

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7131 PCB PSDS 10-01 Criminal Law Reviser Bill

**SPONSOR(S):** Public Safety & Domestic Security Policy Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	<u>Public Safety &amp; Domestic Security Policy Committee</u>	<u>9 Y, 0 N</u>	<u>Cunningham</u>	<u>Cunningham</u>
1)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
2)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
3)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5)	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

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**SUMMARY ANALYSIS**

This bill amends various sections of statute that relate to criminal laws. The bill deletes expired or obsolete statutory language, corrects cross-references and grammatical or typographical errors, removes inconsistencies and redundancies from the statutes, improves the clarity of the statutes and facilitates their correct interpretation, and confirms the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process.

This bill amends, creates, repeals, or reenacts the following sections of the Florida Statutes: ss. 775.0877, 775.25, 784.07, 815.03, 817.554, 828.17, 831.16, 831.17, 831.18, 831.21, 831.27, 831.30, 838.021, 847.0125, 860.13, 865.09, 877.22, 893.02, 893.10, 914.24, 916.12, 916.3012, 918.0155, 921.0022, 921.141, 921.20, 932.704, 933.18, 933.40, 934.03, 938.15, 943.051, 943.053, 943.0581, 943.0582, 943.135, 944.023, 944.053, 944.28, 944.474, 944.708, 944.801, 945.10, 947.06, 947.16, 949.071, 951.23, 951.231, 957.07, 960.003, 984.225, 985.486, 985.632, and 985.686, F.S.

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

## HOUSE PRINCIPLES

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Section 1

Section 775.0877, F.S., requires courts to order persons convicted of specified offenses, including s. 800.04(1), (2), and (3), F.S., to undergo HIV testing. In 1999, s. 800.04, F.S., was substantially reworded,<sup>1</sup> which made the specific references to subsections (1), (2), and (3) of s. 800.04, F.S., in s. 775.0877, F.S., outdated.

The bill removes the specific references to subsection (1), (2), and (3) of s. 800.04, F.S. As such, a court must order a person convicted of any violation of s. 800.04, F.S., to undergo HIV testing.

##### Section 2

Section 775.25, F.S., provides that sexual offenders who commit any act or omission in violation of specified offenses, including s. 947.177, F.S., may be prosecuted in the county in which the act or omission was committed, in the county of the last registered address of the offender, or in the county in which the conviction occurred for the offense that meets the criteria for designating the person as a sexual offender. In 2001, s. 947.177, F.S., which related to inmate release notifications, was repealed.<sup>2</sup>

The bill changes the reference to s. 947.177, F.S., to *former* s. 947.177, F.S.

##### Section 3

Section 784.07, F.S., reclassifies assault or battery offenses committed against specified persons, including "intake officers." Over the past twenty years, the term "intake officer" was changed to "intake counselor"<sup>3</sup> and then later changed to "juvenile probation officer."<sup>4</sup> The term "intake officer" no longer exists in statute.

The bill removes the obsolete reference to "intake officer" in s. 784.07, F.S.

##### Section 4

Section 815.03, F.S., currently defines the term "property" for purposes of computer-related crimes as "anything of value as defined in s. 812.011 and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in either

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<sup>1</sup> Ch. 99-201, L.O.F.

<sup>2</sup> Ch. 01-124, L.O.F.

<sup>3</sup> Ch. 90-208, L.O.F.

<sup>4</sup> Ch. 98-207, L.O.F.

machine-readable or human-readable form, and any other tangible or intangible item of value.” The definition’s cite to s. 812.011, F.S., is obsolete as that section was repealed in 1977.<sup>5</sup>

The bill removes the obsolete reference to s. 812.011, F.S., and replaces it with a reference to s. 812.012, F.S., which contains a definition of the term “value.”

#### Section 5

Section 817.554(4), F.S., provides that “any individual or group that meets the standards of organized fraud as defined in s. 817.036 shall be punished as provided in s. 817.036.” The statute’s cite to s. 817.036, F.S., is obsolete as that section was repealed in 1987.<sup>6</sup>

The bill removes the obsolete reference to s. 817.036, F.S., and replaces it with a reference to s. 817.034, F.S., which references and provides penalties for organized fraud.

