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# **Judiciary Committee**

**Thursday, January 19, 2012**

**9:00 AM**

**404 HOB**

**Meeting Packet**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Thursday, January 19, 2012 09:00 am  
**End Date and Time:** Thursday, January 19, 2012 10:30 am  
**Location:** 404 HOB  
**Duration:** 1.50 hrs

**Consideration of the following bill(s):**

HB 125 Preventing Deaths from Drug-related Overdoses by Bernard  
CS/HB 173 Department of Juvenile Justice by Criminal Justice Subcommittee, Pilon  
CS/HB 183 Misdemeanor Pretrial Substance Abuse Programs by Criminal Justice Subcommittee, Moraitis  
CS/CS/HB 329 Parole Interview Dates for Certain Inmates by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Trujillo, Perry  
HB 1227 Certification of 911 Public Safety Telecommunicators by Drake  
HB 4047 Judicial Census Commissions by Bernard  
HB 4049 Veteran's Guardianship by Bernard  
HB 4055 Supreme Court by Metz  
HB 4073 Florida Motor Vehicle Theft Prevention Authority by Young  
HB 4077 Actions for Damages by Metz  
HB 4093 Court Costs by Porter  
HB 4133 District Courts of Appeal by Gaetz

**NOTICE FINALIZED on 01/17/2012 16:11 by Jones.Missy**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 125 Preventing Deaths from Drug-related Overdoses

**SPONSOR(S):** Bernard and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Krol	Cunningham
2) Health & Human Services Access Subcommittee	14 Y, 0 N	Poche	Schoolfield
3) Judiciary Committee		Krol TK	Havlicak RN

### SUMMARY ANALYSIS

Florida law contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances.

The bill creates s. 893.21, F.S., entitled the "911 Good Samaritan Act," and provides that:

- A person making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.
- A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

The bill does not appear to have a fiscal impact and is effective on October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Florida law currently contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow a criminal defendant to have his or her sentence reduced or suspended in certain instances. A description of these provisions follows.

##### Florida Good Samaritan Laws

The Good Samaritan Act, found in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity from liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>1</sup>
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within scope of his or her training.<sup>2</sup>
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>3</sup>

Section 768.1325, F.S., provides that a person is immune from civil liability for any harm resulting from the use or attempted use of an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim.

Section 768.1355, F.S., entitled the Florida Volunteer Protection Act, provides that any person who volunteers to perform any service for any nonprofit organization without compensation will incur no civil liability for any act or omission that results in personal injury or property damage if:

- The person was acting in good faith within the scope of any official duties performed under the volunteer service and the person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the person in the performance of the duties.

##### Reduction or Suspension of Criminal Sentence

Section 921.186, F.S., allows the state attorney to move the sentencing court to reduce or suspend the sentence of a person convicted of a felony who provides substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity.

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<sup>1</sup> Section 768.13(2)(a), F.S.

<sup>2</sup> Section 768.13(2)(d), F.S.

<sup>3</sup> Section 768.13(3), F.S.

## Mitigating Circumstances

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart”<sup>4</sup> from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>5</sup>

The points are added in order to determine the “lowest permissible sentence” for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are “circumstances or factors that reasonably justify the downward departure.”<sup>6</sup> Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include:

- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The defendant acted under extreme duress or under the domination of another person.
- The defendant cooperated with the state to resolve the current offense or any other offense.<sup>7</sup>

Currently, there are no mitigating circumstances related to defendants who make a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

## Possession of a Controlled Substance

Chapter 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act, makes it a crime for a person to possess<sup>8</sup> a controlled substance.<sup>9</sup> The severity of the crime depends on the type and quantity of the controlled substance possessed. For example:

- Actual or constructive possession of a controlled substance, unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, is a third degree felony punishable<sup>10</sup> by up to 5 years in prison and a fine up to \$5,000.<sup>11</sup>
- Possession of less than 20 grams of cannabis<sup>12</sup> is a first degree misdemeanor punishable<sup>13</sup> by up to 1 year in prison and a fine up to \$1,000.<sup>14</sup>
- Possession of more than 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S., or any combination thereof, or any mixture containing any such substance is a first degree felony punishable<sup>15</sup> by up to 30 years in prison and a fine up to \$10,000.<sup>16</sup>

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<sup>4</sup> Section 921.0022, F.S.

<sup>5</sup> Section 921.0024, F.S., provides that a defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record; and other aggravating factors.

<sup>6</sup> Section 921.0026, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 893.02(18), F.S., states that possession “includes temporary possession for the purpose of verification or testing, irrespective of dominion or control.”

<sup>9</sup> Section 893.02(4), F.S., defines “controlled substance” as “any substance named or described in Schedules I-V of s. 893.03, F.S.”

<sup>10</sup> As provided in ss. 775.082 and 775.083, F.S.

<sup>11</sup> Section 893.13(6)(a), F.S.

<sup>12</sup> For the purposes of s. 893.13(6)(b), F.S., “cannabis” is defined as “all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof.”

<sup>13</sup> As provided in ss. 775.082 and 775.083, F.S.

<sup>14</sup> Section 893.13(6)(b), F.S.

<sup>15</sup> As provided in ss. 775.082 and 775.083, F.S.

<sup>16</sup> Section 893.13(6)(c), F.S.

## 911 Good Samaritan Laws in Other States

In 2007, New Mexico enacted the 911 Good Samaritan Act, which prevents prosecution for drug possession based on evidence “gained as a result of the seeking of medical assistance” to treat a drug overdose.<sup>17</sup> This law was the first of its kind in the country.<sup>18</sup>

While many states have considered similar Good Samaritan immunity legislation, Alaska, Connecticut, New York, and Washington are the only other states to have passed such a law.<sup>19</sup>

### **Effect of the Bill**

The bill is cited as the “911 Good Samaritan Act” and contains the following “whereas clauses”:

- Whereas, some research suggests that in a majority of cases of fatal drug overdose another person was aware of or present during the decedent's fatal drug use and that in one third of the cases someone recognized the decedent's distress,
- Whereas, many people cite fear of police involvement or fear of arrest as their primary reason for not seeking immediate help for a person thought to be experiencing a drug overdose, and
- Whereas, it is in the public interest to encourage a person who is aware of or present during another individual's drug overdose to seek medical assistance for that individual.

The bill provides that a person who in good faith seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person's seeking medical assistance.

The bill also provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence:

- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

### **B. SECTION DIRECTORY:**

**Section 1:** Provides this act may be cited as the “911 Good Samaritan Act.”

**Section 2:** Creates s. 893.21, F.S., relating to drug-related overdoses; medical assistance; immunity from prosecution.

**Section 3:** Amends s. 921.0026, F.S., relating to mitigating circumstances.

**Section 4:** Provides an effective date of October 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

<sup>17</sup> New Mexico Statutes Annotated section 30-31-27.1.

<sup>18</sup> “Preventing Overdose, Saving Lives.” Drug Policy Alliance. March 2009. <http://drugpolicy.org/library/overdose2009.cfm> (last visited on November 17, 2011).

<sup>19</sup> Alaska Statute section 12.55.155(d)(19) (effective September 2008); Connecticut Public Act No. 11-210 (effective 2011); Laws of New York s. 220.78 (effective September 2011); Revised Code of Washington 69.50.315 (effective June 2010).

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

Generally, possession of controlled substances is a felony offense. The bill precludes a person from being charged with possession of controlled substances in specified instances. The Criminal Justice Impact Conference (CJIC) has not yet met to determine the impact of the bill. During the 2011 legislative session, CJIC determined that a bill identical to this one would have no impact on the Department of Corrections.<sup>20</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Possession of less than 20 grams of cannabis is a first degree misdemeanor. The bill could have a positive impact on local jails in that it precludes a person from being charged with possession of cannabis in specified instances. The Criminal Justice Impact Conference (CJIC) has not yet met to determine the impact of the bill. However, because CJIC determined that an identical bill filed during the 2011 legislative session would have "no impact" on prison beds;<sup>21</sup> the jail bed impact will also likely be negligible.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

<sup>20</sup> Criminal Justice Impact Conference. HB 91. March 2, 2011.

<sup>21</sup> *Id.*



1                   A bill to be entitled  
 2           An act relating to preventing deaths from drug-related  
 3           overdoses; providing a short title; creating s.  
 4           893.21, F.S.; providing that a person acting in good  
 5           faith who seeks medical assistance for an individual  
 6           experiencing a drug-related overdose may not be  
 7           charged, prosecuted, or penalized for specified  
 8           offenses in certain circumstances; providing that a  
 9           person who experiences a drug-related overdose and  
 10          needs medical assistance may not be charged,  
 11          prosecuted, or penalized for specified offenses in  
 12          certain circumstances; providing that the protections  
 13          from prosecution for specified offenses are not  
 14          grounds for suppression of evidence in other  
 15          prosecutions; amending s. 921.0026, F.S.; amending  
 16          mitigating circumstances under which a departure from  
 17          the lowest permissible criminal sentence is reasonably  
 18          justified to include circumstances in which a  
 19          defendant was making a good faith effort to obtain or  
 20          provide medical assistance for an individual  
 21          experiencing a drug-related overdose; providing an  
 22          effective date.

23  
 24           WHEREAS, some research suggests that in a majority of cases  
 25          of fatal drug overdose another person was aware of or present  
 26          during the decedent's fatal drug use and that in one-third of  
 27          the cases someone recognized the decedent's distress, and

28 WHEREAS, many people cite fear of police involvement or  
29 fear of arrest as their primary reason for not seeking immediate  
30 help for a person thought to be experiencing a drug overdose,  
31 and

32 WHEREAS, it is in the public interest to encourage a person  
33 who is aware of or present during another individual's drug  
34 overdose to seek medical assistance for that individual, NOW,  
35 THEREFORE,

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. This act may be cited as the "911 Good  
40 Samaritan Act."

41 Section 2. Section 893.21, Florida Statutes, is created to  
42 read:

43 893.21 Drug-related overdoses; medical assistance;  
44 immunity from prosecution.-

45 (1) A person acting in good faith who seeks medical  
46 assistance for an individual experiencing a drug-related  
47 overdose may not be charged, prosecuted, or penalized pursuant  
48 to this chapter for possession of a controlled substance if the  
49 evidence for possession of a controlled substance was obtained  
50 as a result of the person's seeking medical assistance.

51 (2) A person who experiences a drug-related overdose and  
52 is in need of medical assistance may not be charged, prosecuted,  
53 or penalized pursuant to this chapter for possession of a  
54 controlled substance if the evidence for possession of a

55 controlled substance was obtained as a result of the overdose  
 56 and the need for medical assistance.

57 (3) Protection in this section from prosecution for  
 58 possession offenses under this chapter may not be grounds for  
 59 suppression of evidence in other criminal prosecutions.

60 Section 3. Paragraph (n) is added to subsection (2) of  
 61 section 921.0026, Florida Statutes, to read:

62 921.0026 Mitigating circumstances.—This section applies to  
 63 any felony offense, except any capital felony, committed on or  
 64 after October 1, 1998.

65 (2) Mitigating circumstances under which a departure from  
 66 the lowest permissible sentence is reasonably justified include,  
 67 but are not limited to:

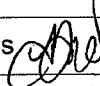

68 (n) The defendant was making a good faith effort to obtain  
 69 or provide medical assistance for an individual experiencing a  
 70 drug-related overdose.

71 Section 4. This act shall take effect October 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 173 Department of Juvenile Justice  
**SPONSOR(S):** Criminal Justice Subcommittee; Pilon and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Williams	Cunningham
2) Judiciary Committee		Williams 	Havlicak 

### SUMMARY ANALYSIS

During the 2011 Legislative Session, CS/SB 618 passed the legislature which repealed numerous provisions relating to serious or habitual juvenile offenders and serious or habitual offender programs (SHOPs). According to the Department of Juvenile Justice (DJJ), SHOPs had a long history of being underutilized, and the changes made by CS/SB 618 more accurately reflected the practices of DJJ.

The bill amends numerous sections of statute in chapters 984 and 985, F.S., to delete references to serious or habitual juvenile offenders and SHOPs. These changes conform the statutes to the repeals made by CS/SB 618.

