held in secure detention to allow the state attorney to review the violation. If, within 21 days, the state attorney notifies the court that commitment will be sought, then the child shall remain in secure detention pending proceedings under s. 985.439 until the initial 21-day period of secure detention has expired. Upon motion of the state attorney, the child may be held for an additional 21-day period if the court finds that the totality of the circumstances, including the preservation of public safety, warrants such extension. Any release from secure detention shall result in the child being held on supervised release with electronic monitoring pending proceedings under s. 985.439.

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

Section 9. Paragraph (a) of subsection (1) and subsection (3) of section 985.255, Florida Statutes, are amended, and paragraphs (g) and (h) are added to subsection (1) of that

section, to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order a continued detention status if:

(a) The result of the risk assessment instrument pursuant to s. 985.245 indicates secure or supervised release detention or the court makes the findings required under paragraph (3)(b).

(g) The court finds probable cause at the detention hearing that the child committed one or more of the following offenses:

1. Murder in the first degree under s. 782.04(1)(a).

2. Murder in the second degree under s. 782.04(2).

3. Armed robbery under s. 812.13(2)(a) that involves the use or possession of a firearm as defined in s. 790.001.

4. Armed carjacking under s. 812.133(2)(a) that involves the use or possession of a firearm as defined in s. 790.001.

5. Having a firearm while committing a felony under s. 790.07(2).

6. Armed burglary under s. 810.02(2)(b) that involves the use or possession of a firearm as defined in s. 790.001.

7. Delinquent in possession of a firearm under s. 790.23(1)(b).

8. An attempt to commit any offense listed in this

paragraph under s. 777.04.

(h) For a child who meets the criteria in paragraph (g):

1. There is a presumption that the child presents a risk to public safety and danger to the community and such child must be held in secure detention prior to an adjudicatory hearing, unless the court enters a written order that the child would not present a risk to public safety or a danger to the community if he or she were placed on supervised release detention care.

2. The written order releasing a child from secure detention must be based on clear and convincing evidence why the child does not present a risk to public safety or a danger to the community and must list the child's prior adjudications, dispositions, and prior violations of pretrial release orders. A court releasing a child from secure detention under this subparagraph shall place the child on supervised release detention care with electronic monitoring until the child's adjudicatory hearing.

3. If an adjudicatory hearing has not taken place after 60 days of secure detention for a child held in secure detention under this paragraph, the court must prioritize the efficient disposition of cases and hold a review hearing within each successive 7-day review period until the adjudicatory hearing or until the child is placed on supervised release with electronic monitoring under subparagraph 2.

4. If the court, under this section, releases a child to

supervised release detention care, the court must provide a copy of the written order to the victim, to the law enforcement agency that arrested the child, and to the law enforcement agency with primary jurisdiction over the child's primary residence.

(3)(a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. The court shall consider ~~use~~ the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for continued detention. If the child is a prolific juvenile offender who is detained under s. 985.26(2)(c), the court shall consider ~~use~~ the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) only to determine whether the prolific juvenile offender should be held in secure detention.

(b) ~~If~~ The court may order ~~orders~~ a placement more or less restrictive than indicated by the results of the risk assessment instrument, and, if the court does so, shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in ~~s. 790.22(8) or~~ s. 985.27, when a child is placed into detention care, or into a respite home or other placement pursuant to a court order following a hearing,

the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement.

Section 10. Paragraph (b) of subsection (2) of section 985.26, Florida Statutes, is amended to read:

985.26 Length of detention.—

(2)

(b) The court may order the child to be held in secure detention beyond 21 days under the following circumstances:

1. Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case or that the totality of the circumstances, including the preservation of public safety, warrants an extension, the court may extend the length of secure detention care for up to

an additional 21 days if the child is charged with an offense which, if committed by an adult, would be a capital felony, a life felony, a felony of the first degree or the second degree, a felony of the third degree involving violence against any individual, or any other offense involving the possession or use of a firearm. Except as otherwise provided in subparagraph 2., the court may continue to extend the period of secure detention care in increments of up to 21 days each by conducting a hearing before the expiration of the current period to determine the need for continued secure detention of the child. At the hearing, the court must make the required findings in writing to extend the period of secure detention. If the court extends the time period for secure detention care, it shall ensure an adjudicatory hearing for the case commences as soon as is reasonably possible considering the totality of the circumstances. The court shall prioritize the efficient disposition of cases in which the child has served 60 or more days in secure detention care.

2. When the child is being held in secure detention under s. 985.255(1)(g), and subject to the provisions of s. 985.255(1)(h).

Section 11. Paragraph (d) is added to subsection (7) of section 985.433, Florida Statutes, and subsections (8) and (9) of that section are amended, to read:

985.433 Disposition hearings in delinquency cases.—When a

child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

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

(d) Any child adjudicated by the court and committed to the department under a restrictiveness level described in s. 985.03(44)(a)-(d), for any offense or attempted offense involving a firearm must be placed on conditional release, as defined in s. 985.03, for a period of 1 year following his or her release from a commitment program. Such term of conditional release shall include electronic monitoring of the child by the department for the initial 6 months following his or her release and at times and under terms and conditions set by the department.

(8) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are

not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution in money or in kind, a curfew, revocation or suspension of the driver license of the child, community service, and appropriate educational programs as determined by the district school board.