#### Section 6

Section 828.17, F.S., requires a law enforcement officer to arrest without a warrant persons found violating specified offenses, including s. 828.04, F.S., which related to child abuse. The statute’s reference to s. 828.04, F.S., is obsolete as that statute was renumbered to s. 827.03, F.S. Additionally, specifying that a law enforcement officer must arrest a person without a warrant if they have committed a child abuse offense is unnecessary in that s. 901.15, F.S., authorizes warrantless arrests for violations of s. 827.03, F.S.

The bill removes the obsolete reference to s. 828.04, F.S. in s. 828.17, F.S.

#### Section 7

Section 831.16, F.S., provides that a person who possesses less than 10 counterfeit coins with the intent to utter such coins shall be punished by imprisonment in the state prison not exceeding 10 years, or in the county jail not exceeding 12 months, or by fine not exceeding \$1,000.

The bill removes the existing penalty language and replaces it by specifying that a person who possesses less than 10 counterfeit coins with the intent to utter such coins commits a 3<sup>rd</sup> degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.<sup>7</sup>

#### Section 8

Section 831.17, F.S., provides that a person who commits a second or subsequent violation of s. 831.16, F.S., and is at the same term of the court convicted upon three distinct charges of s. 831.16, F.S., is a common utterer of counterfeit coins and shall be punished by imprisonment in the state prison not to exceed 20 years.

The bill removes the existing penalty language and replaces it by specifying that a person who commits a second or subsequent violation of s. 831.16, F.S., and is at the same term of the court convicted upon three distinct charges of s. 831.16, F.S., commits a 2<sup>nd</sup> degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.<sup>8</sup>

#### Section 9

Section 831.18, F.S., provides that a person who makes or possess instruments for forging bills shall be punished by imprisonment in the state prison not exceeding 10 years or by a fine not exceeding \$1,000.

The bill removes the existing penalty language and replaces it by specifying that a person who makes or possess instruments for forging bills commits a 3<sup>rd</sup> degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

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<sup>5</sup> Ch. 77-342, L.O.F.

<sup>6</sup> Ch. 87-382, L.O.F.

<sup>7</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine.

<sup>8</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine.

### Section 10

Section 831.21, F.S., provides that a person who forges or counterfeits a doctor's certificate of examination shall be deemed guilty of forgery and upon conviction, shall be punished by imprisonment in the state penitentiary not exceeding 5 years or by a fine not exceeding \$500.

The bill removes the existing penalty language and replaces it by specifying that person who forges or counterfeits a doctor's certificate of examination commits a 3<sup>rd</sup> degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

### Section 11

Section 831.27, F.S., makes it a 2<sup>nd</sup> degree misdemeanor for a person to issue any note, bill, order or check, other than foreign bills of exchange and notes or bills of some bank or company incorporated by the laws of this state, or by the laws of the United States, or by the laws of either of the British provinces in North America, with intent that the same shall be circulated as currency.

The bill replaces the reference to "either of the British provinces in North America" with a reference to "Canada."

### Section 12

Section 831.30, F.S., specifies that it is a 2<sup>nd</sup> degree misdemeanor for a person to falsely make, alter, or forge any prescription, as defined in s. 465.031(2), F.S., for a medicinal drug other than a drug controlled by ch. 893, F.S. However, the statute's cite to s. 465.031(2), F.S., for the definition of the term "prescription" is obsolete as that section of statute was repealed in 1979.<sup>9</sup>

The bill removes the obsolete reference to s. 465.031(2), F.S., and replaces it with a reference to s. 465.003, F.S., which contains a definition of the term "prescription."

### Section 13

Section 838.021, F.S., relates to corruption by threat against a public servant and is currently drafted in a manner that is grammatically incorrect. The bill corrects the grammatical error.

### Section 14

Section 847.0125, F.S., relates to the retail display of materials that are harmful to minors. This section of statute currently incorporates amendments that were made by ch. 86-238, L.O.F. However, this section of statute was also amended in 1986 by ch. 86-38, L.O.F.