In addition, the bill:

- Defines "mother-infant program" and authorizes DJJ to develop or contract for mother-infant programs; and
- Provides authority for DJJ, at the secretary's discretion, to pay up to \$5,000 towards the basic funeral expenses for a youth who dies while in custody of DJJ and whose parents or guardians are indigent and unable to pay for such expenses.

The bill does not appear to have a fiscal impact and is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Serious or Habitual Juvenile Offenders and Programs**

During the 2011 Legislative Session, CS/SB 618 passed the legislature<sup>1</sup> which repealed numerous provisions relating to serious or habitual juvenile offenders and serious or habitual offender programs (SHOPs). According to the Department of Juvenile Justice (DJJ), SHOPs had a long history of being underutilized, and the changes made by CS/SB 618 more accurately reflected the practices of DJJ.<sup>2</sup>

##### *Effect of the Bill*

The bill amends the following sections of statute to delete references to serious or habitual juvenile offenders and SHOPs:

- Section 984.03, F.S., (defining a SHOP);
- Section 985.14, F.S., (referring to assessment for placement in a SHOP);
- Section 985.441, F.S., (referring to juvenile placement in a SHOP);
- Section 985.0301, F.S., (referring to SHOPs);
- Section 985.601, F.S., (referring to SHOPs); and
- Section 985.688, F.S., (referring to SHOPs).

These changes conform the statutes to the repeals made by CS/SB 618.

The bill also amends ss. 985.045 and 985.721, F.S., to conform to the changes made by the bill.

##### **Residential Commitment Programs**

Section 985.441, F.S., authorizes a court that has jurisdiction of an adjudicated delinquent child to commit the child to DJJ at a restrictiveness level defined in s. 985.03, F.S.<sup>3</sup> Once the court has ordered the youth to a specific restrictiveness level, it is the responsibility of DJJ to determine the most appropriate placement available within that restrictiveness level.<sup>4</sup>

Residential commitment programs are grouped into five custody classifications based on the assessed risk to public safety.<sup>5</sup> These classifications are identified as restrictiveness levels and include: minimum-risk nonresidential, low-risk residential, moderate-risk residential, high-risk residential, and maximum-risk residential.<sup>6</sup> Each restrictiveness level of placement represents increased restrictions on the youths' movement and freedom.<sup>7</sup> Juvenile residential facilities range from wilderness and marine camps to halfway houses, youth development centers, sex-offender programs and maximum-security correctional facilities.<sup>8</sup>

Youths in residential commitment programs are committed to these programs for an indeterminate length of time and must receive educational and vocational services.<sup>9</sup> They must also complete an individually-designed treatment plan that is based on their rehabilitative needs as one of the requirements for release.<sup>10</sup>

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<sup>1</sup> Chapter 2011-70, L.O.F.

<sup>2</sup> Department of Juvenile Justice 2011 Agency Proposal (on file with the House Criminal Justice Subcommittee staff).

<sup>3</sup> Section 985.441(1)(b), F.S.

<sup>4</sup> Department of Juvenile Justice, Juvenile Justice Office of Residential Services. <http://www.djj.state.fl.us/Residential/index.html> (last visited on November 1, 2011).

<sup>5</sup> Department of Juvenile Justice, Restrictiveness Levels. <http://www.djj.state.fl.us/Residential/restrictiveness.html> (last visited on November 1, 2011).

<sup>6</sup> Section 985.03(45), F.S.

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

### **Juvenile Justice Continuum - Mother-Infant Program**

Currently, section 985.601(3)(a), requires DJJ to develop or contract for various programs to provide rehabilitative treatment for juveniles adjudicated delinquent. These programs include, but are not limited to:

- Early intervention and prevention;
- Diversion;
- Community-based substance abuse treatment services;
- Community-based mental health treatment services;
- Community-based residential and nonresidential programs; and
- Environmental programs.<sup>11</sup>

The statute does not require DJJ to develop or contract for mother-infant programs.

Currently, DJJ operates a 20-bed mother-infant residential commitment program called Women in Need of Greater Strength for Life (WINGS) in Miami-Dade County.<sup>12</sup> The program serves pregnant and postpartum females ages 14-19 with the objective of:

- Providing a structured and supervised transition from residential placement to the community; and
- Closely monitoring the youth to ensure public safety.<sup>13</sup>

#### *Effect of the Bill*

The bill amends s. 985.601(3)(a), F.S., to authorize DJJ to develop or contract for mother-infant programs.

The bill amends s. 985.03, F.S., to define a "mother-infant program" as a residential program designed to serve the needs of juvenile mothers or expectant juvenile mothers who are committed as delinquents, which is operated or contracted by DJJ. The bill requires mother-infant program facilities to be licensed as a child care facility under s. 402.308, F.S., and to provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of their infants. The bill also provides that an infant, upon agreement of the mother, may accompany the mother in the program.

### **Juvenile Funeral Expenses**

On July 10, 2011, Eric Perez died while in the care of DJJ at a state detention facility in West Palm Beach.<sup>14</sup> At the time, DJJ had an internal policy dating back to 2008, authorizing DJJ to pay up to \$5,000 in funeral expenses when a youth died in their custody and the parents or guardians were indigent and unable to pay such expenses.<sup>15</sup> Citing this policy, DJJ sought to pay for a portion of Eric Perez's funeral expenses. However, according to DJJ, the Department of Financial Services (DFS) would not process the payment based on DFS's determination that there was no statutory authority which allowed DJJ to make such payment.<sup>16</sup>

According to DJJ, when a state agency is responsible for the safety and welfare of youth, under some circumstances, it may be beneficial to both community relations and in the context of potential litigation,

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<sup>11</sup> Section 985.601(3)(a), F.S.

<sup>12</sup> Department of Juvenile Justice, WINGS for Life.

[http://www.djj.state.fl.us/Residential/Facilities/south\\_facilities/WINGS\\_FOR\\_LIFE.html](http://www.djj.state.fl.us/Residential/Facilities/south_facilities/WINGS_FOR_LIFE.html) (last visited on November 1, 2011).

<sup>13</sup> *Id.*

<sup>14</sup> *Florida finance chief won't pay for funeral of teen who died in lockup*. The Miami Herald. July 29, 2011.

<http://www.miamiherald.com/2011/07/29/2337038/florida-finance-chief-wont-pay.html#storylink=misearch> (last visited on November 1, 2011).

<sup>15</sup> Phone conversation with Ana Maria Sanchez, Legislative Affairs Director, Department of Juvenile Justice. October 11, 2011. *See also*, DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

<sup>16</sup> *Id.*

to offer financial assistance to indigent parents or guardians to assist with the burial expenses of a youth.<sup>17</sup> Other states have authorized state agencies to pay for such expenses in similar instances.<sup>18</sup>

*Effect of the Bill*

The bill amends s. 985.601, F.S., to authorize DJJ, at the secretary's discretion, to pay up to \$5,000 toward the basic funeral expenses for a youth who dies while in the custody of DJJ and whose parents or guardians are indigent and for which no other funding is available.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 984.03, F.S., relating to definitions.

Section 2. Amends s. 985.03, F.S., relating to definitions.

Section 3. Amends s. 985.14, F.S., relating to intake and case management system.

Section 4. Amends s. 985.441, F.S., relating to commitment.

Section 5. Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.

Section 6. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 7. Amends s. 985.045, F.S. relating to court records.

Section 8. Amends s. 985.688, F.S., relating to administering county and municipal delinquency programs and facilities.

Section 9. Amends s. 985.721, F.S., relating to escapes from secure detention or residential commitment facility.

Section 10. Provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill authorizes DJJ, at the secretary's discretion, to pay up to \$5,000 toward the basic funeral expenses for a youth who dies while in the custody of DJJ and whose parents or guardians are indigent and for which no other funding is available. According to DJJ, the department has an internal policy dating back to 2008, which authorizes payment of up to \$5,000 in funeral expenses when a youth dies in their custody and the parents or guardians are indigent and unable to pay such expenses. DJJ reports that the department has paid for such funeral expenses for over ten years, and provided records reflecting that since 2008, the department has paid \$5,000 in funeral

<sup>17</sup> DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

<sup>18</sup> The state of Tennessee's Department of Children's Services Administrative Policies and Procedures provides that the department will provide for a funeral and burial for a child who dies in custody if the parent/guardian or next of kin cannot be located or cannot afford to pay. *See*, State of Tennessee, Department of Children's Services Administrative Policies and Procedures: 20.29. [www.tn.gov/youth/dcsguide/policies/chap20/20.29.pdf](http://www.tn.gov/youth/dcsguide/policies/chap20/20.29.pdf) (last visited on November 1, 2011).



expenses in two instances.<sup>19</sup> These expenditures were paid from general revenue funding.<sup>20</sup> DJJ reports that this bill will not have a fiscal impact.<sup>21</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**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 the 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 and municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Section 985.64, F.S., requires DJJ to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 985, F.S. The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill amends s. 985.03, F.S., to define a "mother-infant program" and to provide that mother-infant program facilities must be licensed as a child care facility under s. 402.308, F.S., and must provide the services and support necessary to enable the committed juvenile mothers to provide for the needs of the infants. However, the bill does not set forth any additional requirements or criteria that a mother-infant program must satisfy. Without further legislative directive, the structure and components of mother-infant programs could vary greatly.

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<sup>19</sup> Phone conversation with Ana Maria Sanchez, Legislative Affairs Director, Department of Juvenile Justice. November 3, 2011. *See also*, DJJ's expense records for Wilson Funeral Home and Snow Funeral Home (On file with House Criminal Justice Subcommittee staff).

<sup>20</sup> *Id.*

<sup>21</sup> DJJ Analysis HB 173, 2012. (On file with House Criminal Justice Subcommittee staff).

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 1, 2011, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Corrects and deletes obsolete references to serious and habitual juvenile offender programs;
- Defines "mother-infant program" and authorizes DJJ to develop or contract for mother-infant programs; and
- Authorizes the Secretary to pay up to \$5,000 in funeral expenses when a juvenile dies in DJJ's custody.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to the Department of Juvenile Justice;  
 3           amending s. 984.03, F.S.; deleting obsolete  
 4           references; amending s. 985.03, F.S.; creating and  
 5           revising definitions; amending s. 984.14, F.S.;  
 6           deleting obsolete references; amending s. 985.441,  
 7           F.S.; deleting an obsolete provision; amending s.  
 8           985.601, F.S.; revising the types of diversified and  
 9           innovative programs to provide rehabilitative  
 10          treatment that may be developed or contracted for by  
 11          the department, to include mother-infant programs and  
 12          remove reference to an obsolete program; authorizing  
 13          the department, at the secretary's discretion, to pay  
 14          up to a specified amount toward the basic funeral  
 15          expenses for a youth who dies while in the custody of  
 16          the department and whose parents or guardians are  
 17          indigent and for which no other funding is available;  
 18          amending s. 985.0301, F.S.; deleting obsolete or  
 19          unnecessary references and language; amending s.  
 20          985.045, F.S.; conforming a cross-reference; amending  
 21          s. 985.688, F.S.; deleting obsolete references;  
 22          amending s. 985.721, F.S.; conforming a cross-  
 23          reference; providing an effective date.

24  
 25   Be It Enacted by the Legislature of the State of Florida:

26  
 27           Section 1. Subsections (49) through (56) of section  
 28   984.03, Florida Statutes, are renumbered as subsections (48)

29 through (55), respectively, and present subsection (48) of that  
 30 section is amended to read:

31 984.03 Definitions.—When used in this chapter, the term:  
 32 ~~(48) "Serious or habitual juvenile offender program" means~~  
 33 ~~the program established in s. 985.47.~~

34 Section 2. Subsection (29) of section 985.03, Florida  
 35 Statutes, is amended, subsections (37) through (57) of that  
 36 section are renumbered as subsections (38) through (58),  
 37 respectively, and a new subsection (37) is added to that  
 38 section, to read:

39 985.03 Definitions.—As used in this chapter, the term:  
 40 (29) "Juvenile justice continuum" includes, but is not  
 41 limited to, delinquency prevention programs and services  
 42 designed for the purpose of preventing or reducing delinquent  
 43 acts, including criminal activity by criminal gangs, and  
 44 juvenile arrests, as well as programs and services targeted at  
 45 children who have committed delinquent acts, and children who  
 46 have previously been committed to residential treatment programs  
 47 for delinquents. The term includes children-in-need-of-services  
 48 and families-in-need-of-services programs; conditional release;  
 49 substance abuse and mental health programs; educational and  
 50 career programs; recreational programs; community services  
 51 programs; community service work programs; mother-infant  
 52 programs; and alternative dispute resolution programs serving  
 53 children at risk of delinquency and their families, whether  
 54 offered or delivered by state or local governmental entities,  
 55 public or private for-profit or not-for-profit organizations, or  
 56 religious or charitable organizations.