(a)1. Where a child is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of s. 790.22(3), or is found to have committed an offense during the commission of which the child possessed a firearm, and the court has decided not to commit the child to a residential program, the court shall order the child, in addition to any other punishment provided by law, to:

a. Serve a period of detention of 30 days in a secure detention facility, with credit for time served in secure detention prior to disposition.

b. Perform 100 hours of community service or paid work as determined by the department.

c. Be placed on probation for a period of at least 1 year. Such term of probation shall include electronic monitoring of the child by the department at times and under terms and conditions set by the department.

2. In addition to the penalties in subparagraph 1., the court may impose the following restrictions upon the child's driving privileges:

a. If the child is eligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the child's driver license or driving privilege for up to 1 year.

b. If the child's driver license or driving privilege is under suspension or revocation for any reason, the court may direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 1 year.

c. If the child is ineligible by reason of age for a driver license or driving privilege, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the child would otherwise have become eligible.

For the purposes of this paragraph, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

(b) A child who has previously had adjudication withheld for any of the following offenses shall not be eligible for a second or subsequent withhold of adjudication if he or she is subsequently found to have committed any of the following

667 offenses, and must be adjudicated delinquent and committed to a
668 residential program:
669 1. Armed robbery involving a firearm under s.
670 812.13(2)(a).
671 2. Armed carjacking under s. 812.133(2)(a) involving the
672 use or possession of a firearm as defined in s. 790.001.
673 3. Having a firearm while committing a felony under s.
674 790.07(2).
675 4. Armed burglary under s. 810.02(2)(b) involving the use
676 or possession of a firearm as defined in s. 790.001.
677 5. Delinquent in possession of a firearm under s.
678 790.23(1)(b).
679 6. An attempt to commit any offense listed in this
680 paragraph under s. 777.04.
681 (9) After appropriate sanctions for the offense are
682 determined, including any minimum sanctions required by this
683 section, the court shall develop, approve, and order a plan of
684 probation that will contain rules, requirements, conditions, and
685 rehabilitative programs, including the option of a day-treatment
686 probation program, that are designed to encourage responsible
687 and acceptable behavior and to promote both the rehabilitation
688 of the child and the protection of the community.
689 Section 12. Subsections (1), (3), and (4) of section
690 985.435, Florida Statutes, are amended to read:
691 985.435 Probation ~~and postcommitment probation~~; community

service.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, place the child in a probation program ~~or a postcommitment probation program~~. Such placement must be under the supervision of an authorized agent of the department or of any other person or agency specifically authorized and appointed by the court, whether in the child's own home, in the home of a relative of the child, or in some other suitable place under such reasonable conditions as the court may direct.

(3) A probation program must also include a rehabilitative program component such as a requirement of participation in substance abuse treatment or in a school or career and technical education program. The nonconsent of the child to treatment in a substance abuse treatment program in no way precludes the court from ordering such treatment. Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of ~~postcommitment~~ probation, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances.

(4) A probation program must ~~may also~~ include an

alternative consequence component to address instances in which a child is noncompliant with technical conditions of his or her probation but has not committed any new violations of law. The alternative consequence component must be aligned with the department's graduated response matrix as described in s. 985.438 ~~Each judicial circuit shall develop, in consultation with judges, the state attorney, the public defender, the regional counsel, relevant law enforcement agencies, and the department, a written plan specifying the alternative consequence component which must be based upon the principle that sanctions must reflect the seriousness of the violation, the assessed criminogenic needs and risks of the child, the child's age and maturity level, and how effective the sanction or incentive will be in moving the child to compliant behavior. The alternative consequence component is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of probation. If the probation program includes this component, specific consequences that apply to noncompliance with specific technical conditions of probation, as well as incentives used to move the child toward compliant behavior, must be detailed in the disposition order~~.

Section 13. Section 985.438, Florida Statutes, is created to read:

985.438 Graduated response matrix.—

(1) The department shall create and administer a statewide plan to hold youths accountable to the terms of their court ordered probation and the terms of their conditional release. The plan must be based upon the principle that sanctions must reflect the seriousness of the violation, provide immediate accountability for violations, the assessed criminogenic needs and risks of the child, and the child's age and maturity level. The plan is designed to provide swift and appropriate consequences or incentives to a child who is alleged to be noncompliant with or in violation of his or her probation.

(2) The graduated response matrix shall outline sanctions for youth based on their risk to reoffend and shall include, but not be limited to:

(a) Increased contacts.

(b) Increased drug tests.

(c) Curfew reductions.

(d) Increased community service.

(e) Additional evaluations.

(f) Addition of electronic monitoring.

(3) The graduated response matrix shall be adopted in rule by the department.

Section 14. Section 985.439, Florida Statutes, is amended to read:

985.439 Violation of probation ~~or postcommitment probation~~.—

(1)(a) This section is applicable when the court has jurisdiction over a child on probation ~~or postcommitment probation~~, regardless of adjudication.

(b) If the conditions of the probation program ~~or the postcommitment probation program~~ are violated, the department or the state attorney may bring the child before the court on a petition alleging a violation of the program. A child who violates the conditions of probation ~~or postcommitment probation~~ must be brought before the court if sanctions are sought.

(c) Upon receiving notice of a violation of probation from the department, the state attorney must file the violation within 5 days or provide in writing to the department and the court the reason as to why he or she is not filing.

(2) A child taken into custody under s. 985.101 for violating the conditions of probation shall be screened and detained or released based on his or her risk assessment instrument score.