The bill reenacts s. 847.0125, F.S., to clarify legislative intent that the statute incorporate the amendments made by ch. 86-238, L.O.F., and not those made by ch. 86-38, L.O.F.

### Section 15

Section 860.13, F.S., relates to the operation of aircraft while intoxicated or in a careless or reckless manner. The statute currently requires the court in which there is a conviction of a violation of this section of statute to report the violation to the Civil Aeronautics Administration. The reference to the Civil Aeronautics Administration is obsolete as that organization was abolished in 1958, and its functions transferred to the Federal Aviation Administration.

The bill replaces the reference to the Civil Aeronautics Administration with a reference to the Federal Aviation Administration.

### Section 16

Section 865.09(11), F.S., requires persons to register, cancel, and renew fictitious names with the Division of Corporations of the Department of State. The statute currently specifies that such

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<sup>9</sup> Ch. 79-226, L.O.F.

registration, cancellation, and renewal can be made on forms prescribed by the Department of State as a means of satisfying the requirements of this part. The reference to "this part" is incorrect in that ch. 865 is not divided into parts.

The bill replaces the incorrect reference by specifying that registration, cancellation, and renewal can be made on forms prescribed by the Department of State as a means of satisfying the requirements of *this section*.

#### Section 17

Section 877.22, F.S., relates to minors who violate a curfew. The statute currently authorizes law enforcements officers to transport minors who have violated their curfew to the minor's residence or proceed as authorized under part II of ch. 39, F.S. The cite to part II of ch. 39, F.S., is incorrect as the parts comprising ch. 39, F.S., were re-designated in 1998.<sup>10</sup>

The bill replaces the reference to part II of ch. 39, F.S., with a reference to part V of ch. 39, F.S.

#### Section 18

Section 893.02, F.S., contains a definition of the term "prescription." The definition currently contains a reference to "medicinal drug" as defined in s. 465.031(5), F.S. The citation to s. 465.031(5), F.S., is obsolete as that section of statute was repealed in 1979.<sup>11</sup>

The bill removes the obsolete reference to s. 465.031(5), F.S., and replaces it with a reference to s. 465.003(8), F.S., which contains definitions of the terms "medicinal drug" and "drug."

#### Section 19

Section 893.10(2), F.S., relates to the admissibility of evidence in cases where a person is charged under s. 893.14(1), F.S., with the possession of a controlled substance. Section 893.10(2), F.S., is obsolete as s. 893.14(1), F.S., was repealed in 1980 and there is no similar provision in current law.<sup>12</sup>

The bill repeals s. 893.10(2), F.S., in its entirety.

#### Section 20

Section 914.24(2), F.S., permits courts to issue a protective order prohibiting the harassment of a victim or witness if the court, after a hearing, finds by a preponderance of the evidence that such order is necessary to prevent and restrain an offense under s. 914.23, F.S.<sup>13</sup> When s. 914.24(2), F.S., was reenacted in 1992, the reenactment incorporated an uncoded amendment that appears to have inadvertently removed language specifying additional instances in which a court could issue a protective order.<sup>14</sup>

The bill inserts the inadvertently removed language so that s. 914.24(2), F.S., will permit a court to issue a protective order when necessary to prevent and restrain an offense under s. 914.22<sup>15</sup>, other than an offense consisting of misleading conduct, or when necessary to prevent and restrain an offense under s. 914.23, F.S.

#### Section 21

Section 916.12(3), F.S., lists items that must be included in an examining expert's competence to proceed report and is currently drafted in a manner that is grammatically incorrect. The bill corrects the grammatical error.

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<sup>10</sup> ch. 98-403, L.O.F.

<sup>11</sup> ch. 79-226, L.O.F.

<sup>12</sup> ch. 80-409, L.O.F.

<sup>13</sup> Section 914.23, F.S., relates to retaliating against a witness, victim, or informant.

<sup>14</sup> ch. 92-281, L.O.F.

<sup>15</sup> Section 914.22, F.S., relates to tampering with or harassing a witness, victim, or informant.

### Section 22

Section 916.3012(3), F.S., lists items that must be included in an examining expert's competence to proceed report and is currently drafted in a manner that is grammatically incorrect. The bill corrects the grammatical error.