57        (37) "Mother-infant program" means a residential program  
 58 designed to serve the needs of juvenile mothers or expectant  
 59 juvenile mothers who are committed as delinquents, which is  
 60 operated or contracted by the department. A mother-infant  
 61 program facility must be licensed as a child care facility under  
 62 s. 402.308 and must provide the services and support necessary  
 63 to enable each juvenile mother committed to the facility to  
 64 provide for the needs of her infants who, upon agreement of the  
 65 mother, may accompany them in the program.

66        Section 3. Paragraph (a) of subsection (3) of section  
 67 985.14, Florida Statutes, is amended to read:

68        985.14 Intake and case management system.—

69        (3) The intake and case management system shall facilitate  
 70 consistency in the recommended placement of each child, and in  
 71 the assessment, classification, and placement process, with the  
 72 following purposes:

73        (a) An individualized, multidisciplinary assessment  
 74 process that identifies the priority needs of each individual  
 75 child for rehabilitation and treatment and identifies any needs  
 76 of the child's parents or guardians for services that would  
 77 enhance their ability to provide adequate support, guidance, and  
 78 supervision for the child. This process shall begin with the  
 79 detention risk assessment instrument and decision, shall include  
 80 the intake preliminary screening and comprehensive assessment  
 81 for substance abuse treatment services, mental health services,  
 82 retardation services, literacy services, and other educational  
 83 and treatment services as components, additional assessment of  
 84 the child's treatment needs, and classification regarding the

85 child's risks to the community and, ~~for a serious or habitual~~  
 86 ~~delinquent child, shall include the assessment for placement in~~  
 87 ~~a serious or habitual delinquent children program under s.~~  
 88 985.47. The completed multidisciplinary assessment process shall  
 89 result in the predisposition report.

90 Section 4. Subsection (1) of section 985.441, Florida  
 91 Statutes, is amended to read:

92 985.441 Commitment.—

93 (1) The court that has jurisdiction of an adjudicated  
 94 delinquent child may, by an order stating the facts upon which a  
 95 determination of a sanction and rehabilitative program was made  
 96 at the disposition hearing:

97 (a) Commit the child to a licensed child-caring agency  
 98 willing to receive the child; however, the court may not commit  
 99 the child to a jail or to a facility used primarily as a  
 100 detention center or facility or shelter.

101 (b) Commit the child to the department at a  
 102 restrictiveness level defined in s. 985.03. Such commitment must  
 103 be for the purpose of exercising active control over the child,  
 104 including, but not limited to, custody, care, training,  
 105 monitoring for substance abuse, electronic monitoring, and  
 106 treatment of the child and release of the child from residential  
 107 commitment into the community in a postcommitment nonresidential  
 108 conditional release program. If the child is not successful in  
 109 the conditional release program, the department may use the  
 110 transfer procedure under subsection (4).

111 ~~(c) Commit the child to the department for placement in a~~  
 112 ~~program or facility for serious or habitual juvenile offenders~~

113 | ~~in accordance with s. 985.47.~~

114 |       1. ~~Following a delinquency adjudicatory hearing under s.~~  
 115 | ~~985.35 and a delinquency disposition hearing under s. 985.433~~  
 116 | ~~that results in a commitment determination, the court shall, on~~  
 117 | ~~its own or upon request by the state or the department,~~  
 118 | ~~determine whether the protection of the public requires that the~~  
 119 | ~~child be placed in a program for serious or habitual juvenile~~  
 120 | ~~offenders and whether the particular needs of the child would be~~  
 121 | ~~best served by a program for serious or habitual juvenile~~  
 122 | ~~offenders as provided in s. 985.47. The determination shall be~~  
 123 | ~~made under ss. 985.47(1) and 985.433(7).~~

124 |       2. ~~Any commitment of a child to a program or facility for~~  
 125 | ~~serious or habitual juvenile offenders must be for an~~  
 126 | ~~indeterminate period of time, but the time may not exceed the~~  
 127 | ~~maximum term of imprisonment that an adult may serve for the~~  
 128 | ~~same offense.~~

129 |       (c)~~(d)~~ Commit the child to the department for placement in  
 130 | a program or facility for juvenile sexual offenders in  
 131 | accordance with s. 985.48, subject to specific appropriation for  
 132 | such a program or facility.

133 |       1. The child may only be committed for such placement  
 134 | pursuant to determination that the child is a juvenile sexual  
 135 | offender under the criteria specified in s. 985.475.

136 |       2. Any commitment of a juvenile sexual offender to a  
 137 | program or facility for juvenile sexual offenders must be for an  
 138 | indeterminate period of time, but the time may not exceed the  
 139 | maximum term of imprisonment that an adult may serve for the  
 140 | same offense.

141 Section 5. Paragraph (a) of subsection (3) of section  
 142 985.601, Florida Statutes, is amended, and subsection (11) is  
 143 added to that section, to read:

144 985.601 Administering the juvenile justice continuum.—

145 (3)(a) The department shall develop or contract for  
 146 diversified and innovative programs to provide rehabilitative  
 147 treatment, including early intervention and prevention,  
 148 diversion, comprehensive intake, case management, diagnostic and  
 149 classification assessments, individual and family counseling,  
 150 shelter care, diversified detention care emphasizing  
 151 alternatives to secure detention, diversified probation, halfway  
 152 houses, foster homes, community-based substance abuse treatment  
 153 services, community-based mental health treatment services,  
 154 community-based residential and nonresidential programs, mother-  
 155 infant programs, and environmental programs, ~~and programs for~~  
 156 ~~serious or habitual juvenile offenders.~~ Each program shall place  
 157 particular emphasis on reintegration and conditional release for  
 158 all children in the program.

159 (11) At the secretary's discretion, the department is  
 160 authorized to pay up to \$5,000 toward the basic funeral expenses  
 161 for a youth who dies while in the custody of the department and  
 162 whose parents or guardians are indigent and unable to pay such  
 163 expenses and for which there is no other source of funding  
 164 available.

165 Section 6. Subsection (5) of section 985.0301, Florida  
 166 Statutes, is amended to read:

167 985.0301 Jurisdiction.—

168 (5)(a) Notwithstanding ss. 743.07, 985.43, 985.433,



169 985.435, 985.439, and 985.441, and except as provided in ss.  
 170 985.461 and, 985.465, ~~and 985.47~~ and paragraph (f), when the  
 171 jurisdiction of any child who is alleged to have committed a  
 172 delinquent act or violation of law is obtained, the court shall  
 173 retain jurisdiction, unless relinquished by its order, until the  
 174 child reaches 19 years of age, with the same power over the  
 175 child which the court had before the child became an adult. For  
 176 the purposes of s. 985.461, the court may retain jurisdiction  
 177 for an additional 365 days following the child's 19th birthday  
 178 if the child is participating in transition-to-adulthood  
 179 services. The additional services do not extend involuntary  
 180 court-sanctioned residential commitment and therefore require  
 181 voluntary participation by the affected youth.

182 (b) Notwithstanding ss. 743.07 and 985.455(3), ~~and except~~  
 183 ~~as provided in s. 985.47~~, the term of any order placing a child  
 184 in a probation program must be until the child's 19th birthday  
 185 unless he or she is released by the court on the motion of an  
 186 interested party or on his or her own motion.

187 (c) Notwithstanding ss. 743.07 and 985.455(3), ~~and except~~  
 188 ~~as provided in s. 985.47~~, the term of the commitment must be  
 189 until the child is discharged by the department or until he or  
 190 she reaches the age of 21 years. Notwithstanding ss. 743.07,  
 191 985.435, 985.437, 985.439, 985.441, 985.455, and 985.513, and  
 192 except as provided in this section ~~and s. 985.47~~, a child may  
 193 not be held under a commitment from a court under s. 985.439, s.  
 194 985.441(1)(a) or (b), or s. 985.455 after becoming 21 years of  
 195 age.

196 (d) The court may retain jurisdiction over a child

197 committed to the department for placement in a juvenile prison  
 198 or in a high-risk or maximum-risk residential commitment program  
 199 to allow the child to participate in a juvenile conditional  
 200 release program pursuant to s. 985.46. The jurisdiction of the  
 201 court may not be retained after ~~beyond~~ the child's 22nd  
 202 birthday. However, if the child is not successful in the  
 203 conditional release program, the department may use the transfer  
 204 procedure under s. 985.441(4).

205 (e) The court may retain jurisdiction over a child  
 206 committed to the department for placement in an intensive  
 207 residential treatment program for 10-year-old to 13-year-old  
 208 offenders, in the residential commitment program in a juvenile  
 209 prison or, in a residential sex offender program, ~~or in a~~  
 210 ~~program for serious or habitual juvenile offenders as provided~~  
 211 ~~in s. 985.47 or s. 985.483~~ until the child reaches the age of  
 212 21. If the court exercises this jurisdiction retention, it shall  
 213 do so solely for the purpose of the child completing the  
 214 intensive residential treatment program for 10-year-old to 13-  
 215 year-old offenders, in the residential commitment program in a  
 216 juvenile prison, or in a residential sex offender program, ~~or~~  
 217 ~~the program for serious or habitual juvenile offenders~~. Such  
 218 jurisdiction retention does not apply for other programs, other  
 219 purposes, or new offenses.

220 (f) The court may retain jurisdiction over a child  
 221 committed to a juvenile correctional facility or a juvenile  
 222 prison until the child reaches the age of 21 years, specifically  
 223 for the purpose of allowing the child to complete such program.

224 ~~(g)1. Notwithstanding ss. 743.07 and 985.455(3), a serious~~

225 ~~or habitual juvenile offender shall not be held under commitment~~  
 226 ~~from a court under s. 985.441(1)(c), s. 985.47, or s. 985.565~~  
 227 ~~after becoming 21 years of age. This subparagraph shall apply~~  
 228 ~~only for the purpose of completing the serious or habitual~~  
 229 ~~juvenile offender program under this chapter and shall be used~~  
 230 ~~solely for the purpose of treatment.~~

231 ~~2. The court may retain jurisdiction over a child who has~~  
 232 ~~been placed in a program or facility for serious or habitual~~  
 233 ~~juvenile offenders until the child reaches the age of 21,~~  
 234 ~~specifically for the purpose of the child completing the~~  
 235 ~~program.~~

236 (g) ~~(h)~~ The court may retain jurisdiction over a juvenile  
 237 sexual offender who has been placed in a program or facility for  
 238 juvenile sexual offenders until the juvenile sexual offender  
 239 reaches the age of 21, specifically for the purpose of  
 240 completing the program.

241 (h) ~~(i)~~ The court may retain jurisdiction over a child and  
 242 the child's parent or legal guardian whom the court has ordered  
 243 to pay restitution until the restitution order is satisfied. To  
 244 retain jurisdiction, the court shall enter a restitution order,  
 245 which is separate from any disposition or order of commitment,  
 246 on or prior to the date that the court's jurisdiction would  
 247 cease under this section. The contents of the restitution order  
 248 shall be limited to the child's name and address, the name and  
 249 address of the parent or legal guardian, the name and address of  
 250 the payee, the case number, the date and amount of restitution  
 251 ordered, any amount of restitution paid, the amount of  
 252 restitution due and owing, and a notation that costs, interest,

253 penalties, and attorney ~~attorney's~~ fees may also be due and  
 254 owing. The terms of the restitution order are subject to s.  
 255 775.089(5).