(3) If the child denies violating the conditions of probation ~~or postcommitment probation~~, the court shall, upon the child's request, appoint counsel to represent the child.

(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation ~~or postcommitment probation~~, the court shall enter an order revoking, modifying, or continuing probation ~~or postcommitment probation~~. In each such case, the court shall

enter a new disposition order and, in addition to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. If the child is found to have violated the conditions of probation ~~or postcommitment probation~~, the court may:

(a) Place the child in supervised release detention with electronic monitoring.

(b) If the violation of probation is technical in nature and not a new violation of law, place the child in an alternative consequence program designed to provide swift and appropriate consequences to any further violations of probation.

~~1. Alternative consequence programs shall be established, within existing resources, at the local level in coordination with law enforcement agencies, the chief judge of the circuit, the state attorney, and the public defender.~~

~~2. Alternative consequence programs may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, a county or municipality, or another entity selected by the department.~~

~~3. Upon placing a child in an alternative consequence program, the court must approve specific consequences for specific violations of the conditions of probation.~~

(c) Modify or continue the child's probation program ~~or postcommitment probation program~~.

(d) Revoke probation ~~or postcommitment probation~~ and

commit the child to the department.

(e) Allow the department to place a child on electronic monitoring for a violation of probation if it determines doing so will preserve and protect public safety.

(5) Upon the recommendation of the department at the time of disposition, or subsequent to disposition pursuant to the filing of a petition alleging a violation of the child's conditions of ~~postcommitment~~ probation, the court may order the child to submit to random testing for the purpose of detecting and monitoring the use of alcohol or controlled substances.

Section 15. Subsection (5) is added to section 985.455, Florida Statutes, to read:

985.455 Other dispositional issues.—

(5) If the court orders revocation or suspension of a child's driver license as part of a disposition, the court may, upon finding a compelling circumstance to warrant an exception, direct the Department of Highway Safety and Motor Vehicles to issue a license for driving privileges restricted to business or employment purposes only, as defined in s. 322.271.

Section 16. Subsections (2), (3), and (5) of section 985.46, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

985.46 Conditional release.—

(2) It is the intent of the Legislature that:

(a) Commitment programs include rehabilitative efforts on

preparing committed juveniles for a successful release to the community.

(b) Conditional release transition planning begins as early in the commitment process as possible.

(c) Each juvenile committed to a residential commitment program receive conditional release services ~~be assessed to determine the need for conditional release services~~ upon release from the commitment program unless the juvenile is directly released by the court.

(3) For juveniles referred or committed to the department, the function of the department may include, but shall not be limited to, supervising each juvenile on conditional release when ~~assessing each juvenile placed in a residential commitment program to determine the need for conditional release services upon release from the program, supervising the juvenile when~~ released into the community from a residential commitment facility of the department, providing such counseling and other services as may be necessary for the families and assisting their preparations for the return of the child. Subject to specific appropriation, the department shall provide for outpatient sexual offender counseling for any juvenile sexual offender released from a residential commitment program as a component of conditional release.

(5) Conditional release supervision shall contain, at a minimum, the following conditions:

(a)~~(5)~~ Participation in the educational program by students of compulsory school attendance age pursuant to s. 1003.21(1) and (2)(a) ~~is mandatory for juvenile justice youth on conditional release or postcommitment probation status~~. A student of noncompulsory school-attendance age who has not received a high school diploma or its equivalent must participate in an educational program or career and technical education course of study. A youth who has received a high school diploma or its equivalent and is not employed must participate in workforce development or other career or technical education or attend a community college or a university while in the program~~, subject to available funding~~.

(b) A curfew.

(c) A prohibition on contact with victims, co-defendants, or known gang members.

(d) A prohibition on use of controlled substances.

(e) A prohibition on possession of firearms.

(6) A youth who violates the terms of his or her conditional release shall be assessed using the graduated response matrix as described in s. 985.438. A youth who fails to move into compliance shall be recommitted to a residential facility.

Section 17. Paragraph (c) of subsection (1) of section 985.48, Florida Statutes, is amended to read:

985.48 Juvenile sexual offender commitment programs;

sexual abuse intervention networks.—

(1) In order to provide intensive treatment and psychological services to a juvenile sexual offender committed to the department, it is the intent of the Legislature to establish programs and strategies to effectively respond to juvenile sexual offenders. In designing programs for juvenile sexual offenders, it is the further intent of the Legislature to implement strategies that include:

(c) Providing intensive ~~postcommitment~~ supervision of juvenile sexual offenders who are released into the community with terms and conditions which may include electronic monitoring of a juvenile sexual offender for the purpose of enhancing public safety.

Section 18. Paragraph (a) of subsection (6) of section 985.4815, Florida Statutes, is amended to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

(6)(a) The information provided to the Department of Law Enforcement must include the following:

1. The information obtained from the sexual offender under subsection (4).

2. The sexual offender's most current address and place of permanent, temporary, or transient residence within the state or out of state, and address, location or description, and dates of any current or known future temporary residence within the state

or out of state, while the sexual offender is in the care or custody or under the jurisdiction or supervision of the department in this state, including the name of the county or municipality in which the offender permanently or temporarily resides, or has a transient residence, and address, location or description, and dates of any current or known future temporary residence within the state or out of state; and, if known, the intended place of permanent, temporary, or transient residence, and address, location or description, and dates of any current or known future temporary residence within the state or out of state upon satisfaction of all sanctions.