### Section 23

Section 918.0155, F.S., requires that specified criminal cases be heard and disposed of as expeditiously as possible. The statute further provides that "The Legislature requests the Supreme Court to adopt emergency rules regarding the expeditious handling of the matters enumerated in this section." The language requesting the Supreme Court to adopt emergency rules is obsolete as Rule 3.190(k) of the Rules of Criminal Procedure, entitled "Motion to Expedite", is in effect.

The bill removes the obsolete language requesting the Supreme Court to adopt emergency rules.

### Section 24

Section 921.0022, F.S., the Criminal Punishment Code offense severity ranking chart, ranks criminal offenses from level one (least severe) to level ten (most severe) and assigns points based on the severity of the offense. Currently, the statute incorrectly describes the offense contained in s. 590.28(1), F.S., as "willful, malicious, or intentional burning."<sup>16</sup> The statute also contains an obsolete reference to "intake counselor" relating to the offense contained in s. 784.07(2)(b), F.S.

The bill corrects the description of the offense contained in s. 590.28(1), F.S., by describing the offense as "Intentional burning of lands." The bill also removes the obsolete reference to "intake counselor" relating to s. 784.07(2)(b), F.S.

### Section 25

Section 921.141(5)(a), F.S., specifies that whether "the capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation" is an aggravating circumstance that may be considered when sentencing a defendant to death or life imprisonment. This section of statute currently incorporates amendments that were made by ch. 96-302, L.O.F. However, this section of statute was also amended in 1996 by ch. 96-290, L.O.F.

The bill reenacts s. 921.141(5)(a), F.S., to clarify legislative intent that the statute incorporate the amendments made by ch. 96-302, L.O.F., and not those made by ch. 96-290, L.O.F.

### Section 26

Section 921.20, F.S. provides that as soon as possible after a prisoner has been placed in the custody of the Department of Corrections, the classification board shall furnish a classification summary to the Parole Commission for use as provided in s. 947.14, F.S. The reference to s. 947.14, F.S., is obsolete in that in 1981, s. 947.14(1), (2), (4), and (6), F.S., were transferred, in part, to s. 945.25, F.S., and subsections (3) and (5) were transferred to s. 947.13, F.S.

The bill replaces the obsolete reference to 947.14, F.S., with a reference to s. 945.25, F.S.

### Section 27

Section 932.704, F.S., requires each state or local law enforcement agency that files civil forfeiture actions under the Florida Contraband Forfeiture Act to file, by December 31, 1995, a certificate signed by the agency head or is or her designee, which represents that the agency's policies and procedures are in compliance with the guidelines developed by the Florida Department of Law Enforcement. This language is obsolete as the deadline for certifying compliance was in 1995.

The bill removes obsolete language requiring agencies to submit a certificate of compliance by 1995.

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<sup>16</sup> Section 590.28, F.S., relates to the intentional or reckless burning of lands.

### Section 28

Section 933.18, F.S., provides, in part, that no search warrant may be issued to search any private dwelling unless one or more of the following misdemeanor child abuse offenses is being committed there – violations of ss. 787.03, 800.02, and 800.03, F.S. The statute’s specification that the enumerated child abuse offenses are misdemeanor offenses is incorrect in that the enumerated child abuse offenses also contain felony offenses.

The bill deletes the word “misdemeanor” so that both misdemeanor and felony violations of the enumerated child abuse statutes are included.

### Section 29

Section 933.40, F.S., relates to agricultural warrants and specifies that the judge or magistrate, if satisfied that probable cause exists for the issuing of one or more agricultural warrants, shall issue such warrants with his or her signature and office affixed thereto. The bill removes the reference to “magistrate” and replaces it with a reference to “trial court judge.”

### Section 30

Section 934.03(2)(g), F.S., provides that it is unlawful for specified entities, including public utilities as defined by ss. 365.01 and 366.02, F.S., to intercept and record incoming wire communications. The reference to s. 365.01, F.S., in relation to the definition of the term “public utility” is obsolete as that section of statute was repealed in 1989.<sup>17</sup>

The bill removes to obsolete cite to s. 365.01, F.S., and includes the definition of “public utility” that was contained in the repealed statute in s. 934.03(2)(g), F.S.