256 ~~(i)-(j)~~ This subsection does not prevent the exercise of  
 257 jurisdiction by any court having jurisdiction of the child if  
 258 the child, after becoming an adult, commits a violation of law.

259 Section 7. Subsection (5) of section 985.045, Florida  
 260 Statutes, is amended to read:

261 985.045 Court records.—

262 (5) This chapter does not prohibit a circuit court from  
 263 providing a restitution order containing the information  
 264 prescribed in s. 985.0301(5)(h) ~~985.0301(5)(i)~~ to a collection  
 265 court or a private collection agency for the sole purpose of  
 266 collecting unpaid restitution ordered in a case in which the  
 267 circuit court has retained jurisdiction over the child and the  
 268 child's parent or legal guardian. The collection court or  
 269 private collection agency shall maintain the confidential status  
 270 of the information to the extent such confidentiality is  
 271 provided by law.

272 Section 8. Subsection (2) of section 985.688, Florida  
 273 Statutes, is amended to read:

274 985.688 Administering county and municipal delinquency  
 275 programs and facilities.—

276 (2) A county or municipal government may develop or  
 277 contract for innovative programs that provide rehabilitative  
 278 treatment with particular emphasis on reintegration and  
 279 conditional release for all children in the program, including  
 280 halfway houses and community-based substance abuse treatment

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281 services, mental health treatment services, residential and  
 282 nonresidential programs, and environmental programs, ~~and~~  
 283 ~~programs for serious or habitual juvenile offenders.~~

284 Section 9. Subsection (2) of section 985.721, Florida  
 285 Statutes, is amended to read:

286 985.721 Escapes from secure detention or residential  
 287 commitment facility.—An escape from:

288 (2) Any residential commitment facility described in s.  
 289 985.03(46) ~~985.03(45)~~, maintained for the custody, treatment,  
 290 punishment, or rehabilitation of children found to have  
 291 committed delinquent acts or violations of law; or

292  
 293 constitutes escape within the intent and meaning of s. 944.40  
 294 and is a felony of the third degree, punishable as provided in  
 295 s. 775.082, s. 775.083, or s. 775.084.

296 Section 10. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 183 Misdemeanor Pretrial Substance Abuse Programs

**SPONSOR(S):** Criminal Justice Subcommittee; Moraitis and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 1 N	McAuliffe	Jones Darity
3) Judiciary Committee		Williams <i>AW</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Currently, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not been previously convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the list of persons eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program to include persons who have not previously been convicted of a felony and who have been charged with:

- A nonviolent, nontraffic-related misdemeanor and who have been identified as having a substance abuse problem;
- A misdemeanor for prostitution under s. 796.07, F.S.;
- A misdemeanor for possession of alcohol while under the age of 21 under s. 562.111, F.S.; or
- A misdemeanor for possession of a controlled substance without a valid prescription under s. 499.03(1), F.S.

The bill also expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

The bill may have a fiscal impact on local governments. Persons who successfully complete such programs may have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate, which would be a negative impact. The bill has no expected fiscal impact to the state.

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

Pretrial diversion has been described by the National Association of Pretrial Services Agencies as a voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon successful completion of an individualized program plan, results in a dismissal of the charge.<sup>1</sup> The purpose of a pretrial diversion/intervention program is to enhance justice and public safety through addressing the root cause of the arrest-provoking behaviors of the defendant, reduce the stigma which accompanies a record of conviction, restore victims and assist with the conservation of court and criminal justice resources.<sup>2</sup>

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S.,<sup>3</sup> and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program,<sup>4</sup> for a period based on the program requirements and the treatment plan for the offender. Admission to such a program may be based upon the motion of either party or the court's own motion.<sup>5</sup>

Participants in the program are subject to a coordinated strategy<sup>6</sup> developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.<sup>7</sup>

At the end of the pretrial intervention period, the court is required to consider the recommendation of the treatment program and the recommendation of the state attorney as to disposition of the pending charges.<sup>8</sup> The court must determine, by written finding, whether the defendant successfully completed the pretrial intervention program.<sup>9</sup> If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution.<sup>10</sup> The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.<sup>11</sup>

#### **Effect of the Bill**

As noted above, only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not been previously

---

<sup>1</sup> Performance Standards and Goals for Pretrial Diversion/Intervention National Association of Pretrial Services Agencies November 2008. [http://www.napsa.org/publications/diversion\\_intervention\\_standards\\_2008.pdf](http://www.napsa.org/publications/diversion_intervention_standards_2008.pdf) (last visited on October 10, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act.

<sup>4</sup> Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and sets criteria for such programs.

<sup>5</sup> Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program. Section 948.16(1)(a), F.S.

<sup>6</sup> The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. Section 948.16(1)(b), F.S.

<sup>7</sup> Section 948.16(1)(b), F.S.

<sup>8</sup> Section 948.16(2), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*



convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the list of persons eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program to include persons who have not previously been convicted of a felony and who have been charged with:

- A nonviolent, nontraffic-related misdemeanor and who have been identified as having a substance abuse problem;
- A misdemeanor for prostitution under s. 796.07, F.S.;<sup>12</sup>
- A misdemeanor for possession of alcohol while under the age of 21 under s. 562.111, F.S.;<sup>13</sup> or
- A misdemeanor for possession of a controlled substance without a valid prescription under s. 499.03(1), F.S.<sup>14</sup>

The bill also expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program.

Section 2. Provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

---

<sup>12</sup> "Prostitution" means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses. Section 796.07, F.S.

<sup>13</sup> Section 562.111, F.S., prohibits the possession of alcohol by a person under the age of 21. Any person under the age of 21 who commits the first offense of the possession of alcohol is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083, F.S. Any person under the age of 21 who commits a second offense of possession of alcohol is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 and s. 775.083, F.S.

<sup>14</sup> Section 499.03, F.S., makes the possession of any habit-forming, toxic, harmful, or new drug subject to s. 499.003(33), or prescription drug as defined in s. 499.003(43), a second degree misdemeanor, unless the possession of the drug has been obtained by a valid prescription. These drugs include "new drugs" (s. 499.003(33), F.S.), prescription drugs (s. 499.003(43), F.S.), medicinal drugs (s. 465.003(8), F.S.), misbranded drugs (s. 499.007(13), F.S.), compressed medical gas (s. 499.003(11), F.S.), prescription medical oxygen (s. 499.003(46), F.S.) and veterinary prescription drugs (s. 499.003(53), F.S.).

The bill expands the list of persons eligible to participant in county-funded misdemeanor pretrial substance abuse education and treatment intervention programs. This may have a positive fiscal impact on local governments because persons who successfully complete such programs have their criminal charges dismissed and may not be sentenced to time in local jails. However, counties may need to expend funds to expand their misdemeanor pretrial substance abuse education and treatment programs if more people are eligible to participate, which would be a negative impact.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program. There may be a positive fiscal impact on treatment providers if more people are eligible to participate in such programs.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On October 18, 2011, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarifies that those eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program must have not previously been convicted of a felony. The amendment also corrects a statutory citation relating to the "possession of a control substance without a valid prescription" offense.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1                   A bill to be entitled  
 2           An act relating to misdemeanor pretrial substance  
 3           abuse programs; amending s. 948.16, F.S.; providing  
 4           that a person who has not previously been convicted of  
 5           a felony and who is charged with a nonviolent,  
 6           nontraffic-related misdemeanor and identified as  
 7           having a substance abuse problem or is charged with  
 8           certain other designated misdemeanor offenses may  
 9           qualify for participation in a misdemeanor pretrial  
 10          substance abuse program; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Paragraph (a) of subsection (1) of section  
 15           948.16, Florida Statutes, is amended to read:

16           948.16 Misdemeanor pretrial substance abuse education and  
 17           treatment intervention program.—

18           (1)(a) A person who has not previously been convicted of a  
 19           felony and who is charged with a nonviolent, nontraffic-related  
 20           misdemeanor and identified as having a substance abuse problem  
 21           or is charged with a misdemeanor for possession of a controlled  
 22           substance or drug paraphernalia under chapter 893, prostitution  
 23           under s. 796.07, possession of alcohol while under 21 years of  
 24           age under s. 562.111, or possession of a controlled substance  
 25           without a valid prescription under s. 499.03(1) and who has not  
 26           ~~previously been convicted of a felony nor been admitted to a~~  
 27           ~~pretrial program,~~ is eligible for voluntary admission into a  
 28           misdemeanor pretrial substance abuse education and treatment

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29 intervention program, including a treatment-based drug court  
30 program established pursuant to s. 397.334, approved by the  
31 chief judge of the circuit, for a period based on the program  
32 requirements and the treatment plan for the offender, upon  
33 motion of either party or the court's own motion, except, if the  
34 state attorney believes the facts and circumstances of the case  
35 suggest the defendant is involved in dealing and selling  
36 controlled substances, the court shall hold a preadmission  
37 hearing. If the state attorney establishes, by a preponderance  
38 of the evidence at such hearing, that the defendant was involved  
39 in dealing or selling controlled substances, the court shall  
40 deny the defendant's admission into the pretrial intervention  
41 program.

42 Section 2. This act shall take effect July 1, 2012.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 329 Parole Interview Dates for Certain Inmates

**SPONSOR(S):** Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Trujillo; Perry and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee	15 Y, 0 N, As CS	McAuliffe	Jones Darity
3) Judiciary Committee		Krol TK	Havlicak RH

### SUMMARY ANALYSIS

Currently, the Florida Parole Commission re-interviews parole eligible inmates to review the inmate's presumptive parole release date (PPRD). Generally, inmates are re-interviewed every two years. However, the statute provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., or the inmate was convicted of:

- Murder,
- Attempted murder, or
- Sexual battery or attempted sexual battery.

This bill increases the intervals between parole interview dates from two to seven years for inmates convicted of:

- Kidnapping or attempted kidnapping; or
- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

This bill will not have a fiscal impact on the Commission in Fiscal Year 2012-2013; however the bill will have a minimal positive fiscal impact in subsequent years. The bill is effective on July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Parole is not available for most crimes that were committed on or after October 1, 1983.<sup>1</sup> There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,360 Florida inmates still eligible for parole consideration with about 489 under supervision in the community.<sup>2</sup>

The parole process begins with the setting of a presumptive parole release date (PPRD) by the commission after a hearing examiner reviews the inmate's file, conducts an initial interview with the inmate, and makes an initial recommendation to a panel of commissioners.<sup>3</sup> The PPRD is the tentative parole release date as determined by objective parole guidelines.<sup>4</sup> An inmate may request one review of the initial PPRD within 60 days after notification.<sup>5</sup> Otherwise, the PPRD is not reviewed until a hearing examiner holds subsequent interviews with the inmate.<sup>6</sup>

Subsequent interviews for review of the PPRD may be held every two years or every seven years depending on the offense the inmate was convicted of.<sup>7</sup> Generally, inmates are re-interviewed every two years.<sup>8</sup> However, the statute provides for less frequent reviews if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate was convicted of: murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence under s. 775.082, F.S.<sup>9</sup> In such cases, the subsequent interviews may be conducted every seven years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.<sup>10,11</sup>

Subsequent interviews are limited to determining whether or not information has been gathered that might affect the PPRD.<sup>12</sup> The department is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as an inmate's current progress reports, psychological reports, and disciplinary reports.<sup>13</sup>

After an interview is conducted the hearing examiner sends his or her report and recommendation to a panel of commissioners.<sup>14</sup> The inmate's case is then added to the docket of the next available parole hearing date where the commission will hear public testimony and make a final decision regarding the

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<sup>1</sup>The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

<sup>2</sup>E-mail from Sarah Rumph, Florida Parole Commission, November 4, 2011. (On file with Criminal Justice Subcommittee staff.)

<sup>3</sup>Section 947.172, F.S.

<sup>4</sup>Section 947.005(8), F.S.

<sup>5</sup>Section 947.173(1), F.S.

<sup>6</sup>Section 947.174, F.S.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>Section 947.174(1)(b), F.S.

<sup>10</sup>*Id.*

<sup>11</sup>In addition, s. 947.16(4), F.S., provides that at the time of sentencing, a judge may enter an order to retain jurisdiction over an offender for review of a commission release order to grant parole. If the judge vacates the parole release order and denies the parole, the offender shall be re-interviewed by the commission every two or seven years as determined by the same criteria described in this cited paragraph.