3. The legal status of the sexual offender and the scheduled termination date of that legal status.

4. The location of, and local telephone number for, any department office that is responsible for supervising the sexual offender.

5. An indication of whether the victim of the offense that resulted in the offender's status as a sexual offender was a minor.

6. The offense or offenses at adjudication and disposition that resulted in the determination of the offender's status as a sex offender.

7. A digitized photograph of the sexual offender, which must have been taken within 60 days before the offender was released from the custody of the department or a private

correctional facility by expiration of sentence under s. 944.275, or within 60 days after the onset of the department's supervision of any sexual offender who is on probation, ~~postcommitment probation,~~ residential commitment, nonresidential commitment, licensed child-caring commitment, community control, conditional release, parole, provisional release, or control release or who is supervised by the department under the Interstate Compact Agreement for Probationers and Parolees. If the sexual offender is in the custody of a private correctional facility, the facility shall take a digitized photograph of the sexual offender within the time period provided in this subparagraph and shall provide the photograph to the department.

Section 19. Subsection (11) of section 985.601, Florida Statutes, is renumbered as subsection (12), and a new subsection (11) is added to that section, to read:

985.601 Administering the juvenile justice continuum.—

(11) The department shall establish a class focused on the risk and consequences of youthful firearm offending which shall be provided by the department to any youth who has been adjudicated or had adjudication withheld for any offense involving the use or possession of a firearm.

Section 20. Section 985.711, Florida Statutes, is amended to read:

985.711 Introduction, removal, or possession of certain articles unlawful; penalty.—

(1)(a) Except as authorized through program policy or operating procedure or as authorized by the facility superintendent, program director, or manager, a person may not introduce into or upon the grounds of a juvenile detention facility or commitment program, or take or send, or attempt to take or send, from a juvenile detention facility or commitment program, any of the following articles, which are declared to be contraband under this section:

1. Any unauthorized article of food or clothing <u>given or transmitted, or intended to be given or transmitted, to any youth in a juvenile detention facility or commitment program</u>.

2. Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.

3. Any controlled substance as defined in s. 893.02(4), marijuana as defined in s. 381.986, hemp as defined in s. 581.217, industrial hemp as defined in s. 1004.4473, or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.

4. Any firearm or weapon of any kind or any explosive substance.

5. Any cellular telephone or other portable communication device as described in s. 944.47(1)(a)6., intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program. As used in this subparagraph, the term "portable communication device" does

not include any device that has communication capabilities which has been approved or issued by the facility superintendent, program director, or manager.

6. Any vapor-generating electronic device as defined in s. 386.203, intentionally and unlawfully introduced inside the secure perimeter of any juvenile detention facility or commitment program.

7. Any currency or coin given or transmitted, or intended to be given or transmitted, to any youth in any juvenile detention facility or commitment program.

8. Any cigarettes, as defined in s. 210.01(1) or tobacco products, as defined in s. 210.25, given, or intended to be given, to any youth in a juvenile detention facility or commitment program.

(b) A person may not transmit contraband to, cause contraband to be transmitted to or received by, attempt to transmit contraband to, or attempt to cause contraband to be transmitted to or received by, a juvenile offender into or upon the grounds of a juvenile detention facility or commitment program, except as authorized through program policy or operating procedures or as authorized by the facility superintendent, program director, or manager.

(c) A juvenile offender or any person, while upon the grounds of a juvenile detention facility or commitment program, may not be in actual or constructive possession of any article

or thing declared to be contraband under this section, except as authorized through program policy or operating procedures or as authorized by the facility superintendent, program director, or manager.

(2)~~(a) Any person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)1. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

~~(b) Any person who violates this section as it pertains to an article of contraband described in subparagraph (1)(a)5. or subparagraph (1)(a)6. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(c) In all other cases,~~ A person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 21. Paragraph (c) of subsection (2) of section 1002.221, Florida Statutes, is amended to read:

1002.221 K-12 education records; public records exemption.—

(2)

(c) In accordance with the FERPA and the federal regulations issued pursuant to the FERPA, an agency or institution, as defined in s. 1002.22, may release a student's education records without written consent of the student or parent to parties to an interagency agreement among the

Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies. Information provided pursuant to an interagency agreement may be used for proceedings initiated under chapter 984 or chapter 985 ~~in furtherance of an interagency agreement is intended solely for use in determining the appropriate programs and services for each juvenile or the juvenile's family, or for coordinating the delivery of the programs and services, and as such is inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of the juvenile~~.

Section 22. Paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is amended to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a prearrest delinquency ~~civil~~ citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(2).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 23. Paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is amended to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a <u>prearrest delinquency</u> ~~civil~~ citation ~~or is participating in a similar diversion program~~ pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the

Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(2).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems

appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 24. Paragraph (n) of subsection (2) of section 1006.07, Florida Statutes, is amended to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the

attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(2) CODE OF STUDENT CONDUCT.—Adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools and distribute the appropriate code to all teachers, school personnel, students, and parents, at the beginning of every school year. Each code shall be organized and written in language that is understandable to students and parents and shall be discussed at the beginning of every school year in student classes, school advisory council meetings, and parent and teacher association or organization meetings. Each code shall be based on the rules governing student conduct and discipline adopted by the district school board and shall be made available in the student handbook or similar publication. Each code shall include, but is not limited to:

(n) Criteria for recommending to law enforcement that a student who commits a criminal offense be allowed to participate in a prearrest delinquency citation ~~civil citation or similar prearrest diversion~~ program as an alternative to expulsion or arrest. All prearrest delinquency citation ~~civil citation or similar prearrest diversion~~ programs must comply with s. 985.12.