### Section 31

Section 938.15, F.S., relates to criminal justice education for local governments. Subsection (2) of the statute makes a reference to the “commission,” but it is unclear what commission the statute is referencing. The bill clarifies that the commission referenced by s. 938.15(2), F.S., is the Criminal Justice Standards and Training Commission.

### Section 32

Section 943.051(3)(b), F.S., provides that if a minor is charged with or is found to have committed specified offenses, including s. 827.05, F.S., the minor must be fingerprinted and the fingerprints submitted to the Florida Department of Law Enforcement. In 1996, s. 827.05, F.S., which relates to the negligent treatment of children, was repealed.<sup>18</sup>

The bill changes the reference to s. 827.05, F.S., to *former* s. 827.05, F.S.

### Section 33

Section 943.053, F.S., specifies that the Florida Department of Law Enforcement shall provide the Florida Department of Revenue Child Support Enforcement access to specified information. The reference to the Division of Child Support Enforcement is obsolete in that chapter 97-287, L.O.F., removed references to divisions of state agencies. The bill removes the reference to Child Support Enforcement and retains the reference to the Florida Department of Revenue.

### Section 34

Section 943.0581(6), F.S., which specifies that an application or endorsement for administrative expunction is not admissible as evidence in any judicial or administrative proceeding or otherwise be construed in any way as an admission of liability in connection with an arrest, is drafted in a manner that is grammatically incorrect. The bill corrects the grammatical error.

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<sup>17</sup> ch. 89-86, L.O.F.

<sup>18</sup> chapters 96-322 and 96-388, L.O.F.

### Section 35

Section 943.0582, F.S., requires the Florida Department of Law Enforcement to expunge the non-judicial arrest record of a minor who has successfully completed a pre-arrest or post-arrest diversion program if the minor meets specified requirements. Section 943.0582, F.S., also specifies that it operates retroactively. This section of statute currently incorporates amendments that were made by ch. 2001-125, L.O.F. However, this section of statute was also amended in 2001 by ch. 2001-127, L.O.F.

The bill reenacts s. 943.0582, F.S., to clarify legislative intent that the statute incorporate the amendments made by ch. 2001-125, L.O.F., and not those made by ch. 2001-127, L.O.F.

### Section 36

Section 943.135, F.S., permits specified persons to associate with their employing agency for the sole purpose of securing continuing employment-related training and education. Paragraph (4)(b) of the statute requires the employing agency with which the person has associated to submit proof of completion of any education or training so obtained and to indicate that the person for whom the credits are reported has secured the training under the special status authorized by this section. Section 943.135(4)(b), F.S., currently incorporates amendments that were made by ch. 98-251, L.O.F. However, this section of statute was also amended in 1998 by ch. 98-249, L.O.F.

The bill reenacts s. 943.135(4)(b), F.S., to clarify legislative intent that the statute incorporate the amendments made by ch. 98-251, L.O.F., and not those made by ch. 98-249, L.O.F.

### Section 37

Section 944.023, F.S., requires the comprehensive correctional master plan to include a siting plan, which must assess, rank, and designate appropriate sites pursuant to s. 944.095(2)(a)-(k), F.S. The cite to s. 944.095(2)(a)-(k), F.S., is obsolete in that s. 944.095, F.S., was rewritten in 1995 and removed paragraphs (a)-(k) from subsection (2).<sup>19</sup>

The bill replaces the obsolete reference to s. 944.095(2)(a)-(k), F.S., with a general reference to s. 944.095, F.S., which relates to the siting of correctional facilities.

### Section 38

Section 944.053, F.S., provides that forestry work camps shall house minimum custody inmates and medium custody inmates who are not serving a sentence for, or who have not been previously convicted of, sexual battery or any sexual offender specified in s. 917.012(1), F.S., unless they have successfully completed a treatment program pursuant to s. 917.012, F.S. The references to s. 917.012, F.S., which related to mentally disordered sex offenders, are obsolete in that the statute was repealed in 1991.<sup>20</sup>

The bill removes the obsolete references to s. 917.012, F.S. and specifies that sexual battery offenses are listed in s. 794.011, F.S.