<sup>12</sup>Section 947.174(1)(c), F.S.

<sup>13</sup>Section 947.174(3), F.S.

<sup>14</sup>Rule 23-21.0052, F.A.C.

PPRD recommendation. Inmates are not permitted to attend parole hearings.<sup>15</sup> At parole hearings, victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission.<sup>16</sup> The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings.<sup>17</sup>

The hearing examiner conducts a final interview of the inmate within 90 days of the PPRD in order to set an effective parole release date and to establish a parole release plan.<sup>18</sup> The commission is required to give notice to the sentencing court prior to this final interview.<sup>19</sup> If the court objects to the offender's release, the objection can be an exceptional circumstance under s. 947.173, F.S., for the commission to cancel the final interview and reset the case for future review.<sup>20</sup> If the court does not object and the final interview is held, the commission then holds a final public hearing at which it decides whether the inmate's parole release plan is satisfactory and whether to authorize the effective parole release date and enter a release order.<sup>21</sup>

### **Proposed Changes**

As noted above, the Florida Parole Commission re-interviews parole eligible inmates to review the inmate's presumptive parole release date (PPRD). Generally, inmates are re-interviewed every two years. However, the statute provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., or the inmate was convicted of:

- Murder,
- Attempted murder, or
- Sexual battery or attempted sexual battery.

This bill increases the intervals between parole interview dates from two to seven years for inmates convicted of:

- Kidnapping or attempted kidnapping; or
- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

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

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

Section 4. Reenacts s. 947.165, F.S., relating to objective parole guidelines.

Section 5. Provides an effective date of July 1, 2012.

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<sup>15</sup> Rule 23-21.004, F.A.C.

<sup>16</sup> Section 947.06, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 947.1745(1), F.S.

<sup>19</sup> Section 947.1745(6), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Rule 23-21.015, F.A.C.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

This bill will not have a fiscal impact on the commission in Fiscal Year 2012-2013; however the bill will have a minimal positive fiscal impact in subsequent years. According to the commission, inmates would be informed of any changes to the law regarding subsequent interview dates at their next scheduled interview. They would be informed that, upon passage of this bill, the commission may set a subsequent interview within seven years rather than within two. The bill does not remove the inmate's limited due process rights or the mechanism for the inmate to request the commission to consider setting an earlier interview date which is currently in place.

This bill will have no affect on the current review dates that are presently set for parole eligible inmates. This bill would only affect those inmates whose review dates occur after the effective date of the bill. Therefore, the inmates' interview dates that fall between July 1, 2012 and June 30, 2014, would not be affected by the bill until after that interview when they are informed their next interview would be in seven years instead of two.

The commission staff reviewed the 842 initial, extraordinary, and subsequent interviews from commission dockets from July 1, 2010 through June 30, 2011. Of the total cases docketed, 534 cases have already been given a seven year subsequent interview date; 264 cases would not be affected because their review date is not addressed by the bill and will remain within two years; and 44 cases could be affected by the bill and could have their next interview date set for seven years after they are informed of the law change at their next two year review.

Therefore 44 cases may be affected by the bill in Fiscal Year 2014-2015 and could have their next interview date set within seven years instead of within two years. This would equate a total savings to the Commission of 166 hours annually (44 x 3.78 hours per case) or approximately 1/12 of an FTE for the FY 2010-2011 eligible pool of inmates. It is reasonable to assume that in the subsequent years, the savings should compound as other eligible inmates review dates are changed from two to seven years, but the savings associated with the remaining eligible pool is also expected to be minimal.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

On June 1, 1997, the Legislature changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years.<sup>22</sup> According to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.<sup>23</sup>

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2011, the Criminal Justice Subcommittee approved one amendment and reported the bill favorably as a committee substitute. The amendment clarifies which crimes the phrase "in which a human being is present and a sexual act is completed or attempted" applies to.

On December 7, 2011, the Justice Appropriations Subcommittee approved one amendment that adds convictions for attempted kidnapping, and breaking and entering if a sexual act is attempted or completed, to the offenses that increase the intervals between parole interview dates from two to seven years.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

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<sup>22</sup> Chapter 97-289, L.O.F.

<sup>23</sup> *Tuff v. State*, 732 So.2d 461 (3<sup>rd</sup> DCA 1999).

1                                   A bill to be entitled  
 2           An act relating to parole interview dates for certain  
 3           inmates; amending ss. 947.16, 947.174, and 947.1745,  
 4           F.S.; extending from 2 years to 7 years the period  
 5           between parole interview dates for inmates convicted  
 6           of committing specified crimes; requiring a periodic  
 7           parole interview for an inmate convicted of kidnapping  
 8           or attempted kidnapping or robbery, burglary of a  
 9           dwelling, burglary of a structure or conveyance, or  
 10          breaking and entering, or the attempt thereof of any  
 11          of these crimes, in which a human being is present and  
 12          a sexual act is attempted or completed; reenacting s.  
 13          947.165(1), F.S., relating to objective parole  
 14          guidelines, to incorporate the amendment made by this  
 15          act to s. 947.1745, F.S., in a reference thereto;  
 16          providing an effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. Paragraph (g) of subsection (4) of section  
 21   947.16, Florida Statutes, is amended to read:

22           947.16 Eligibility for parole; initial parole interviews;  
 23   powers and duties of commission.—

24           (4) A person who has become eligible for an initial parole  
 25   interview and who may, according to the objective parole  
 26   guidelines of the commission, be granted parole shall be placed  
 27   on parole in accordance with the provisions of this law; except  
 28   that, in any case of a person convicted of murder, robbery,

29 burglary of a dwelling or burglary of a structure or conveyance  
 30 in which a human being is present, aggravated assault,  
 31 aggravated battery, kidnapping, sexual battery or attempted  
 32 sexual battery, incest or attempted incest, an unnatural and  
 33 lascivious act or an attempted unnatural and lascivious act,  
 34 lewd and lascivious behavior, assault or aggravated assault when  
 35 a sexual act is completed or attempted, battery or aggravated  
 36 battery when a sexual act is completed or attempted, arson, or  
 37 any felony involving the use of a firearm or other deadly weapon  
 38 or the use of intentional violence, at the time of sentencing  
 39 the judge may enter an order retaining jurisdiction over the  
 40 offender for review of a commission release order. This  
 41 jurisdiction of the trial court judge is limited to the first  
 42 one-third of the maximum sentence imposed. When any person is  
 43 convicted of two or more felonies and concurrent sentences are  
 44 imposed, then the jurisdiction of the trial court judge as  
 45 provided herein applies to the first one-third of the maximum  
 46 sentence imposed for the highest felony of which the person was  
 47 convicted. When any person is convicted of two or more felonies  
 48 and consecutive sentences are imposed, then the jurisdiction of  
 49 the trial court judge as provided herein applies to one-third of  
 50 the total consecutive sentences imposed.

51 (g) The decision of the original sentencing judge or, in  
 52 her or his absence, the chief judge of the circuit to vacate any  
 53 parole release order as provided in this section is not  
 54 appealable. Each inmate whose parole release order has been  
 55 vacated by the court shall be reinterviewed within 2 years after  
 56 the date of receipt of the vacated release order and every 2

57 | years thereafter, or earlier by order of the court retaining  
 58 | jurisdiction. However, each inmate whose parole release order  
 59 | has been vacated by the court and who has been:

- 60 |       1. Convicted of murder or attempted murder;
- 61 |       2. Convicted of sexual battery or attempted sexual  
 62 | battery; ~~or~~
- 63 |       3. Convicted of kidnapping or attempted kidnapping;
- 64 |       4. Convicted of robbery, burglary of a dwelling, burglary  
 65 | of a structure or conveyance, or breaking and entering, or the  
 66 | attempt thereof of any of these crimes, in which a human being  
 67 | is present and a sexual act is attempted or completed; or
- 68 |       ~~5.3.~~ Sentenced to a 25-year minimum mandatory sentence  
 69 | previously provided in s. 775.082,

70 |  
 71 | shall be reinterviewed once within 7 years after the date of  
 72 | receipt of the vacated release order and once every 7 years  
 73 | thereafter, if the commission finds that it is not reasonable to  
 74 | expect that parole would be granted during the following years  
 75 | and states the bases for the finding in writing. For an ~~any~~  
 76 | inmate who is within 7 years of his or her tentative release  
 77 | date, the commission may establish a reinterview date before  
 78 | ~~prior to~~ the 7-year schedule.

79 |       Section 2. Paragraph (b) of subsection (1) of section  
 80 | 947.174, Florida Statutes, is amended to read:

81 |       947.174 Subsequent interviews.-

82 |       (1)

83 |       (b) For any inmate convicted of murder or ~~or~~ attempted  
 84 | murder; ~~or~~ sexual battery ~~or~~ attempted sexual battery; kidnapping

85 or attempted kidnapping; or robbery, burglary of a dwelling,  
 86 burglary of a structure or conveyance, or breaking and entering,  
 87 or the attempt thereof of any of these crimes, in which a human  
 88 being is present and a sexual act is attempted or completed, or  
 89 any inmate who has been sentenced to a 25-year minimum mandatory  
 90 sentence previously provided in s. 775.082, and whose  
 91 presumptive parole release date is more than 7 years after the  
 92 date of the initial interview, a hearing examiner shall schedule  
 93 an interview for review of the presumptive parole release date.  
 94 The interview shall take place once within 7 years after the  
 95 initial interview and once every 7 years thereafter if the  
 96 commission finds that it is not reasonable to expect that parole  
 97 will be granted at a hearing during the following years and  
 98 states the bases for the finding in writing. For an ~~any~~ inmate  
 99 who is within 7 years of his or her tentative release date, the  
 100 commission may establish an interview date before the 7-year  
 101 schedule.

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

104 947.1745 Establishment of effective parole release date.—  
 105 If the inmate's institutional conduct has been satisfactory, the  
 106 presumptive parole release date shall become the effective  
 107 parole release date as follows:

108 (6) Within 90 days before the effective parole release  
 109 date interview, the commission shall send written notice to the  
 110 sentencing judge of any inmate who has been scheduled for an  
 111 effective parole release date interview. If the sentencing judge  
 112 is no longer serving, the notice must be sent to the chief judge

113 of the circuit in which the offender was sentenced. The chief  
 114 judge may designate any circuit judge within the circuit to act  
 115 in the place of the sentencing judge. Within 30 days after  
 116 receipt of the commission's notice, the sentencing judge, or the  
 117 designee, shall send to the commission notice of objection to  
 118 parole release, if the judge objects to such release. If there  
 119 is objection by the judge, such objection may constitute good  
 120 cause in exceptional circumstances as described in s. 947.173,  
 121 and the commission may schedule a subsequent review within 2  
 122 years, extending the presumptive parole release date beyond that  
 123 time. However, for an inmate who has been:

- 124 (a) Convicted of murder or attempted murder;
- 125 (b) Convicted of sexual battery or attempted sexual  
 126 battery; ~~or~~
- 127 (c) Convicted of kidnapping or attempted kidnapping;
- 128 (d) Convicted of robbery, burglary of a dwelling, burglary  
 129 of a structure or conveyance, or breaking and entering, or the  
 130 attempt thereof of any of these crimes, in which a human being  
 131 is present and a sexual act is attempted or completed; or
- 132 (e) ~~(e)~~ Sentenced to a 25-year minimum mandatory sentence  
 133 previously provided in s. 775.082,

134  
 135 the commission may schedule a subsequent review under this  
 136 subsection once every 7 years, extending the presumptive parole  
 137 release date beyond that time if the commission finds that it is  
 138 not reasonable to expect that parole would be granted at a  
 139 review during the following years and states the bases for the  
 140 finding in writing. For an ~~any~~ inmate who is within 7 years of

141 his or her release date, the commission may schedule a  
 142 subsequent review before ~~prior to~~ the 7-year schedule. With any  
 143 subsequent review the same procedure outlined above will be  
 144 followed. If the judge remains silent with respect to parole  
 145 release, the commission may authorize an effective parole  
 146 release date. This subsection applies if the commission desires  
 147 to consider the establishment of an effective release date  
 148 without delivery of the effective parole release date interview.  
 149 Notice of the effective release date must be sent to the  
 150 sentencing judge, and either the judge's response to the notice  
 151 must be received or the time period allowed for such response  
 152 must elapse before the commission may authorize an effective  
 153 release date.