Section 25. This act shall take effect July 1, 2024.

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

Remove line 57 and insert:
inform the court and the Department of Juvenile
Justice

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1595 Controlled Substances
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1512

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Butcher	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Federal and state law both classify controlled substances into five schedules. The scheduling determination for a controlled substance is based on a substance's potential for abuse and whether the substance has a currently accepted medical use. The classifications range from a Schedule I substance, which has a high potential for abuse and no accepted medical use; to a Schedule V substance, which has a low potential for abuse and an accepted medical use. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein.

The Legislature delegated to the Florida Attorney General the authority to adopt rules to add a substance to a schedule established under s. 893.03, F.S., or transfer a substance between schedules, if the substance has the potential for abuse and meets other requirements, or to remove a scheduled substance if it no longer meets the requirements for inclusion in that schedule. If the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03, F.S., on a temporary basis is necessary to avoid an imminent hazard to the public safety, he or she may bypass certain requirements and by rule schedule such substance in Schedule I.

Tianeptine, sometimes referred to as "gas station heroin," was developed in the 1960s for use as an antidepressant. Although it is approved in low doses for that purpose in some countries outside of the United States, the United States Food and Drug Administration (FDA) has never approved tianeptine for any medical use, and both its potency and dosage are unregulated. When used in high doses, tianeptine produces effects similar to those produced by an opioid and delivers short-lived euphoria. Tianeptine comes in both powder and pill forms but has also been found in counterfeit pills mimicking other pharmaceutical products and individual stamp bags commonly used to distribute heroin.

On September 20, 2023, Florida's Attorney General issued Emergency Rule 2ER23-1, temporarily scheduling tianeptine as a Schedule I controlled substance and concluding that tianeptine was "an immediate danger to the public" by producing side effects including respiratory depression, loss of consciousness, death, nausea, vomiting, agitation, decreased blood pressure, rapid heartbeat, slowed or stopped breathing, drowsiness, mental confusion, and dependence. The emergency rule and the temporary scheduling of tianeptine will expire on June 30, 2024.

HB 1595 amends s. 893.03, F.S., to add tianeptine to the list of Schedule I controlled substances. As such, under the bill, the manufacture, distribution, preparation, and dispensing of tianeptine will be regulated by Florida law.

The bill may have a positive indeterminate impact on jail and prison beds by making the possession, distribution, sale, or manufacture of more substances illegal which may result in more jail and prison admissions.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Law

Controlled Substance Schedules

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, classifies controlled substances[1] into five categories, called schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different controlled substance schedules are the "potential for abuse"[2] of the substance and whether there is a currently accepted medical use for the substance.[3]

The controlled substance schedules are as follows:

- Schedule I substances have a high potential for abuse and currently have no accepted medical use in the United States and their use under medical supervision does not meet accepted safety standards.[4]
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States, and abuse of the substance may lead to severe psychological or physical dependence.[5]
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States, and the abuse of the substance may lead to moderate or low physical dependence or high psychological dependence, or in the case of anabolic steroids, may lead to physical damage.[6]
- Schedule IV substances have a low potential for abuse relative to substances in Schedule III and have a currently accepted medical use in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III.[7]
- Schedule V substances, compounds, mixtures, or preparation of substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States, and abuse of such compound, mixture, or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.[8]

Attorney General Emergency Scheduling Authority

The Legislature delegated to the Florida Attorney General the authority to adopt rules to add a substance to a schedule established under s. 893.03, F.S., or transfer a substance between schedules, if the substance has the potential for abuse and meets other classification requirements, or to remove a substance previously added to a schedule if it no longer meets the requirements for inclusion in that schedule.[9] Proof of potential for abuse can be based upon a showing that these activities are already taking place, or upon a showing that the nature and properties of the substance make it reasonable to assume that there is a substantial likelihood that such activities will take place, in other than isolated or

[1] "Controlled substance" means any substance named or described in Schedules I-V of s. 893.03, F.S. S. 893.02(4), F.S.
[2] "Potential for abuse" means that a substance has properties of a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user's health or safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user's own initiative rather than on the basis of professional medical advice. S. 893.02(22), F.S.
[3] *See* s. 893.03, F.S.
[4] S. 893.03(1), F.S.
[5] S. 893.03(2), F.S.
[6] S. 893.03(3), F.S.
[7] S. 893.03(4), F.S.
[8] S. 893.03(5), F.S.
[9] S. 893.035(2), F.S.; "Potential for abuse" has the same meaning as provided in s. 893.02(22), F.S.

occasional instances.[10] Any findings and conclusions provided by the U.S. Attorney General with respect to any substance is admissible as evidence in any rulemaking proceeding, including an emergency rulemaking proceeding.[11]

If the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03, F.S., on a temporary basis is necessary to avoid an imminent hazard to public safety, he or she may by rule[12] schedule such substance in Schedule I if the substance is not listed in any other schedule of s. 893.03, F.S. The Attorney General must consider, with respect to his or her finding of imminent hazard to public safety, only:

- The substance's potential for abuse;[13]
- The substance's history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to the public health;[14]
- Diversion from legitimate channels, if any; and
- Clandestine importation, manufacture, or distribution.[15]

The Attorney General must provide specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.[16] The Attorney General shall report to the Legislature by March 1 of each year concerning any rules adopted to schedule or reschedule any substance during the previous year. Each such rule expires on the following June 30 unless the Legislature adopts the provisions in statute.[17]

Federal Law

The federal Controlled Substances Act[18] (CSA) also classifies controlled substances into schedules based on the potential for abuse and whether there is a currently accepted medical use for the substance. The U.S. Attorney General is required to consider the following when determining where to schedule a substance:[19]

- The substance's actual or relative potential for abuse;
- Scientific evidence of the substance's pharmacological effect, if known;
- The state of current scientific knowledge regarding the substance;
- The substance's history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to public health;
- The substance's psychic or physiological dependence liability; and
- Whether the substance is an immediate precursor of a substance already controlled.

Tianeptine

General Information

[10] S. 893.035(3)(a), F.S.
[11] *Id*.
[12] In an emergency rulemaking proceeding, the Attorney General may proceed without regard to the requirements to request a medical and scientific evaluation of the substance from and consider recommendations regarding scheduling from the Department of Health and the Department of Law Enforcement. S. 893.035(5) and (7), F.S.
[13] S. 893.035(3)(a), F.S.
[14] S. 893.035(4)(d-f), F.S.
[15] S. 893.035(7), F.S.
[16] S. 120.54(4)(a)3., F.S.
[17] These expiration provisions are notwithstanding the 90-day expiration described in s. 120.54(4)(c), F.S.
[18] 21 U.S.C. § 812.
[19] 21 U.S.C. § 811(c).

Tianeptine, sometimes referred to as "gas station heroin," was developed in the 1960s for use as an antidepressant.[20,21] Although it is approved in low doses for that purpose in some countries outside of the United States, the United States Food and Drug Administration (FDA) has never approved tianeptine for any medical use, and both its potency and dosage are unregulated.[22] When used in high doses, tianeptine produces effects similar to those produced by an opioid and delivers short-lived euphoria.[23] Tianeptine comes in both powder and pill forms but has also been found in counterfeit pills mimicking other pharmaceutical products and individual stamp bags commonly used to distribute heroin.[24]

Reports have indicated that people may be taking tianeptine under the widespread, mistaken belief that it is a safe alternative to street opioids like fentanyl or heroin, or even as a way to taper off using those other drugs.[25] Tianeptine is also relatively cheap and accessible to consumers, with capsules costing slightly more than $30 for a package of 15 and liquid solutions costing around $15 for a single 10mL bottle.[26]

Tianeptine is similar to opioids in terms of side effects, withdrawal symptoms, and overall addiction potential.[27] At low dosages, common side effects include headaches, dizziness, constipation, dry mouth, drowsiness, insomnia, and nightmares.[28] At higher doses, side effects, some of which may cause death, may include increased blood pressure and other cardiovascular effects; liver and kidney damage; addiction and dependence; and irregular heartbeat, difficulty breathing, seizures, hallucinations, and loss of consciousness.[29] Withdrawal symptoms related to tianeptine initially last five to seven days and are similar to those seen with opioids, including nausea or vomiting, flu-like illness, muscle aches, and tremors; depression and anxiety; strong cravings for tianeptine; and seizures.[30]

Florida's poison control center had 15 exposure calls for tianeptine in the first half of 2023, 24 calls in 2022, and 54 calls over the last 4 years combined.[31] Five deaths in the United States have been attributed to tianeptine intoxication.[32]

Federal Tianeptine Regulation

The United States Food and Drug Administration (FDA) has never approved tianeptine to treat depression or for any other medical use, and both its potency and dosage are unregulated.[33] Additionally, the FDA considers tianeptine to be an unsafe food additive that does not meet the statutory definition of a dietary ingredient.[34]

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[20] Cleveland Clinic, *Know the Dangers of 'Gas Station Heroin'* (May 25, 2023), https://health.clevelandclinic.org/gas-station-heroin-tianeptine (last visited Jan. 17, 2024).
[21] *See also* United States Drug Enforcement Agency (DEA), *Tianeptine* (May 2023), https://www.deadiversion.usdoj.gov/drug_chem_info/tianeptine.pdf (last visited Jan. 17, 2024).
[22] *Supra* note 20.
[23] Jan Hoffman, *'Gas-Station Heroin' Sold as Dietary Supplement Alarms Health Officials* (Jan. 10, 2024), The New York Times, https://www.nytimes.com/2024/01/10/health/gas-station-heroin-tianeptine-addiction.html (last visited Jan. 17, 2024).
[24] Florida Department of State, *Emergency Rule 2ER23-1* (Sep. 20, 2023), https://www.myfloridalegal.com/sites/default/files/2023-09/2er23-1.pdf (last visited Jan. 17, 2024).
[25] *Supra* note 23.
[26] *Id.*
[27] Carmen Pope, BPharm, *Tianeptine* (Jan. 12, 2024), Drugs.com, https://www.drugs.com/illicit/tianeptine.html (last visited Jan. 17, 2024).
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Supra* note 24.
[32] *Id.*
[33] *Supra* note 20.
[34] DEA, *Tianeptine in Dietary Supplements* (Feb. 22, 2023) https://www.fda.gov/food/dietary-supplement-ingredient-directory/tianeptine-dietary-supplements (last visited Jan. 17, 2024). A "dietary ingredient" is a vitamin; mineral; herb or other botanical; amino acid; dietary substance for use by man to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any dietary ingredient from the preceding categories. Non-dietary ingredients intended for use in dietary supplements must be used in accordance with a food additive regulation or be generally recognized as safe, unless they meet one of the other listed exceptions to the food additive definition.