### Section 39

Section 944.28(1), F.S., specifies circumstances in which the Department of Corrections may declare a forfeiture of gain-time earned by a prisoner. Chapter 91-280, L.O.F., purported to reenact s. 944.28(1), F.S., but did not include the version as amended by ch. 89-531, L.O.F. As a result, a reference to control release was omitted.

The bill reenacts s. 944.28(1), F.S., to clarify legislative intent that the statute include a reference to control release.

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<sup>19</sup> ch. 95-283, L.O.F.

<sup>20</sup> ch. 91-225, L.O.F.

#### Section 40

Section 944.474, F.S., provides that notwithstanding s. 112.0455(5)(a), F.S., the Department of Corrections may develop a program for the reasonable suspicion drug testing of employees who are in safety-sensitive or special risk positions. The cite to paragraph (a) of s. 112.0455(5), F.S., appears to be incorrect as that paragraph defines the term “drug.”

The bill replaces the incorrect citation to s. 112.0455(5)(a), F.S., with a reference to s. 112.0455, F.S., entitled the “Drug-Free Workplace Act.”

#### Sections 41 - 43

Sections 944.708, 944.801, and 945.10, F.S., contain references to the Department of Labor and Employment Security. The bill replaces these references with the Agency for Workforce Innovation.

#### Section 44

Section 947.06, F.S., specifies when the Parole Commission may meet and how the Commission may act. Section 947.06 F.S., currently incorporates amendments that were made by ch. 90-211, L.O.F. However, this section of statute was also amended in 1990 by ch. 90-337, L.O.F.

The bill reenacts s. 947.06 F.S., to clarify legislative intent that the statute incorporate the amendments made by ch. 90-211, L.O.F., and not those made by ch. 90-337 L.O.F.

#### Section 45

Section 947.16(4), F.S., specifies that a trial judge may retain jurisdiction over certain parole-eligible offenders to review a Parole Commission release order. In such instances, the trial judge must state the justification for retaining jurisdiction and such justification must be made a part of the court record. A copy of the justification must also be delivered to the Department of Corrections together with the commitment issued by the court pursuant to s. 944.16, F.S. The reference to s. 944.16, F.S., appears to be incorrect as that section of statute was repealed in 1985.<sup>21</sup>

The bill replaces the incorrect reference to s. 944.16, F.S., and with a reference to s. 944.17, F.S., which requires clerks to complete a commitment form and submit such form to the Department of Corrections.

#### Section 46

Section 949.071, F.S., references “s. 111(b) of Title 4 of the United States Code as added by Pub. L. No. 970 84<sup>th</sup> Congress, CH. 941 2d Session” in defining the term “state” for interstate compact purposes. The cite to s. 111(b) of Title 4 of the United States Code was re-designated as 4 U.S.C. s. 112(b) by Pub. L. No. 89-554, S.2(c), 80 Stat. 608. The bill corrects this citation.

#### Section 47

Section 951.23, F.S., relates to the inmate commissary and welfare fund. Paragraph (9)(e) of the statute requires an audit of the commissary including certification that the commissary complies with the pricing requirements of paragraph (1)(b). The cite to paragraph (1)(b) appears incorrect as that paragraph defines “county residential probation center.”

The bill replaces the reference to s. 951.23(1)(b), F.S., with a reference to s. 951.23(9)(b), F.S., which specifies that canteen prices shall be set so as not to exceed the fair market value of comparable products sold in the community where the facility is located.

#### Section 48

Section 951.231(1), F.S., specifies, in part, that any prisoner who has been sentenced to serve a sentence in a county residential probation center must participate in and complete the program required by s. 958.04(4), F.S., if required by the supervisor of the center. The statute’s reference to s.

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<sup>21</sup> ch. 85-288, L.O.F.

958.04(4), F.S., is obsolete as that statute was repealed in 1994 and the subunits of the statute renumbered.<sup>22</sup>

The bill replaces the obsolete reference to s. 958.04(4), F.S., with a reference to s. 958.045, F.S., which relates to the youthful offender basic training program.