154 Section 4. For the purpose of incorporating the amendment  
 155 made by this act to section 947.1745, Florida Statutes, in a  
 156 reference thereto, subsection (1) of section 947.165, Florida  
 157 Statutes, is reenacted to read:

158 947.165 Objective parole guidelines.—

159 (1) The commission shall develop and implement objective  
 160 parole guidelines which shall be the criteria upon which parole  
 161 decisions are made. The objective parole guidelines shall be  
 162 developed according to an acceptable research method and shall  
 163 be based on the seriousness of offense and the likelihood of  
 164 favorable parole outcome. The guidelines shall require the  
 165 commission to aggravate or aggregate each consecutive sentence  
 166 in establishing the presumptive parole release date. Factors  
 167 used in arriving at the salient factor score and the severity of  
 168 offense behavior category shall not be applied as aggravating



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169 | circumstances. If the sentencing judge files a written objection  
170 | to the parole release of an inmate as provided for in s.  
171 | 947.1745(6), such objection may be used by the commission as a  
172 | basis to extend the presumptive parole release date.

173 |       Section 5. This act shall take effect July 1, 2012.

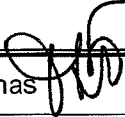



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1227 Certification of 911 Public Safety Telecommunicators

SPONSOR(S): Drake and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee		Thomas 	Havlicak 
2) State Affairs Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill provides that a sworn state-certified law enforcement officer that passes the 911 public safety telecommunicator certification exam is not required to complete a public safety telecommunication training program, provided that the officer:

- Is selected by the chief executive of her or his agency, and
- performs as a public safety telecommunicator only on an occasional or limited basis.

The bill waives the \$75.00 fee for law enforcement officers taking the examination. A law enforcement officer who fails the examination must complete the required safety telecommunication training program before retaking the exam.

The bill will not have a significant fiscal impact on state or local governments.

The bill takes effect July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Legislative History

In 2008, the Legislature established a voluntary certification program for “911 emergency dispatchers.”<sup>1</sup> In 2010, the Legislature amended this program to change it to a mandatory certification program for “911 public safety telecommunicators.”<sup>2</sup>

##### Emergency Telephone Number “911”

Section 365.171, F.S., governs Florida’s public policy on the emergency telephone number “911.” This statute specifies that it is the intent of the Legislature:

to implement and continually update a cohesive statewide emergency communications number “E911” plan for enhanced 911 services which will provide citizens with rapid direct access to public safety agencies by accessing “911” with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services.<sup>3</sup>

The Department of Management Services (DMS) directs the statewide 911 system and is authorized to coordinate the activities of the system with state, county, local, and private agencies. The Enhanced 911 (E911) Board receives and distributes fee revenues for the system and provides annual reports to the Governor and the Legislature regarding expenditures and the status of E911 service in Florida.<sup>4</sup>

All 67 Florida counties have E911 equipment, which allows an emergency dispatch center’s computers to automatically provide a caller’s name, address, and mapped location.<sup>5</sup> The map also identifies the closest police, fire, and emergency medical services (EMS) agencies. Next Generation 911 equipment will include video and data transmission capability.<sup>6</sup>

The E911 Board’s 2009-2010 fiscal year county funding survey identified 286 Public Safety Answering Points statewide with each county having between one and forty of these facilities.<sup>7</sup> There is no standard procedure defining which local agency operates these call centers, but many are managed by Sheriff’s offices, police departments, fire rescue, or a variety of local administrative agencies.<sup>8</sup> The FY 2009-2010 county survey found that 5,213 call takers received over 13.2 million 911 calls statewide.<sup>9</sup>

##### Public Safety Telecommunicators

Public safety telecommunicators (telecommunicators), also known as 911 operators or emergency dispatchers, are often the initial point of contact for the public when emergency assistance is required. Telecommunicators receive emergency calls requesting police, fire, medical, and other urgent situation

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<sup>1</sup> Chapter 2008-51, L.O.F.

<sup>2</sup> Chapter 2010-188, L.O.F.

<sup>3</sup> Section 365.171(2), F.S.

<sup>4</sup> Section 365.172 (5)(a), F.S.

<sup>5</sup> See s. 365.172(2)(i), F.S.

<sup>6</sup> State of Florida E911 Board 2011 Annual Report, *available at*

[http://dms.myflorida.com/suncom/public\\_safety\\_bureau/florida\\_e911/e911\\_board](http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board) (last visited Jan. 17, 2012).

<sup>7</sup> *Id.* See appendix 2.

<sup>8</sup> David Gulliver, Ed., *Florida 911: The State of Emergency*, Gulf Coast Community Foundation of Venice,

<http://www.a911.org/sites/default/files/Florida-911-Report.pdf> (last visited Jan. 17, 2012).

<sup>9</sup> *Supra* note 7.

services. These personnel determine the nature, location, and priority of the situation and communicate this information to emergency units as necessary and in accordance with established procedures. Telecommunicators answer and process 911 calls, maintain contact with all units on assignment, and coordinate status and location of emergency responders as necessary.

### Public Safety Telecommunication Curriculum Framework and Standards

The Division of Workforce Education at the Department of Education (DOE) publishes curriculum frameworks and standards for both public safety telecommunication and law enforcement.

The Public Safety Telecommunication framework is designed to prepare students for employment as police, fire, and ambulance dispatchers. The intended outcomes for the 232-hour Public Safety Telecommunication course include the ability of the dispatcher to do all of the following:

- Describe and demonstrate professional ethics and the role of telecommunicator.
- Describe Guidelines and Operational Standards of call classification and prioritization.
- Identify and explain communication equipment and resources.
- Demonstrate communication and interpersonal skills.
- Perform operational skills.
- Demonstrate understanding of fire department role and responses as well as hazardous materials awareness.
- Demonstrate understanding of emergency medical services role and responses.
- Demonstrate understanding of law enforcement role and responses.
- Understand the duties of a public safety telecommunicator.
- Comprehend stress management techniques.
- Demonstrate an understanding of Emergency Management practices.
- Demonstrate CPR proficiency.<sup>10</sup>

The Public Safety Telecommunication program curriculum is currently taught at various community colleges and vocational/technical centers across the state. Forty-eight public safety agencies have been certified to teach the curriculum since 2008, including thirty-seven local law enforcement agencies.<sup>11</sup>

### Law Enforcement Officer Curriculum Framework and Standards

The Florida DOE curriculum framework for Law Enforcement Officers includes its own set of intended outcomes in its 770-hour course. Seven of the twelve Public Safety Telecommunication outcomes overlap with Law Enforcement Officer training. The five Public Safety Telecommunication outcomes which are not covered by the Law Enforcement Officer curriculum are the first three, relating to the role of telecommunicator, call classification and prioritization, and E911 equipment; the fifth, relating to operational skills; and the tenth, relating to understanding the duties of a public safety telecommunicator.

### Public Safety Telecommunicator Certification

In 2010, the Florida Legislature made several changes to the public safety telecommunication certification provisions of s. 401.465, F.S.<sup>12</sup> Among the changes were the replacement of “911 emergency dispatcher” with “public safety telecommunicator” throughout Florida law and the delineation of a public safety telecommunication training program. A training program is certified by the Department

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<sup>10</sup> Florida Department of Education, *Curriculum Framework, Public Safety Telecommunication* (July 2010) available at [http://www.fldoe.org/workforce/dwdframe/law\\_cluster\\_frame10.asp](http://www.fldoe.org/workforce/dwdframe/law_cluster_frame10.asp) (last visited Jan. 17, 2012).

<sup>11</sup> Florida Department of Health, *911 Public Safety Telecommunicator Program: Overview* (Oct. 4, 2011) available at <http://www.doh.state.fl.us/DEMO/EMS/dispatchers.html> (last visited Jan. 17, 2012).

<sup>12</sup> Section 3, ch. 2010-188, L.O.F.

of Health (DOH) if it meets the DOE's curriculum framework and consists of not less than 232 hours of coursework.

Another significant change to this section in 2010 was the transition of certification from a voluntary to a mandatory procedure. Effective October 1, 2012, all public safety telecommunicators must be certified by DOH if they are employed at an "answering point," defined as a "public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to the calls."<sup>13</sup> To achieve certification, a person must complete an appropriate training program and pass an examination administered by DOH which measures the applicant's competency and proficiency.<sup>14</sup> A certificate is good for two years and expires automatically if not renewed at the end of the two-year period.<sup>15</sup> Twenty hours of training are required for the biennial renewal certification.<sup>16</sup>

Section 401.465(4), F.S., provides that this mandatory public safety telecommunicator certification may be temporarily waived by the DOH in a geographic area of Florida where a state of emergency has been declared by the Governor.

#### Existing Public Safety Telecommunicators, Law Enforcement Officers and Firefighters

Section 401.465(2)(j), F.S., addresses the certification of existing public safety telecommunicators, as well as existing state-certified law enforcement officers and firefighters. Persons who fit these descriptions prior to April 1, 2012, must still pass the examination for certification; however, upon passage of the examination, completion of the training program is waived. Newly employed telecommunicators, law enforcement officers, and firefighters who begin their employment on or after April 1, 2012, will be required to be certified by taking both a training course and passing the exam.

In a 2010 Advisory Legal Opinion, Florida Attorney General Bill McCollum addressed a question posed by the Chief of Police in Springfield, Florida, as to whether the law now required "all law enforcement officers who are likely to work in the city's dispatch center and serve as a call-taker and dispatcher of 911 calls to be trained and certified?" The Attorney General opined that certification is the only requirement. McCollum stated:

... it is my opinion that pursuant to section 401.465(2)(a), Florida Statutes, any public agency employee whose duties and responsibilities include answering, receiving, transferring, and dispatching functions related to 911 calls or supervising or serving as the command officer to a person or persons having these duties and responsibilities at a public safety answering point is required to be certified by the Department of Health by October 1, 2012. Training requirements are dependent upon personnel's length of employment as a 911 public safety telecommunicator.<sup>17</sup>

#### Florida Department of Law Enforcement E911 Training Efforts

The Florida Department of Law Enforcement (FDLE) is working to develop a 40-hour training program in E911 Public Safety communication for sworn law enforcement officers for which approval as a specialized course will be sought from the Criminal Justice Standards and Training Commission. The training program will be a combination of hands-on and on-line training. The hands-on training portion could be delivered by public safety agency training departments, and the online segment would be made available by FDLE via its current system for on-line training and delivery at no cost to officers of their agency.

<sup>13</sup> Section 365.172(3)(a), F.S. A trainee may be employed for a period of less than 12 months if this person is working under the direct supervision of a certified telecommunicator and is also enrolled in a public safety telecommunication training program.

<sup>14</sup> See s. 401.465(2)(d), F.S. An alternative process for initial certification of existing public safety telecommunicators will expire also on Oct. 1, 2012.

<sup>15</sup> Section 401.465(2)(f), F.S.

<sup>16</sup> Section 401.465(2)(e), F.S.

<sup>17</sup> Op. Atty Gen. Fla. 10-27 (2010).

## **Effect of the Bill**

The bill amends the definition of a "911 public safety telecommunicator" in s. 401.465(1)(a), F.S., to exclude a sworn state-certified law enforcement officer --- selected by the chief executive of her or his agency --- who performs on an occasional or limited basis as a public safety telecommunicator.

The bill further provides that a law enforcement officer that passes the 911 public safety telecommunicator certification exam, is not required to complete a public safety training program, provided that the officer:

1. Only performs as a public safety telecommunicator on an occasional and limited basis.
2. Is selected by the chief executive of her or his agency.

The bill waives the \$75.00 examination fee for law enforcement officers taking the examination under this new provision. A law enforcement officer who fails the examination must complete the required public safety telecommunication training program before retaking the exam.

The bill takes effect on July 1, 2012.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 401.465, F.S., relating to 911 public safety telecommunicator certification.

Section 2 provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill waives examination fees for law enforcement officers, fees that are now collected by DOH. The fee is set by DOH and is presently set at the statutory cap of \$75. It is unknown at this time how many fees will be waived under this bill.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill will likely reduce costs for local governments by allowing them to occasionally utilize law enforcement officers as public safety telecommunicators if the officers have passed the statutorily-mandated certification exam. In addition, the bill waives examination fees for law enforcement officers.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A



1                                   A bill to be entitled  
2           An act relating to certification of 911 public safety  
3           telecommunicators; amending s. 401.465, F.S.; revising  
4           the definition of the term "911 public safety  
5           telecommunicator" to exclude certain law enforcement  
6           officers; revising requirements for certification of  
7           911 public safety telecommunicators; providing  
8           conditions under which the requirement for completion  
9           of a public safety telecommunication training program  
10          may be waived for certain law enforcement officers;  
11          providing for exemption from the examination fee;  
12          providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. Paragraph (a) of subsection (1) and paragraphs  
17           (d) and (j) of subsection (2) of section 401.465, Florida  
18           Statutes, are amended, paragraph (k) of subsection (2) is  
19           redesignated as paragraph (l), and a new paragraph (k) is added  
20           to subsection (2) of that section, to read:

21           401.465 911 public safety telecommunicator certification.—

22           (1) DEFINITIONS.—As used in this section, the term:

23           (a) "911 public safety telecommunicator" means a public  
24           safety dispatcher or 911 operator whose duties and  
25           responsibilities include the answering, receiving, transferring,  
26           and dispatching functions related to 911 calls; dispatching law  
27           enforcement officers, fire rescue services, emergency medical  
28           services, and other public safety services to the scene of an

29 emergency; providing real-time information from federal, state,  
 30 and local crime databases; or supervising or serving as the  
 31 command officer to a person or persons having such duties and  
 32 responsibilities. However, the term does not include  
 33 administrative support personnel, including, but not limited to,  
 34 those whose primary duties and responsibilities are in  
 35 accounting, purchasing, legal, and personnel, or sworn state-  
 36 certified law enforcement officers selected by their chief  
 37 executive to perform on an occasional or limited basis as a  
 38 public safety telecommunicator.

39 (2) PERSONNEL; STANDARDS AND CERTIFICATION.--

40 (d) The department shall determine whether the applicant  
 41 meets the requirements specified in this section and in rules of  
 42 the department and shall issue a certificate to any person who  
 43 meets such requirements. Such requirements must include the  
 44 following:

- 45 1. Completion of an appropriate 911 public safety  
 46 telecommunication training program;
- 47 2. Certification under oath that the applicant is not  
 48 addicted to alcohol or any controlled substance;
- 49 3. Certification under oath that the applicant is free  
 50 from any physical or mental defect or disease that might impair  
 51 the applicant's ability to perform his or her duties;
- 52 4. Submission of the application fee prescribed in  
 53 subsection (3);
- 54 5. Submission of a completed application to the department  
 55 which indicates compliance with subparagraphs 1., 2., and 3.;
- 56 and

57           6. Effective October 1, 2012, passage of an examination  
 58 approved ~~administered~~ by the department which measures the  
 59 applicant's competency and proficiency in the subject material  
 60 of the public safety telecommunication training program.

61           (j) If a person was employed as a 911 public safety  
 62 telecommunicator, ~~a sworn state-certified law enforcement~~  
 63 ~~officer~~, or a state-certified firefighter before April 1, 2012,  
 64 he or she must pass the examination administered by the  
 65 department which measures the competency and proficiency in the  
 66 subject material of the public safety telecommunication program,  
 67 as defined in paragraph (1)(c). Upon passage of the examination,  
 68 the completion of the public safety telecommunication training  
 69 program shall be waived.

70           (k)1. The requirement for completion of a public safety  
 71 telecommunication training program is waived for a person  
 72 employed as a sworn state-certified law enforcement officer  
 73 selected by his or her chief executive to perform on an  
 74 occasional or limited basis as a public safety telecommunicator  
 75 if the person passes the department-approved examination that  
 76 measures the competency and proficiency of an applicant in the  
 77 subject material comprising the public safety telecommunication  
 78 program.

79           2. A sworn state-certified law enforcement officer who  
 80 fails an examination taken under subparagraph 1. must take a  
 81 department-approved public safety telecommunication training  
 82 program prior to retaking the examination.

83           3. The testing required under this paragraph is exempt  
 84 from the examination fee required under subsection (3).

HB 1227

2012

85

Section 2. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4047 Judicial Census Commissions  
SPONSOR(S): Bernard  
TIED BILLS: None IDEN./SIM. BILLS: SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Cary	Bond
2) Judiciary Committee		Cary <i>JML</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

The Legislature created judicial census commissions to determine the population of a judicial circuit. The Florida Constitution formerly required one circuit judge for every 50,000 people in a judicial circuit. The Constitution was amended in 1973 to provide for different method of determining the number of circuit judges.

This bill repeals the statutory provision related to judicial census commissions.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Section 26.011, F.S., provides that the Legislature may, from time to time, create a commission to determine the population of a judicial circuit. This "judicial census commission" may report to the Governor and the Governor may, by proclamation, announce the population of a circuit.

A judicial census commission was once useful because prior versions of the Florida Constitution provided for 1 circuit judge for every 50,000 people. For example, article V, section 6 of the 1968 Constitution provided:

(2) Circuit Judges. The legislature shall provide for one circuit judge in each circuit for each fifty thousand inhabitants or major fraction thereof according to the last census authorized by law. In circuits having more than one judge the legislature may designate the place of residence of any such additional judge or judges.

This provision was removed from the Constitution effective in 1973<sup>1</sup> and replaced with the current system where the Supreme Court certifies the need for additional judges to the Legislature prior to each legislative session.<sup>2</sup>

This bill repeals s. 26.011, F.S.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 26.011, F.S., relating to census commissions.

Section 2 provides an effective date of July 1, 2012.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

<sup>1</sup> SJR 52-D (1971), adopted in 1972 and effective January 1, 1973.

<sup>2</sup> Article V, s. 9, Fla. Const.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



HB 4047

2012

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A bill to be entitled  
An act relating to judicial census commissions;  
repealing s. 26.011, F.S., relating to judicial census  
commissions; providing an effective date.

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

Section 1. Section 26.011, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4049 Veteran's Guardianship  
SPONSOR(S): Bernard  
TIED BILLS: None IDEN./SIM. BILLS: SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Caridad	Bond
2) Judiciary Committee		Caridad <i>DC</i>	Havlicak <i>RN</i>

SUMMARY ANALYSIS

This bill repeals an obsolete provision of the guardianship statute. The statutory provision relates to statutory construction of Veteran's Guardianship Act and contains statutory references which have been repealed. The same rules of statutory construction are contained in the Veteran's Guardianship Act without the reference to repealed statutes.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Part VIII of ch. 744, F.S., is Florida's "Veteran's Guardianship Law."<sup>1</sup> Section 744.602(2), provides:

The application of this part is limited to veterans and other persons who are entitled to receive benefits from the United States Department of Veterans Affairs. This part is not intended to replace the general law relating to guardianship except insofar as this part is inconsistent with the general law relating to guardianship; in which event, this part and the general law relating to guardianship shall be read together, with any conflict between this part and the general law of guardianship to be resolved by giving effect to this part.

Section 744.103, F.S., provides:

The provisions of this law shall extend to incapacitated world war veterans, provided for in chapters 293 and 294 or any amendment or revision of them. The provisions of this law are cumulative to those chapters. Any conflict between chapters 293 and 294, or any amendment or revision of them, and this law shall be resolved by giving effect to those chapters.

This bill repeals s. 744.103, F.S., which is obsolete because chapters 293 and 294, F.S., were repealed or transferred to ch. 744, F.S.<sup>2</sup> Section 744.103, F.S., references repealed chapters of the Florida Statutes. The statutory construction provisions in s. 744.103, F.S., are also contained in s. 744.602(2), F.S.

The effect of this bill is to repeal an obsolete statutory section. This bill does not change the law relating to veteran's guardianship.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 744.103, F.S., relating to guardians of incapacitated world war veterans.

Section 2 provides an effective date of July 1, 2012.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

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<sup>1</sup> Section 744.602(1), F.S.

<sup>2</sup> Chapter 84-62, L.O.F.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

HB 4049

2012

1                   A bill to be entitled  
2           An act relating to veteran's guardianship; repealing  
3           s. 744.103, F.S., relating to guardians of  
4           incapacitated world war veterans; providing an  
5           effective date.

6

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

8

9           Section 1. Section 744.103, Florida Statutes, is repealed.

10          Section 2. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4055 Supreme Court  
SPONSOR(S): Metz  
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 4 N	Cary	Bond
2) Judiciary Committee		Cary <i>JMC</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

This bill repeals statutes relating to the Florida Supreme Court that prohibit justices of the Supreme Court drawing retirement compensation from engaging in the practice of law, require the Supreme Court to appoint a Clerk of the Supreme Court, require the Clerk to have an office in the Supreme Court Building, require the clerk to perform duties as directed by the Court, and provide that when rules and statutes conflict, the rule supersedes the statute.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Retired Justices**

This bill repeals s. 25.151, F.S., a 1957 law that prohibits a retired justice from engaging in the practice of law.<sup>1</sup> This statute is likely unconstitutional as it encroaches on the judiciary's exclusive directive to regulate attorneys.<sup>2</sup> In 1973, the Florida Supreme Court found unconstitutional a substantially similar provision in the Florida Retirement System statutes.<sup>3</sup> Repealing this obsolete law removes a provision from the statutes that is likely unconstitutional and not presently enforced.

##### **Clerk of the Supreme Court**

This bill repeals ss. 25.191, 25.211, and 25.231, F.S. These 1957 statutes require the appointment of a Clerk of the Supreme Court, require the clerk have an office in the Supreme Court Building, and require that the clerk perform duties as directed by the court.<sup>4</sup> However, the subsequently-adopted Florida Constitution directs the Supreme Court to appoint a clerk who is to perform duties as the court directs<sup>5</sup>, making the statutes redundant. The only substantive change to the law after repealing these three sections is that the clerk would no longer be required to have an office in the Supreme Court Building.

##### **Rules of the Court**

This bill repeals s. 25.371, F.S. This 1957 statute provides that a rule of the Supreme Court concerning practice and procedure supersedes a contrary statutory provision.<sup>6</sup> Art. V, s. 2(a), Fla. Const., provides, "[t]he Supreme Court shall adopt rules for the practice and procedure in all courts." The Supreme Court of Florida has held that where the court has promulgated rules relating to practice and procedure, contrary statutes are unconstitutional to the extent of the conflict.<sup>7</sup> Repeal of this statutory provision will not remove the ability of the Supreme Court's power to promulgate rules of practice and procedure, as this power is a constitutional power under Art. V, s. 2(a). The Court has never cited to this statute; rather, it cites to the Constitutional provisions when deciding cases where a court rule contradicts a statute.<sup>8</sup>

#### B. SECTION DIRECTORY:

Section 1 repeals s. 25.151, F.S., relating to a retired justice practicing law.

Section 2 repeals s. 25.191, F.S., relating to Clerk of the Supreme Court.

Section 3 repeals s. 25.211, F.S., relating to the clerk's office.

Section 4 repeals s. 25.231, F.S., relating to the clerk's duties.

Section 5 repeals s. 25.371, F.S., relating to the court's rulemaking power.

Section 6 provides an effective date of July 1, 2012.

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<sup>1</sup> L.O.F. 57-274, Sec. 1.

<sup>2</sup> ART. V, SEC. 15, FLA. CONST.

<sup>3</sup> *In re The Florida Bar-Code of Judicial Conduct*, 281 So.2d 21 (Fla. 1973).

<sup>4</sup> L.O.F. 57-274, Sec. 1.

<sup>5</sup> ART. V, SEC. 3, FLA. CONST.

<sup>6</sup> L.O.F. 57-274, Sec. 1.

<sup>7</sup> *See e.g., Massey v. David*, 976 So.2d 931, 937 (Fla. 2008).