On November 21, 2023, after receiving severe adverse event reports from the public, the FDA issued a warning to consumers not to purchase or use any products containing tianeptine—which it characterized as a potentially dangerous substance that is not FDA-approved for any medical use but is nonetheless sold with unauthorized and unsubstantiated claims that it improves brain function and treats anxiety, depression, pain, opioid use disorder and other conditions.[35] The FDA's warning noted that products containing tianeptine "may contain other harmful ingredients not listed on the label,"[36] in line with prior consumer warnings about the overall risks of using tianeptine.[37]

Despite the FDA's warnings, as of January 2024, tianeptine is still not a controlled substance under federal law.

Florida Tianeptine Regulation

On September 20, 2023, Florida's Attorney General issued Emergency Rule 2ER23-1, temporarily scheduling tianeptine as a Schedule I controlled substance and concluding that tianeptine was "an immediate danger to the public" by producing side effects including respiratory depression, loss of consciousness, death, nausea, vomiting, agitation, decreased blood pressure, rapid heartbeat, slowed or stopped breathing, drowsiness, mental confusion, and dependence.[38,39]

Emergency Rule 2ER23-1 and the temporary scheduling of tianeptine will expire on June 30, 2024.[40]

Effect of Proposed Changes

HB 1595 amends s. 893.03, F.S., to add tianeptine to the list of Schedule I controlled substances.

As such, under the bill, the manufacture, distribution, preparation, and dispensing of tianeptine will be regulated by Florida law.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 893.03, F.S., relating to standards and schedules.
Section 2: Amends s. 893.13, F.S., relating to prohibited acts; penalties.
Section 3: Amends s. 893.131, F.S., relating to distribution of controlled substances resulting in overdose or serious bodily injury.
Section 4: Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.
Section 5: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[35] FDA, *FDA warns consumers not to purchase or use Neptune's Fix or any tianeptine product due to serious risks* (Nov. 21, 2023), https://www.fda.gov/drugs/drug-safety-and-availability/fda-warns-consumers-not-purchase-or-use-neptunes-fix-or-any-tianeptine-product-due-serious-risks (last visited Jan. 17, 2024).
[36] *Id.*
[37] FDA, *Tianeptine Products Linked to Serious Harm, Overdoses, Death* (Feb. 10, 2022), https://www.fda.gov/consumers/consumer-updates/tianeptine-products-linked-serious-harm-overdoses-death (last visited Jan. 17, 2024).
[38] Office of the Attorney General, *Video: Attorney General Moody Outlaws Gas Station Heroin in Florida* (Sep. 21, 2023) https://www.myfloridalegal.com/newsrelease/video-attorney-general-moody-outlaws-gas-station-heroin-florida (last visited Jan. 17, 2024).
[39] Tianeptine is a controlled substance in Alabama, Georgia, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Ohio, and Tennessee.
[40] *Supra* note 24.

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:

Prior to the issuance of Emergency Rule 2ER23-1, tianeptine was sold by some private businesses, including gas stations and other convenience stores. The Emergency Rule currently classifies tianeptine as a Schedule I controlled substance, prohibiting its sale or distribution by such private businesses. The bill codifies the scheduling of tianeptine, consistent with the Emergency Rule and as such, to the extent that a private business was selling the substance prior to the issuance of the Emergency Rule, such businesses may continue to experience reduced profits as they will continue to be prohibited from selling tianeptine or tianeptine products under the bill.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by making the possession, distribution, sale, or manufacture of more substances illegal which may result in more jail and prison admissions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; adding tianeptine to the list of Schedule I controlled substances; amending ss. 893.13, 893.131, and 893.135, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in

treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.

2. Acetylmethadol.

3. Allylprodine.

4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

5. Alphamethadol.

6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

7. Alpha-methylthiofentanyl.

8. Alphameprodine.

9. Benzethidine.

10. Benzylfentanyl.

11. Betacetylmethadol.

12. Beta-hydroxyfentanyl.

13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-Propionoxypiperidine).

37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).

38. 3-Methylthiofentanyl.

39. Morpheridine.

40. Noracymethadol.

41. Norlevorphanol.

42. Normethadone.

43. Norpipanone.

44. Para-Fluorofentanyl.

45. Phenadoxone.

46. Phenampromide.

47. Phenomorphan.

48. Phenoperidine.

49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine).

50. Piritramide.

51. Proheptazine.

52. Properidine.

53. Propiram.

54. Racemoramide.

55. Thenylfentanyl.

56. Thiofentanyl.

57. Tianeptine.

58. Tilidine.

59.~~58.~~ Trimeperidine.

60.~~59.~~ Acetylfentanyl.

61.~~60.~~ Butyrylfentanyl.

62.~~61.~~ Beta-Hydroxythiofentanyl.

63.~~62.~~ Fentanyl derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:

a. With or without substitution at the carbonyl of the aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl, methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;

b. With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;

c. With or without substitution or addition to the piperdine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;

d. With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;

e. With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

f. With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and

g. With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;

excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil; including, but not limited to:

(I) Acetyl-alpha-methylfentanyl.

(II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

(III) Alpha-methylthiofentanyl.

(IV) Benzylfentanyl.

(V) Beta-hydroxyfentanyl.

(VI) Beta-hydroxy-3-methylfentanyl.

(VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).

(VIII) 3-Methylthiofentanyl.

(IX) Para-Fluorofentanyl.

(X) Thenylfentanyl or Thienyl fentanyl.

(XI) Thiofentanyl.

(XII) Acetylfentanyl.

(XIII) Butyrylfentanyl.

(XIV) Beta-Hydroxythiofentanyl.

(XV) Lofentanil.

(XVI) Ocfentanil.

(XVII) Ohmfentanyl.

(XVIII) Benzodioxolefentanyl.

(XIX) Furanyl fentanyl.

(XX) Pentanoyl fentanyl.

(XXI) Cyclopentyl fentanyl.

(XXII) Isobutyryl fentanyl.

(XXIII) Remifentanil.

64.~~63.~~ Nitazene derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a benzimidazole ring with an ethylamine substitution at the 1-position and a benzyl ring substitution at the 2-position structure:

a. With or without substitution on the benzimidazole ring

with alkyl, alkoxy, carboalkoxy, amino, nitro, or aryl groups, or halogens;

b. With or without substitution at the ethylamine amino moiety with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system;

c. With or without inclusion of the ethylamine amino moiety in a cyclic structure;

d. With or without substitution of the benzyl ring; or

e. With or without replacement of the benzyl ring with an aromatic ring, including, but not limited to:

(I) Butonitazene.

(II) Clonitazene.

(III) Etodesnitazene.

(IV) Etonitazene.

(V) Flunitazene.

(VI) Isotodesnitazene.

(VII) Isotonitazene.

(VIII) Metodesnitazene.

(IX) Metonitazene.

(X) Nitazene.

(XI) N-Desethyl Etonitazene.

(XII) N-Desethyl Isotonitazene.

(XIII) N-Piperidino Etonitazene.

(XIV) N-Pyrrolidino Etonitazene.

(XV) Protonitazene.

Section 2. Paragraph (i) of subsection (1) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)

(i) Except as authorized by this chapter, a person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and must be sentenced to a mandatory minimum term of imprisonment of 3 years, if:

1. The person sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or deliver, any of the following:

a. Alfentanil, as described in s. 893.03(2)(b)1.;

b. Carfentanil, as described in s. 893.03(2)(b)6.;

c. Fentanyl, as described in s. 893.03(2)(b)9.;

d. Sufentanil, as described in s. 893.03(2)(b)30.;

e. A fentanyl derivative, as described in s. 893.03(1)(a)63. ~~s. 893.03(1)(a)62.~~;

f. A controlled substance analog, as described in s. 893.0356, of any substance described in sub-subparagraphs a.-e.; or

g. A mixture containing any substance described in sub-subparagraphs a.-f.; and

2. The substance or mixture listed in subparagraph 1. is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or

in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

a. Resembles the trade dress of a branded food product, consumer food product, or logo food product;

b. Incorporates an actual or fake registered copyright, service mark, or trademark;

c. Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or

d. Contains a cartoon character imprint.

Section 3. Paragraph (a) of subsection (2) of section 893.131, Florida Statutes, is amended to read:

893.131 Distribution of controlled substances resulting in overdose or serious bodily injury.—

(2)(a) Except as provided in paragraph (b), a person 18 years of age or older who unlawfully distributes:

1. Heroin, as described in s. 893.03(1)(b)11.;

2. Alfentanil, as described in s. 893.03(2)(b)1.;

3. Carfentanil, as described in s. 893.03(2)(b)6.;

4. Fentanyl, as described in s. 893.03(2)(b)9.;

5. Sufentanil, as described in s. 893.03(2)(b)30.;

6. Fentanyl derivatives, as described in s. 893.03(1)(a)63. ~~s. 893.03(1)(a)62.~~;

7. A controlled substance analog, as described in s. 893.0356, of any substance specified in subparagraphs 1.-6.; or

8. A mixture containing any substance specified in subparagraphs 1.-7.,

and an overdose or serious bodily injury of the user results, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, when such substance or mixture is proven to have caused or been a substantial factor in causing the overdose or serious bodily injury of the user.

Section 4. Paragraph (c) of subsection (1) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the

quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 50 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 100 grams or more, but less than 300 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 300 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such

person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)30.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)63. ~~s. 893.03(1)(a)62.~~;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-

sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in dangerous fentanyl or fentanyl analogues," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and shall be ordered to pay a fine of $50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 20 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

c. A person 18 years of age or older who violates sub-subparagraph a. by knowingly selling or delivering to a minor at least 4 grams of a substance or mixture listed in sub-subparagraph a. shall be sentenced to a mandatory minimum term of not less than 25 years and not exceeding life imprisonment, and shall be ordered to pay a fine of $1 million if the substance or mixture listed in sub-subparagraph a. is in a form

that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

(I) Resembles the trade dress of a branded food product, consumer food product, or logo food product;

(II) Incorporates an actual or fake registered copyright, service mark, or trademark;

(III) Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or

(IV) Contains a cartoon character imprint.

5. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the

court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to

pay the maximum fine provided under subparagraph 1.

Section 5. This act shall take effect July 1, 2024.