#### Section 49

Section 957.07, F.S., requires the Department of Corrections to submit a report to the Correctional Privatization Commission detailing the cost to build a facility similar to a private facility. In 2004, the Correctional Privatization Commission was abolished, and the Department of Management Services took over many of the Commission's functions.<sup>23</sup>

The bill replaces the reference to the Commission with a reference to the Department of Management Services.

#### Section 50

Section 960.003, F.S., requires persons charged with certain offenses to be tested for HIV and specifies that the same counseling which must be made available under s. 381.004(3)(e) to those who undergo HIV testing must also be made available to the victim. The reference to paragraph (3)(e) of s. 381.004, F.S., appears incorrect as that paragraph currently relates to the confidentiality of HIV tests.

The bill replaces the reference to s. 381.004(3)(e), F.S., with a reference to s. 381.004, F.S.

#### Section 51

Section 984.225, F.S., provides that in certain instances in which a child is handled as a dependent child, jurisdiction must be transferred to the Department of Children and Family Services and the child's care be governed under parts II and III of chapter 39, F.S. In years past, chapter 39, F.S., had four parts, with parts II and III addressing dependency and foster care. Currently, chapter 39, F.S., has 13 parts.

The bill removes the specific reference to parts II and II of chapter 39, F.S., and instead specifies that that a dependent child's care be governed under the relevant provisions of chapter 39, F.S.

#### Section 52

Section 985.486, F.S., provides that no child who is eligible for commitment to an intensive residential treatment program for offenders less than 13 years of age as established in s. 985.483(1), F.S., may be committed to such a program unless such program has been established by the Department of Juvenile Justice through existing resources or specific appropriation. Section 985.483(1), F.S., lists the eligibility criteria for intensive residential treatment programs for offenders less than 13 – it does not establish such programs.

The bill removes language indicating that s. 985.483, F.S., establishes intensive residential treatment programs for offenders less than 13 and clarifies that the statute only provides eligibility criteria for such programs.

#### Section 53

Section 985.632, F.S., requires the Department of Juvenile Justice to develop a cost-effectiveness model and apply the mode to each commitment program. The statute further states that it is the intent of the Legislature that continual development efforts take place to improve the validity and reliability of the cost-effectiveness model and to integrate the standard methodology developed under s. 985.401(4), F.S., for interpreting program outcome evaluations. The reference to s. 985.401(4), F.S., is obsolete as that section was repealed in 2001.<sup>24</sup> The bill removes the legislative intent language that relates to the repealed section of statute.

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<sup>22</sup> ch. 94-209, L.O.F.

<sup>23</sup> ch. 2004-248, L.O.F.

<sup>24</sup> ch. 2001-185, L.O.F.

Section 985.632(7), F.S., requires the Department of Juvenile Justice, no later than November 1, 2001, to submit a report to the Legislature concerning funding incentives and disincentives for the department and for providers under contract with the department. The bill removes this reporting requirement as it is now obsolete.

#### Section 54

Section 985.686(2)(b), F.S., defines the term “fiscally constrained county.” The statute currently incorporates amendments that were made by ch. 2006-62, L.O.F. However, this section of statute was also amended in 2006 by ch. 2006-120, L.O.F.

The bill reenacts s. 985.686(2)(b), F.S., to clarify legislative intent that the statute incorporate the amendments made by ch. 2006-62, L.O.F., and not those made by ch. 2006-120, L.O.F.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

**Section 2.** Amends s. 775.25, F.S., relating to prosecutions for acts or omissions.

**Section 3.** Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

**Section 4.** Amends s. 815.03, F.S., relating to definitions.

**Section 5.** Amends s. 817.554, F.S., relating to fraudulently offering for sale tour or travel-related services.

**Section 6.** Amends s. 828.17, F.S., relating to officer to arrest without warrant.

**Section 7.** Amends s. 831.16, F.S., relating to having less than 10 counterfeit coins in possession, with intent to utter.