<sup>8</sup> *See e.g., Massey* (Fla. 2008).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

n/a

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4073 Florida Motor Vehicle Theft Prevention Authority

**SPONSOR(S):** Young and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N	Williams	Cunningham
2) Judiciary Committee		Williams <i>AW</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

In 1992, the Legislature created the Florida Motor Vehicle Theft Prevention Act (Act), which established the Florida Motor Vehicle Theft Prevention Authority (Authority) within the Department of Legal Affairs. The purpose of the Act was to prevent, combat, and reduce motor vehicle theft in Florida.

The Authority was funded by the Florida Motor Vehicle Theft Prevention Trust Fund (Trust Fund). The Trust Fund was abolished in 2003. According to the Office of the Attorney General (OAG), the OAG has not administered the Authority since funding was eliminated. However, statutes relating to the Authority still exist, despite the program not being operational.

The bill repeals obsolete statutes relating to the Authority. Specifically, the bill repeals the following provisions:

- Section 860.151, F.S., (Short title);
- Section 860.152, F.S., (Purpose);
- Section 860.153, F.S., (Definitions);
- Section 860.154, F.S., (Florida Motor Vehicle Theft Prevention Authority);
- Section 860.155, F.S., (Compensation of members);
- Section 860.156, F.S., (Personnel);
- Section 860.157, F.S., (Powers and duties of the authority); and
- Section 860.158, F.S., (Florida Motor Vehicle Theft Prevention Authority Expenditures).

The bill also amends s. 713.78, F.S., (Liens for recovering, towing, or storing vehicles and vessels) to remove a reference to the Authority.

The bill does not appear to have a fiscal impact and is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida Motor Vehicle Theft Prevention Act - Background**

In 1992, the Legislature created the Florida Motor Vehicle Theft Prevention Act (Act).<sup>1</sup> The purpose of the Act was to prevent, combat, and reduce motor vehicle theft in Florida, and to improve and support the law enforcement, prosecution, and administration of motor vehicle theft laws.<sup>2</sup> The Act also established the Florida Motor Vehicle Theft Prevention Authority (Authority), within the Department of Legal Affairs.<sup>3</sup>

##### *Powers and Duties of the Authority*

The power and duties of the Authority include:

- Applying for, soliciting, receiving, establishing priorities for, allocating, disbursing, contracting for, and spending funds that are made available to the Authority from any source to effectuate the purposes of the Act;
- Assessing the scope of the problem of motor vehicle theft;
- Developing and sponsoring the implementation of statewide plans and strategies to combat motor vehicle theft and to improve the administration of the motor vehicle theft laws and provide an effective forum for identification of critical problems associated with motor vehicle theft;
- Coordinating the development, adoption, and implementation of plans and strategies relating to interagency or intergovernmental cooperation with respect to motor vehicle theft law enforcement; and
- Providing an annual report on the activities of the Authority to specified entities.<sup>4</sup>

##### *Membership of the Authority*

The powers and duties of the Authority are vested in and exercised by a Board of Directors (Board), established within the Authority, which includes the following members:

- The Chief Financial Officer or his or her designee;
- The executive director of the Department of Highway Safety and Motor Vehicles;
- The executive director of the Department of Law Enforcement;
- Six additional members, each of whom are appointed by the Attorney General as follows: a state attorney or city or county executive, a chief executive law enforcement official, a sheriff, one representative of companies authorized to sell motor vehicle insurance, one representative of insurers authorized to write motor vehicle insurance in this state, and one representative of purchasers of motor vehicle insurance in this state who is not employed by or connected with the business of insurance.<sup>5</sup>

##### *Florida Motor Vehicle Theft Prevention Trust Fund*

In addition to the Authority, the Act created the Florida Motor Vehicle Theft Prevention Trust Fund (Trust Fund).<sup>6</sup> The Trust Fund was funded pursuant to s. 320.08046, F.S., which appropriated 18 percent of a \$1 license tax<sup>7</sup> surcharge (vehicle registration fee) to the Trust Fund.<sup>8</sup> Trust Fund dollars were required to be used to:

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<sup>1</sup> Chapter 1992-145, L.O.F.

<sup>2</sup> Section 860.152, F.S.

<sup>3</sup> Section 860.154, F.S.

<sup>4</sup> Section 860.157, F.S.

<sup>5</sup> Section 860.154, F.S.

<sup>6</sup> Chapter 1992-145, L.O.F.

<sup>7</sup> Section 320.08, F.S., imposes license taxes.

<sup>8</sup> In 1992, s. 320.08045, F.S., imposed a 50 cent surcharge on each license tax, which was deposited into the Trust Fund. This statute was repealed in 1995. That same year, s. 320.08046, F.S., was amended to revise the surcharge on license taxes and to provide guidelines for surcharge distribution to the Trust Fund. See ch. 1992-145, L.O.F., and ch. 1995-267, L.O.F.

- Pay the Authority's cost to administer the Board and the Trust Fund; and
- Achieve the purposes and objectives of the Act.<sup>9</sup>

In 2003, the Legislature terminated the Trust Fund and amended s. 320.08046, F.S., to remove the language appropriating 18 percent of the \$1 license tax surcharge to the Trust Fund.<sup>10</sup> As a result, the Authority has not been funded since 2003. According to the Office of the Attorney General (OAG), the OAG has not administered the Authority since funding was eliminated.<sup>11</sup> However, statutes relating to the Authority still exist, despite the program not being operational.

### **Effect of the Bill**

The bill repeals statutes relating to the Authority. Specifically, the bill repeals the following provisions:

- Section 860.151, F.S., (Short title);
- Section 860.152, F.S., (Purpose);
- Section 860.153, F.S., (Definitions);
- Section 860.154, F.S., (Florida Motor Vehicle Theft Prevention Authority);
- Section 860.155, F.S., (Compensation of members);
- Section 860.156, F.S., (Personnel);
- Section 860.157, F.S., (Powers and duties of the authority); and
- Section 860.158, F.S., (Florida Motor Vehicle Theft Prevention Authority Expenditures).

The bill also makes a conforming change to s. 713.78, F.S., (Liens for recovering, towing, or storing vehicles and vessels), to delete a reference to s. 860.158, F.S.

### **B. SECTION DIRECTORY:**

Section 1. Repeals ss. 860.151, 860.152, 860.153, 860.154, 860.155, 860.156, 860.157, and 860.158, F.S., relating to the Florida Motor Vehicle Theft Prevention Authority.

Section 2. Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

Section 3. Provides an effective date of July 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state government expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

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<sup>9</sup> Chapter 1992-145, L.O.F.

<sup>10</sup> Chapter 2003-179, L.O.F.

<sup>11</sup> Email response from Kimberly Case, Legislative Affairs Director, Office of the Attorney General. November 3, 2011. (On file with House Criminal Justice Subcommittee Staff).

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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 the 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 and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**





HB 4073

2012

29 operator's lien.

30 Section 3. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4077 Actions for Damages  
SPONSOR(S): Metz  
TIED BILLS: None IDEN./SIM. BILLS: SB 1268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Caridad	Bond
2) Judiciary Committee		Caridad <i>JDC</i>	Havlicak <i>RN</i>

SUMMARY ANALYSIS

Current law provides that a court may require the parties to attend a settlement conference. This bill repeals the statutory provision regarding such conferences.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Section 768.75, F.S., was enacted as part of the Tort Reform and Insurance Act of 1986.<sup>1</sup> It provides that in any action to which the provisions regarding damages for negligence apply, the court may require a settlement conference to be held at least three weeks before the date set for trial. Attorneys who will conduct the trial, parties, and persons with authority to settle must attend the settlement conference held before the court unless excused by the court for good cause.

Section 38.10, F.S., provides that a judge shall be disqualified for prejudice against a party in an action before the court. A judge's mere knowledge of settlement proceedings does not constitute grounds for disqualification based on prejudice.<sup>2</sup> However, ex parte communication between the judge and a party is grounds for disqualification.<sup>3</sup>

Section 44.102, F.S., provides that a court, upon the request of a party, must refer the action for monetary damages at issue to mediation. This statute was passed in 1987.

The bill repeals s. 768.75, F.S.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 768.75, F.S., relating to optional settlement conference in certain tort actions.

Section 2 provides that the act shall take effect upon becoming law.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

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<sup>1</sup> Ch. 86-160, L.O.F.

<sup>2</sup> See *Enterprise Leasing Co. v. Jones*, 750 So.2d 114 (Fla. 5th DCA 1999) (holding that judge's mere knowledge of settlement negotiations and offers did not require disqualification).

<sup>3</sup> See, e.g., *Klapper-Barrett v. Nurell*, 742 So.2d 851 (Fla. 5th DCA 1999) (holding that judge's ex parte communication with a party in a dissolution of marriage proceeding regarding settlement negotiations warranted a grant of a motion to recuse).

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

HB 4077

2012

1                                    A bill to be entitled  
2                    An act relating to actions for damages; repealing s.  
3                    768.75, F.S., relating to an optional settlement  
4                    conference in certain tort actions; providing an  
5                    effective date.

6  
7    Be It Enacted by the Legislature of the State of Florida:

8  
9                    Section 1.    Section 768.75, Florida Statutes, is repealed.

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





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4093 Court Costs  
SPONSOR(S): Porter  
TIED BILLS: None IDEN./SIM. BILLS: SB 882

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Cary	Bond
2) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

This bill repeals an 1861 law that prohibits the Clerk of the Supreme Court from charging a losing party in the Supreme Court for copies of the record provided to the Attorney General.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Section s. 57.101, F.S. was first enacted in 1861.<sup>1</sup> The original context of the law was that the Clerk of the Supreme Court may not charge a losing party for copies that the Clerk is required to provide to the Attorney General.<sup>2</sup> That context has been lost in the subsequent shuffling of provisions of the Florida Statutes. Today, the statute simply provides that a person may not be charged a fee for something the person did not order or request.<sup>3</sup>

This bill repeals s. 57.101, F.S.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 57.101, F.S., relating to court costs.

Section 2 provides an effective date of July 1, 2012.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

None.

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<sup>1</sup> L.O.F. ch. 1137, s. 5, F.S., 1861.

<sup>2</sup> L.O.F. ch. 1137, F.S., 1860.

<sup>3</sup> Section 57.101, F.S.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 4093

2012

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A bill to be entitled  
An act relating to court costs; repealing s. 57.101,  
F.S., relating to the taxing of costs in the Supreme  
Court for copies of records of any paper on file in  
the Supreme Court ordered by a losing party or his or  
her attorney; providing an effective date.

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

- Section 1. Section 57.101, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4133 District Courts of Appeal  
**SPONSOR(S):** Gaetz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Bond	Bond
2) Judiciary Committee		Bond <i>YTB</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

This bill repeals a 1957 law that provides that a district court of appeal may enact regulations regarding the internal government of the court.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Section 35.07, F.S., enacted in 1957, provides that a district court of appeal "may make such regulations as necessary for the internal government of the court," provided that such regulations do not conflict with rules of practice and procedure enacted by the Supreme Court.

All entities, government or not, have the inherent power to manage their internal affairs, provided that such management complies with constitutional and statutory law. Article V, s. 2(a) of the state constitution gives the Supreme Court power to enact rules of practice and procedure regarding "the administrative supervision of all courts." The Supreme Court has enacted rules governing the internal management of the district courts.<sup>1</sup> Accordingly, the statute appears unnecessary.

This bill repeals s. 35.07, F.S.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 35.07, F.S., relating to power to make rules and regulations.

Section 2 provides an effective date of July 1, 2012.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

#### D. FISCAL COMMENTS:

None.

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<sup>1</sup> See generally, the Florida Rules of Appellate Procedure, and the Florida Rules of Judicial Administration.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.



HB 4133

2012

1                   A bill to be entitled  
2           An act relating to district courts of appeal;  
3           repealing s. 35.07, F.S., relating to the district  
4           courts of appeal's authority to make rules and  
5           regulations for their internal government; providing  
6           an effective date.

7

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

9

10           Section 1. Section 35.07, Florida Statutes, is repealed.

11           Section 2. This act shall take effect July 1, 2012.