**Section 8.** Amends s. 831.17, F.S., relating to violation of s. 831.16; second conviction.

**Section 9.** Amends s. 831.18, F.S., relating to making or possessing instruments for forging bills.

**Section 10.** Amends s. 831.21, F.S., relating to forging or counterfeiting doctor’s certificate of examination.

**Section 11.** Amends s. 831.27, F.S., relating to issuing notes.

**Section 12.** Amends s. 831.30, F.S., relating to medicinal drugs; fraud in obtaining.

**Section 13.** Amends s. 838.021, F.S., relating to corruption by threat against public servant.

**Section 14.** Reenacts s. 847.0125, F.S., relating to retail display of materials harmful to minors prohibited.

**Section 15.** Amends s. 860.13, F.S., relating to operation of aircraft while intoxicated or in careless or reckless manner; penalty.

**Section 16.** Amends s. 865.09, F.S., relating to fictitious name registration.

- Section 17.** Amends s. 877.22, F.S., relating to minors prohibited in public places and establishments during certain hours; penalty; procedure.
- Section 18.** Amends s. 893.02, F.S., relating to definitions.
- Section 19.** Amends s. 893.10, F.S., relating to burden of proof; photograph or video recording of evidence.
- Section 20.** Reenacts s. 914.24, F.S., relating to civil action to restrain harassment of a victim or witness.
- Section 21.** Amends s. 916.12, F.S., relating to mental competence to proceed.
- Section 22.** Amends s. 916.3012, F.S., relating to mental competence to proceed.
- Section 23.** Amends s. 918.0155, F.S., relating to expeditious disposition of particular criminal cases involving a child under age 16.
- Section 24.** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 25.** Reenacts s. 921.141, F.S., relating to sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.
- Section 26.** Amends s. 921.20, F.S., relating to classification summary; Parole Commission.
- Section 27.** Amends s. 932.704, F.S., relating to forfeiture proceedings.
- Section 28.** Amends s. 933.18, F.S., relating to when warrant may be issued for search of private dwelling.
- Section 29.** Amends s. 933.40, F.S., relating to agriculture warrants.
- Section 30.** Amends s. 934.03, F.S., relating to interception and disclosure of wire, oral, or electronic communications prohibited.
- Section 31.** Amends s. 938.15, F.S., relating to criminal justice education for local government.
- Section 32.** Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.
- Section 33.** Reenacts s. 943.053, F.S., relating to dissemination of criminal justice information; fees.
- Section 34.** Amends s. 943.0581, F.S., relating to administrative expunction.
- Section 35.** Reenacts s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.
- Section 36.** Reenacts s. 943.135, F.S., relating to requirements for continued employment.
- Section 37.** Amends s. 944.023, F.S., relating to comprehensive correctional master plan.
- Section 38.** Amends s. 944.053, F.S., relating to forestry work camps.
- Section 39.** Reenacts s. 944.28, F.S., relating to forfeiture of gain-time and the right to earn gain-time in the future.

- Section 40.** Amends s. 944.474, F.S., relating to legislative intent; employee wellness program; drug and alcohol testing.
- Section 41.** Amends s. 944.708, F.S., relating to rules.
- Section 42.** Amends s. 944.801, F.S., relating to education for state prisoners.
- Section 43.** Amends s. 945.10, F.S., relating to confidential information.
- Section 44.** Reenacts s. 947.06, F.S., relating to meeting; when commission may act.
- Section 45.** Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.
- Section 46.** Amends s. 949.071, F.S., relating to definition of “state” as used in s. 949.07; further declaration relating to interstate compacts.
- Section 47.** Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.
- Section 48.** Amends s. 951.231, F.S., relating to county residential probation program.
- Section 49.** Amends s. 957.07, F.S., relating to cost-saving requirements.
- Section 50.** Amends s. 960.003, F.S., relating to HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.
- Section 51.** Amends s. 984.225, F.S., relating to powers of disposition; placement in a staff-secure shelter.
- Section 52.** Amends s. 985.486, F.S., relating to intensive residential treatment programs for offenders less than 13 years of age; prerequisite for commitment.
- Section 53.** Amends s. 985.632, F.S., relating to quality assurance and cost-effectiveness.
- Section 54.** Reenacts s. 985.686, F.S., relating to shared county and state responsibility for juvenile detention.
- Section 55.** This bill takes effect July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES