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# **Criminal Justice Subcommittee**

**January 25, 2012**

**11:00 AM**

**404 HOB**

**Dean Cannon  
Speaker**

**Gayle Harrell  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Wednesday, January 25, 2012 11:00 am

**End Date and Time:** Wednesday, January 25, 2012 01:30 pm

**Location:** 404 HOB

**Duration:** 2.50 hrs

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


HB 37 Offenses by Caregivers of Minor Children by Diaz, Plakon  
CS/HB 943 Background Screening by Health & Human Services Access Subcommittee, Holder  
HB 949 Juvenile Justice Education and Workforce Programs by Baxley  
HB 1021 Agriculture by Albritton  
HB 1173 Criminal Gang Prevention by Ingram  
HB 1285 Criminal Conduct by Schwartz  
HB 1323 Metal Theft by Drake  
HB 1443 Public Nuisances by Frishe

**NOTICE FINALIZED on 01/23/2012 16:17 by hudson.jessica**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 37 Offenses by Caregivers of Minor Children  
**SPONSOR(S):** Diaz; Plakon and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 84; SB 86; SB 146

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

### SUMMARY ANALYSIS

Currently, Florida law does not make it a crime to fail to report a missing child or to fail to report the death of a child.

The bill creates s. 827.10, F.S., to make it a third degree felony for any caregiver of a child 12 years or younger to willfully or by culpable negligence fail to make contact or otherwise verify the whereabouts and safety of the child for a period of 48 hours and to immediately report the child missing to law enforcement after the 48-hour period expires without contact. The penalty is increased to a second degree felony if the child suffers great bodily harm, permanent disability, or permanent disfigurement while missing.

The bill creates s. 827.11, F.S., to make it a second degree felony for any caregiver of a minor child to fail to report:

- The child's death to a law enforcement agency within 2 hours; or
- The location of the child's corpse to a law enforcement agency within 2 hours.

Section 837.055, F.S., currently makes it a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

The bill increases the penalty to a second degree felony if the person who knowingly and willfully gives false information is a caregiver and the missing person investigation or felony criminal investigation involves a minor in his or her care.

On December 14, 2011, the Criminal Justice Impact Conference determined that the bill will have an insignificant prison bed impact on the Department of Corrections.

The bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Failure to Report a Missing Child**

Currently, New Jersey is the only state in the country that has enacted a statute that makes it a crime to fail to report a missing child.<sup>1</sup> However, legislation regarding the failure to report a missing child has been filed in the U.S. Congress and in 14 states.<sup>2</sup>

##### *Effect of the Bill*

The bill creates s. 827.10, F.S., which makes it a third degree felony for a caregiver to willfully or by culpable negligence fail to:

- Make contact or otherwise verify the whereabouts and safety of a child in his or her care who is 12 years of age or younger for a period of 48 hours, and
- Immediately report the child as missing to law enforcement after this 48-hour period expires without contact.

The penalty is enhanced to a second degree felony if the child suffers great bodily harm, permanent disability, or permanent disfigurement while missing.

##### **Failure to Report a Child's Death**

Currently, New Jersey is the only state in the country that has enacted a statute that makes it a crime to fail to report the death of a child.<sup>3</sup> However, legislation regarding the failure to report the death of a child has been filed in the U.S. Congress and in 11 states.<sup>4</sup>

While Florida has no law criminalizing the failure to report the death of a child, s. 406.12, F.S., provides that it is the duty of any person<sup>5</sup> aware of a death occurring under specified circumstances, to report the death and circumstances to the district medical examiner.

Section 406.11(1)(a)1.-12., F.S., lists the specified circumstances as when a person in the state dies:

- Of criminal violence;
- By accident;
- By suicide;
- Suddenly, when in apparent good health;
- Unattended by a practicing physician or other recognized practitioner;
- In any prison or penal institution;
- In police custody;
- In any suspicious or unusual circumstance;
- By criminal abortion;
- By poison;
- By disease constituting a threat to public health; or
- By disease, injury, or toxic agent resulting from employment.

It is a first degree misdemeanor<sup>6</sup> for any person to:

- Knowingly fail or refuse to report such death and circumstances,

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<sup>1</sup> P.L. 2011, c. 174. Approved by the governor on January 5, 2012.

<sup>2</sup> "Filed Caylee Legislation." November 28, 2011. <http://www.ncsl.org/issues-research/civil-and-criminal-justice/filed-quotcaylees-law-quot-legislation.aspx> (last visited January 18, 2012).

<sup>3</sup> *Supra*, P.L. 2011, c. 174.

<sup>4</sup> *Supra*, "Filed Caylee Legislation."

<sup>5</sup> The person must be located in the district where the death occurs. "District" includes all municipalities and unincorporated and federal areas. Section 406.12, F.S.

<sup>6</sup> Punishable by up to 1 year imprisonment and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

- Refuse to make available prior medical or other information pertinent to the death investigation, or
- Without an order from the office of the district medical examiner, willfully touch, remove, or disturb the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death.<sup>7</sup>

*Effect of the Bill*

The bill creates s. 827.11, F.S., to provide that it is a second degree felony if a caregiver of a minor child fails to report:

- The child's death to a law enforcement agency within 2 hours after learning about the child's death; or
- The location of the child's corpse to a law enforcement agency within 2 hours after learning the location of the corpse, if the child's death appears to have been one described in s. 406.11(1)(a), F.S., other than a death:
  - In a prison or penal institution,
  - In police custody, or
  - By criminal abortion.

**Providing False Information to Law Enforcement during an Investigation**

Section 837.055, F.S., provides it is a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

*Effect of the Bill*

The bill increases the penalty to a second degree felony if the person who knowingly and willfully gives false information is a caregiver and the missing person investigation or felony criminal investigation involves a minor in his or her care.

**B. SECTION DIRECTORY:**

Section 1. Cites this act as "Caylee's Law."

Section 2. Creates s. 827.10, F.S., relating to missing child; duty to report.

Section 3. Creates s. 827.11, F.S., relating to death of a child or location of a child's corpse; reporting requirements.

Section 4. Amends s. 837.055, F.S., relating to false information to law enforcement during investigation.

Section 5. 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:

On December 14, 2011, the Criminal Justice Impact Conference determined that the bill will have an insignificant prison bed impact on the Department of Corrections.<sup>8</sup>

<sup>7</sup> Section 406.12, F.S.

<sup>8</sup> "2012 Session Bills and Links to Backup Materials." Office of Economic & Demographic Research. [http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC\\_12.xls](http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC_12.xls) (last visited on January 18, 2012).

**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:

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 37

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1                                   A bill to be entitled  
 2           An act relating to offenses by caregivers of minor  
 3           children; providing a short title; creating s. 827.10,  
 4           F.S.; penalizing the failure of a caregiver, willfully  
 5           or by culpable negligence, to make contact with a  
 6           child under a specified age in his or her care for a  
 7           certain period and to immediately report the child as  
 8           missing to law enforcement after that period expires  
 9           without contact in certain circumstances; providing  
 10          criminal penalties; providing enhanced criminal  
 11          penalties in certain circumstances; creating s.  
 12          827.11, F.S.; requiring the caregiver of a minor child  
 13          to report the child's death to a law enforcement  
 14          agency within a specified period in certain  
 15          circumstances; requiring the caregiver of a minor  
 16          child to report the location of a child's corpse to a  
 17          law enforcement agency within a specified period in  
 18          certain circumstances; providing criminal penalties;  
 19          amending s. 837.055, F.S.; providing enhanced criminal  
 20          penalties for a caregiver of a minor child who  
 21          knowingly and willfully gives false information with  
 22          specified intent to a law enforcement officer  
 23          conducting a missing person investigation or a felony  
 24          criminal investigation involving a child; providing an  
 25          effective date.

26  
 27   Be It Enacted by the Legislature of the State of Florida:  
 28



29 Section 1. This act may be cited as "Caylee's Law."

30 Section 2. Section 827.10, Florida Statutes, is created to  
31 read:

32 827.10 Missing child; duty to report.—A caregiver who  
33 willfully or by culpable negligence fails to make contact with  
34 or otherwise verify the whereabouts and safety of a child in his  
35 or her care who is 12 years of age or younger for a period of 48  
36 hours and to immediately report the child as missing to law  
37 enforcement after this 48-hour period expires without contact  
38 commits:

39 (1) A felony of the second degree if the child suffers  
40 great bodily harm, permanent disability, or permanent  
41 disfigurement while missing; or

42 (2) A felony of the third degree in any other  
43 circumstance,

44  
45 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

46 Section 3. Section 827.11, Florida Statutes, is created to  
47 read:

48 827.11 Death of a child or location of a child's corpse;  
49 reporting requirements.—

50 (1) A caregiver of a minor child must:

51 (a) Report the child's death to a law enforcement agency  
52 within 2 hours after learning about the child's death; or

53 (b) Report the location of the child's corpse to a law  
54 enforcement agency within 2 hours after learning the location of  
55 the corpse,

56

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57 if the child's death appears to have been one described in s.  
 58 406.11(1)(a) other than a death described in s. 406.11(1)(a)6.,  
 59 7., or 9.

60 (2) A person who violates this section commits a felony of  
 61 the second degree, punishable as provided in s. 775.082, s.  
 62 775.083, or s. 775.084.

63 Section 4. Section 837.055, Florida Statutes, is amended  
 64 to read:

65 837.055 False information to law enforcement during  
 66 investigation.—

67 (1) Except as provided in subsection (2), a person who  
 68 ~~whoever~~ knowingly and willfully gives false information to a law  
 69 enforcement officer who is conducting a missing person  
 70 investigation or a felony criminal investigation with the intent  
 71 to mislead the officer or impede the investigation commits a  
 72 misdemeanor of the first degree, punishable as provided in s.  
 73 775.082 or s. 775.083.

74 (2) A caregiver, as defined in s. 827.01, who knowingly  
 75 and willfully gives false information to a law enforcement  
 76 officer who is conducting a missing person investigation or a  
 77 felony criminal investigation involving a minor child in his or  
 78 her care with the intent to mislead the officer or impede the  
 79 investigation commits a felony of the second degree, punishable  
 80 as provided in s. 775.082, s. 775.083, or s. 775.084.

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

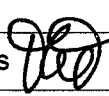



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 943 Background Screening

**SPONSOR(S):** Health & Human Services Subcommittee; Holder and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Guzzo	Schoolfield
2) Criminal Justice Subcommittee		Thomas 	Cunningham 
3) Health & Human Services Committee			

**SUMMARY ANALYSIS**

In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of the individuals and businesses that deal primarily with vulnerable populations. In 2011, the Legislature passed CS/SB 1992, which further implemented the 2010 legislation, however, this bill was vetoed by the Governor. The bill contains many of the provisions contained in the vetoed bill, while addressing the concerns of the Governor.

The bill exempts from screening or rescreening: mental health personnel working in hospitals with less than 15 hours of direct contact with adult patients per week in a hospital; Certified Nursing Assistant applicants who have successfully passed background screening within 90 days of applying for certification; law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies; and certain volunteers, relatives of clients, and attorneys who provide services through a direct service provider that has a contractual relationship with the Department of Elderly Affairs.

The bill also:

- Requires electronic fingerprinting vendors to use technology systems that are compliant with the systems used by the Florida Department of Law Enforcement (FDLE) and have the ability to electronically communicate the screening results. Fingerprints will be retained by FDLE when taken on or after July 1, 2014.
- Allows employers to hire an employee for training and orientation to a position that requires background screening before the screening is complete, provided the employee does not have any contact with clients until successful completion of the screening.
- Provides a means of acquiring an exemption from disqualification for personnel of a private school.
- Creates an inter-agency workgroup to develop a work plan for implementing a statewide system for streamlining background screening processes and sharing background screening information.

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Background Screening

Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the screening of prospective employees, owners, operators, contractors, and volunteers where the Legislature had determined it necessary to conduct criminal history background screenings to protect vulnerable persons. Chapter 435, F.S., outlines the screening requirements. The Florida Department of Law Enforcement (FDLE) processes criminal history checks for the screening entity. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of these persons and businesses.<sup>1</sup> Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1<sup>2</sup> screenings were increased to Level 2<sup>3</sup> screenings.
- By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

Level 2 background screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).<sup>4</sup>

##### Mental Health Personnel

"Mental health personnel" are required to be Level 2 screened. "Mental health personnel" includes program directors, clinicians, staff, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals.<sup>5</sup> Volunteers that have less than ten hours per month of contact with patients are not required to be screened so long as they remain in the line of sight of someone who has been Level 2 screened while having direct contact with patients.<sup>6</sup>

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<sup>1</sup> Chapter 2010-114, L.O.F.

<sup>2</sup> Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

<sup>3</sup> Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

<sup>4</sup> *Criminal History Record Checks/Background Checks Fact Sheet* October 7, 2011. Available at <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited January 23, 2012).

<sup>5</sup> Section 394.4572(1)(a), F.S.

<sup>6</sup> Section 394.4572(1)(c), F.S.

## **Effect of Proposed Changes**

The bill restores an exemption from screening removed in 2010 for mental health personnel with 15 hours or less direct contact with patients per week in a hospital licensed pursuant to ch. 395, F.S. The exemption does not apply to persons working in a mental health facility where the primary purpose of the facility is the treatment of minors.

### **Agency for Health Care Administration Rescreening Schedule**

Persons screened under the Agency for Health Care Administration (AHCA) must be rescreened every five years. In 2010, authority was given to AHCA to establish by rule a staggered schedule for the rescreening of all persons who have a controlling interest in, is employed by, or contracts with a licensee on July 31, 2010. All such persons must be rescreened by July 31, 2015.

The bill delays until July 31, 2013, the start of the staggered period for rescreens of persons who have a controlling interest in, are employed by, or contracts with a licensee on July 31, 2010. The bill adds the schedule to statute, thereby eliminating the need for a rule.

### **Summer Camps**

Summer camps are not licensed by the state but summer camp owners, operators, employees, and volunteers are required to be Level 2 screened.<sup>7</sup> Volunteers that have less than ten hours per month of contact with children are not required to be screened so long as they remain in the line of sight of someone who has been Level 2 screened while having direct contact with children.<sup>8</sup>

The bill adds law enforcement officers with active certification to those licensed persons who do not have to be screened for purposes of ch. 409, F.S. The exemption will apply to law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies.

### **The Department of Elderly Affairs**

The Department of Elderly Affairs (DOEA) is the designated state unit on aging as defined in the Older Americans Act (OAA) of 1965.<sup>9</sup> As such, DOEA's role is to administer the state's OAA allotment and grants, and to advocate, coordinate, and plan all elder services.<sup>10</sup> The OAA requires states to provide elder services through a coordinated service delivery system through designated Area Agencies on Aging (AAAs). Chapter 430, F.S., requires DOEA to fund service delivery "lead agencies" that coordinate and provide a variety of oversight and elder support services at the consumer level in the counties within each planning and service area. DOEA is 94 percent privatized through contracts with local entities and utilizes over 45,000 volunteers to deliver information and services to elders.<sup>11</sup> Many of the volunteers are elders themselves.<sup>12</sup>

### **Direct Service Providers**

The 2010 revision of the background screening laws created s. 430.0402, F.S., requiring Level 2 background screenings for "direct services providers" who provide services through a contractual relationship with DOEA. A "direct service provider" is defined as a person who pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services

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<sup>7</sup> Section 409.175(2)(i) and (k), F.S.

<sup>8</sup> Section 409.175(2)(i), F.S.

<sup>9</sup> Section 305(a)(1)(c), Older Americans Act.

<sup>10</sup> Section 430.04(1), F.S.

<sup>11</sup> Department of Elder Affairs, Summary of Programs and Services (2010).

<sup>12</sup> *Id.*

to the client or has access to the client's living areas or to the client's funds or personal property. Volunteers are specifically included as "direct service providers".

The statute contains no exception from background screening for a volunteer who has occasional or limited contact with elders. In other statutes, there are exceptions for volunteers who are in brief or occasional contact with vulnerable populations. For example, s. 393.0655(1), F.S., exempts from screening a volunteer who assists with persons with developmental disabilities if the volunteer assists less than 10 hours per month and a person who has been screened is always present and has the volunteer within his or her line of sight.<sup>13</sup>

Section 430.0402, F.S., also provides that in addition to the offenses listed in s. 435.04, F.S., direct service providers must also be screened for offenses prohibited under the following:

- Any authorizing statutes, if the offense was a felony.
- Section 409.920, relating to Medicaid provider fraud.
- Section 409.9201, relating to Medicaid fraud.
- Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, relating to false and fraudulent insurance claims.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to criminal use of personal identification information.
- Section 817.60, relating to obtaining a credit card through fraudulent means.
- Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, relating to forgery.
- Section 831.02, relating to uttering forged instruments.
- Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.

Area Agencies on Aging and Elder Care Services are entities who contract with DOEA to provide services to elders. Representatives of several of these entities report that the requirement of Level 2 background screening of volunteers has dramatically reduced the number of volunteers, potentially impacting the availability of services to elders.<sup>14</sup> The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a Level 2 background screening. Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteers.

The provisions of the 2010 legislation also impacts Home Care for the Elderly (HCE)<sup>15</sup> caregivers. Many HCE caregivers are family members. These family members receive a monthly stipend of \$106 to help care for a family member at home. The stipend is used to pay for incontinence products, nutritional supplements, respite care, and other needed products and services. The new Level 2 background screening requirement is applicable to these family members who act as caregivers.

The bill amends the definition of direct service provider to include individuals who have direct, face-to-face contact with a client and have access to the client's living areas, funds, personal property, or personal identification information as defined in s. 817.568, F.S. Current law defines a direct service provider as having client contact or living area/property access.

The bill creates an exemption from background screening for the following:

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<sup>13</sup> See e.g. s. 394.4572(1)(a), F.S. (contact with persons held for mental health treatment), and s. 409.175(2), F.S. (contact with children).

<sup>14</sup> Meetings with Health and Human Services Committee staff in November and December of 2010, and correspondence on file with the Committee.

<sup>15</sup> Department of Elder Affairs, Summary of Programs and Services (2010).

- Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.
- Relatives.
- Attorneys in good standing with the Florida Bar.

The bill provides a definition of the term “relative” as it relates to this exemption to mean an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the client.

The bill provides an exemption from additional background screening for an individual who becomes a direct care provider and provides services within the scope of his or her license. The exemption applies to a person who was previously screened by the Agency for Health Care Administration as a condition of licensure. Such individuals would include owners, administrators, and employees of such entities as nursing homes, assisted living facilities, home health agencies, and adult day care establishments.<sup>16</sup>

The bill provides time frames for screenings by DOEA:

- Individuals serving as direct service providers on July 31, 2011, must be screened by July 1, 2013.
- DOEA may adopt rules to establish a schedule to stagger the implementation of the required screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013.
- Individuals shall be rescreened every 5 years following the date of his or her last background screening unless the individual’s fingerprints are continuously retained and monitored by FDLE in the federal fingerprint retention program.

The bill removes “any authorizing statutes, if the offense was a felony” for the list of disqualifying offenses for direct services providers. The term “authorizing statute” is not defined by ch. 430, F.S. The term is defined in s. 408.803, F.S., and relates to entities regulated by the Agency for Health Care Administration. Its inclusion in s. 430.0402, F.S., appears to be a scrivener’s error.

#### Employment Prior to Screening

Currently an employer may not “hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening” until the person has successfully completed the background screening.<sup>17</sup> The language creates uncertainty whether a person can be hired for the purpose of training and orientation prior to successfully completing the background screening.

The bill provides that an employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is successfully completed.

#### Electronic Screening Vendors

By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.<sup>18</sup> An agency may by rule require fingerprints to be submitted electronically prior to that date.<sup>19</sup> An agency may contract

<sup>16</sup> For a complete list of entities, see s. 408.802, F.S.

<sup>17</sup> Section 435.06(2)(a), F.S.

<sup>18</sup> Section 435.04(1)(b), F.S.

<sup>19</sup> Section 435.04(1)(d), F.S.



with one or more vendors to perform all or part of the electronic fingerprinting and must ensure that each vendor is qualified and will ensure the integrity and security of all personal information.<sup>20</sup>

The bill requires vendors that do electronic fingerprinting to:

- Meet certain technical standards that are compatible with technology used by FDLE; and
- Have the ability to communicate electronically with the relevant state agency.

FDLE is directed to retain the fingerprints of any person who is screened on or after July 1, 2014.

#### Exemptions from Disqualification; Qualified Entities

A person disqualified for offenses revealed pursuant to background screening under ch. 435, F.S., may be eligible for an exemption from disqualification. The head of the appropriate agency may grant an exemption from disqualification for:

- Felonies for which at least 3 years have elapsed since the completion of confinement, supervision, or sanction for the disqualifying felony;
- Misdemeanors for which the applicant has completed or been lawfully released from confinement, supervision, or sanction;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant has been lawfully released from confinement, supervision, or sanction; or
- Certain findings of delinquency.<sup>21</sup>

The applicant must demonstrate by clear and convincing evidence that the applicant should not be disqualified.<sup>22</sup> Disqualification may not be removed for certain serious offenses.<sup>23</sup>

A "qualified entity" is a business or organization that provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.<sup>24</sup> Qualified entities that register with FDLE may screen personnel and employees through the submission of fingerprints. Each request must be voluntary and conform to the requirements of the National Child Protection Act of 1993, as amended.<sup>25</sup>

The bill allows personnel employed by qualified entities who are required to be screened pursuant to s. 435.04, F.S., to apply for exemptions from disqualification under ch. 435, F.S.

#### Certified Nursing Assistants

Certified Nursing Assistants (CNAs) provide care and assistance to persons with their activities of daily living.<sup>26</sup> To become a CNA an individual must:

- Demonstrate a minimum competency to read and write.
- Successfully pass the Level 2 background screening described in s. 400.215, F.S.<sup>27</sup>
- Meet one of the following requirements:
  - Successfully complete an approved training program and examination.

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<sup>20</sup> Section 435.04(1)(c), F.S.

<sup>21</sup> Section 435.07, F.S.

<sup>22</sup> Section 435.07(3)(a), F.S.

<sup>23</sup> Section 435.07(4), F.S.

<sup>24</sup> Section 943.0542(1), F.S.

<sup>25</sup> Section 943.0542(2), F.S.

<sup>26</sup> Section 464.201(5), F.S.

<sup>27</sup> The background screening required by s. 400.215, F.S., refers to the screening described in s. 408.809, F.S., and is identical to the background screening required by s. 430.0402, F.S., except that the following are also disqualifying offenses: s. 741.28, F.S., relating to domestic violence, s. 831.30, F.S., relating to fraud in obtaining medicinal drugs, and s. 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

- Achieve a minimum score, on the nursing assistant competency examination, be 18 years old, and have a high school degree or the equivalent.

Only CNAs may be employed in nursing homes to provide nursing assistance.<sup>28</sup> However, there are limited exceptions for a person to begin working as a CNA for up to four months prior to certification when the person is enrolled in a CNA program, is a CNA in another state, or has preliminarily passed the CNA exam.<sup>29</sup> Such individuals must be background screened pursuant to s. 400.215, F.S., before beginning work as a CNA in a nursing home.

The bill provides that if an applicant for CNA certification has successfully passed the background screening required by s. 400.215, F.S., or s. 408.809, F.S., within 90 days of applying for the certification, the Board of Nursing shall waive the requirement that the applicant pass another background screening.

### Statewide Interagency Background Screening Workgroup

The bill requires AHCA, FDLE, DOEA, the Department of Children and Family Services, the Department of Health, and the Agency for Persons with Disabilities to create the Statewide Interagency Background Screening Workgroup. The workgroup shall develop a work plan for implementing a statewide system for streamlining background screening processes and sharing background screening information.

The work plan is to be submitted to Speaker of the House of Representatives and the President of the Senate by November 1, 2012.

The creation of the workgroup was included in CS/SB 1992, which passed both chambers of the legislature during the 2011 legislative session. However, the bill was vetoed by the Governor. As a result, the creation of the workgroup was not statutorily required. However, the Governor issued an Executive Order to provide for the creation of a statewide interagency background screening workgroup.<sup>30</sup> The workgroup was charged with the same goals articulated in this bill. The workgroup has since completed their report and submitted their recommendations to the Governor.

## B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.4572, F.S., relating to screening of mental health personnel.
- Section 2:** Amends s. 409.1757, F.S., relating to persons not required to be reprinted or rescreened.
- Section 3:** Amends s. 430.0402, F.S., relating to screening of direct service providers.
- Section 4:** Amends s. 435.04, F.S., relating to Level 2 screening standards.
- Section 5:** Amends s. 435.06, F.S., relating to exclusion from employment.
- Section 6:** Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 7:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 8:** Amends s. 464.203, F.S., relating to certified nursing assistants; certification requirements.
- Section 9:** Provides for certain agencies to create a statewide interagency background screening workgroup for the purpose of developing a work plan for implementing a statewide system for streamlining background screening processes and sharing background screening information.
- Section 10:** Provides an effective date of July 1, 2012.

<sup>28</sup> Section 400.211, F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Executive Office of the Governor of Florida, the Honorable Rick Scott, Letter to Secretary of State Kurt S. Browning regarding Veto of CS/SB 1992, June 23, 2011 (on file with subcommittee staff).

## 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 will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).<sup>31</sup>

### 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 Department of Elderly Affairs is given rule-making authority to establish a schedule to stagger the implementation of the required background screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013. This authority appears to be adequate under ch. 120, F.S.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>31</sup> See note 4, supra.

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

On January 17, 2012, the Health and Human Services Access Subcommittee adopted two amendments to HB 943. The amendments:

- Create an exemption from level 2 background screening for direct service provider volunteers that serve on an intermittent basis for less than 20 hours per week, provided the volunteers are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.
- Provide a detailed definition of "Relatives" as it pertains to direct service providers who are exempt from level 2 background screening.
- Change the dates in the rescreening schedule to conform to current law.

The bill was reported favorably as a Committee Substitute. This analysis reflects the bill as passed by the Health and Human Services Access Subcommittee.

1 A bill to be entitled  
 2 An act relating to background screening; amending s.  
 3 394.4572, F.S.; providing that mental health personnel  
 4 working in a facility licensed under ch. 395, F.S.,  
 5 who work on an intermittent basis for less than 15  
 6 hours per week of direct, face-to-face contact with  
 7 patients are exempt from the fingerprinting and  
 8 screening requirements; providing an exception;  
 9 amending s. 409.1757, F.S.; adding law enforcement  
 10 officers who have a good moral character to the list  
 11 of professionals who are not required to be  
 12 refingerprinted or rescreened; amending s. 430.0402,  
 13 F.S.; including a person who has access to a client's  
 14 personal identification information within the  
 15 definition of the term "direct service provider";  
 16 exempting attorneys in good standing, relatives of  
 17 clients, and volunteers who assist on an intermittent  
 18 basis for less than 20 hours per month from level 2  
 19 background screening; excepting certain licensed  
 20 professionals and persons screened as a licensure  
 21 requirement from further screening under certain  
 22 circumstances; requiring direct service providers  
 23 working as of a certain date to be screened within a  
 24 specified period; providing a phase-in for screening  
 25 direct service providers; requiring that employers of  
 26 direct service providers and certain other individuals  
 27 be rescreened every 5 years unless fingerprints are  
 28 retained electronically by the Department of Law

29 Enforcement; removing an offense from the list of  
 30 disqualifying offenses for purposes of background  
 31 screening; amending s. 435.04, F.S.; requiring vendors  
 32 who submit fingerprints on behalf of employers to meet  
 33 specified criteria; requiring that fingerprints be  
 34 retained for any person screened by a certain date;  
 35 amending s. 435.06, F.S.; authorizing an employer to  
 36 hire an employee to a position that otherwise requires  
 37 background screening before the completion of the  
 38 screening process for the purpose of training the  
 39 employee; prohibiting the employee from having direct  
 40 contact with vulnerable persons until the screening  
 41 process is complete; amending s. 435.07, F.S.;

42 providing that personnel of a qualified entity as  
 43 defined in ch. 943, F.S., may apply for an exemption  
 44 from screening; amending s. 408.809, F.S.; eliminating  
 45 a rule that requires the Agency for Health Care  
 46 Administration to stagger rescreening schedules;  
 47 providing a rescreening schedule; amending s. 464.203,  
 48 F.S.; requiring the Board of Nursing to waive  
 49 background screening requirements for certain  
 50 certified nursing assistants; requiring the  
 51 establishment of a statewide interagency workgroup  
 52 relating to statewide background screening procedures  
 53 and information sharing; providing for membership;  
 54 requiring the workgroup to submit a report to the  
 55 Legislature by a specified date; setting forth the  
 56 topics that, at a minimum, the workgroup must address

57 in its work plan; providing an effective date.

58

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

60

61 Section 1. Paragraph (d) is added to subsection (1) of  
62 section 394.4572, Florida Statutes, to read:

63 394.4572 Screening of mental health personnel.--

64 (1)

65 (d) Mental health personnel working in a facility licensed  
66 under chapter 395 who work on an intermittent basis for less  
67 than 15 hours per week of direct, face-to-face contact with  
68 patients are exempt from the fingerprinting and screening  
69 requirements, except that persons working in a mental health  
70 facility where the primary purpose of the facility is the mental  
71 health treatment of minors must be fingerprinted and meet  
72 screening requirements.

73 Section 2. Section 409.1757, Florida Statutes, is amended  
74 to read:

75 409.1757 Persons not required to be refingerprinted or  
76 rescreened.--Any ~~provision of~~ law to the contrary  
77 notwithstanding, human resource personnel who have been  
78 fingerprinted or screened pursuant to chapters 393, 394, 397,  
79 402, and this chapter, ~~and~~ teachers who have been fingerprinted  
80 pursuant to chapter 1012, and law enforcement officers who meet  
81 the requirements of s. 943.13, who have not been unemployed for  
82 more than 90 days thereafter, and who under the penalty of  
83 perjury attest to the completion of such fingerprinting or  
84 screening and to compliance with ~~the provisions of~~ this section

85 and the standards for good moral character as contained in such  
 86 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,  
 87 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall not be~~  
 88 required to be refingerprinted or rescreened in order to comply  
 89 with any caretaker screening or fingerprinting requirements.

90 Section 3. Section 430.0402, Florida Statutes, is amended  
 91 to read:

92 430.0402 Screening of direct service providers.-

93 (1)(a) Except as provided in subsection (2), level 2  
 94 background screening pursuant to chapter 435 is required for  
 95 direct service providers. Background screening includes  
 96 employment history checks as provided in s. 435.03(1) and local  
 97 criminal records checks through local law enforcement agencies.

98 (b) For purposes of this section, the term "direct service  
 99 provider" means a person 18 years of age or older who, pursuant  
 100 to a program to provide services to the elderly, has direct,  
 101 face-to-face contact with a client while providing services to  
 102 the client and ~~or~~ has access to the client's living areas, ~~or to~~  
 103 ~~the client's~~ funds, ~~or~~ personal property, or personal  
 104 identification information as defined in s. 817.568. The term  
 105 includes coordinators, managers, and supervisors of residential  
 106 facilities and volunteers.

107 (2) Level 2 background screening pursuant to chapter 435  
 108 is not required for the following direct service providers:

109 (a) Licensed physicians, nurses, or other professionals  
 110 licensed by the Department of Health or attorneys in good  
 111 standing with The Florida Bar ~~are not subject to background~~  
 112 ~~screening~~ if they are providing a service that is within the



113 scope of their licensed practice.

114 (b) Relatives. For purposes of this section, the term  
 115 "relative" means an individual who is the father, mother,  
 116 stepfather, stepmother, son, daughter, brother, sister,  
 117 grandmother, grandfather, great-grandmother, great-grandfather,  
 118 grandson, granddaughter, uncle, aunt, first cousin, nephew,  
 119 niece, husband, wife, father-in-law, mother-in-law, son-in-law,  
 120 daughter-in-law, brother-in-law, sister-in-law, stepson,  
 121 stepdaughter, stepbrother, stepsister, half-brother, or half-  
 122 sister of the client.

123 (c) Volunteers who assist on an intermittent basis for  
 124 less than 20 hours per month and who are not listed on the  
 125 Department of Law Enforcement Career Offender Search or the Dru  
 126 Sjodin National Sex Offender Public Website (NSOPW). The program  
 127 that provides services to the elderly is responsible for  
 128 verifying that the volunteer is not listed on the databases.

129 (3) Individuals qualified for employment by the Agency for  
 130 Health Care Administration pursuant to the agency's background  
 131 screening standards for licensure or employment contained in s.  
 132 408.809 are not subject to subsequent or additional Level 2  
 133 screening pursuant to chapter 435, or to the unique screening  
 134 requirements of this section, by virtue of their employment as a  
 135 direct service provider if they are providing a service that is  
 136 within the scope of their licensed practice.

137 (4)~~(3)~~ Refusal on the part of an employer to dismiss a  
 138 manager, supervisor, or direct service provider who has been  
 139 found to be in noncompliance with standards of this section  
 140 shall result in the automatic denial, termination, or revocation

141 of the license or certification, rate agreement, purchase order,  
 142 or contract, in addition to any other remedies authorized by  
 143 law.

144 (5) Individuals serving as direct service providers on  
 145 July 31, 2011, must be screened by July 1, 2013. The department  
 146 may adopt rules to establish a schedule to stagger the  
 147 implementation of the required screening over a 1-year period,  
 148 beginning July 1, 2012, through July 1, 2013.

149 (6) An employer of a direct service provider who  
 150 previously qualified for employment or volunteer work under  
 151 Level 1 screening standards or an individual who is required to  
 152 be screened according to the Level 2 screening standards  
 153 contained in chapter 435, pursuant to this section, shall be  
 154 rescreened every 5 years following the date of his or her last  
 155 background screening or exemption, unless such individual's  
 156 fingerprints are continuously retained and monitored by the  
 157 Department of Law Enforcement in the federal fingerprint  
 158 retention program according to the procedures specified in s.  
 159 943.05.

160 (7)(4) The background screening conducted pursuant to this  
 161 section must ensure that, in addition to the disqualifying  
 162 offenses listed in s. 435.04, no person subject to the  
 163 provisions of this section has an arrest awaiting final  
 164 disposition for, has been found guilty of, regardless of  
 165 adjudication, or entered a plea of nolo contendere or guilty to,  
 166 or has been adjudicated delinquent and the record has not been  
 167 sealed or expunged for, any offense prohibited under any of the  
 168 following provisions of state law or similar law of another

169 jurisdiction:

170 ~~(a) Any authorizing statutes, if the offense was a felony.~~

171 (a)~~(b)~~ Section 409.920, relating to Medicaid provider  
172 fraud.

173 (b)~~(e)~~ Section 409.9201, relating to Medicaid fraud.

174 (c)~~(d)~~ Section 817.034, relating to fraudulent acts  
175 through mail, wire, radio, electromagnetic, photoelectronic, or  
176 photooptical systems.

177 (d)~~(e)~~ Section 817.234, relating to false and fraudulent  
178 insurance claims.

179 (e)~~(f)~~ Section 817.505, relating to patient brokering.

180 (f)~~(g)~~ Section 817.568, relating to criminal use of  
181 personal identification information.

182 (g)~~(h)~~ Section 817.60, relating to obtaining a credit card  
183 through fraudulent means.

184 (h)~~(i)~~ Section 817.61, relating to fraudulent use of  
185 credit cards, if the offense was a felony.

186 (i)~~(j)~~ Section 831.01, relating to forgery.

187 (j)~~(k)~~ Section 831.02, relating to uttering forged  
188 instruments.

189 (k)~~(l)~~ Section 831.07, relating to forging bank bills,  
190 checks, drafts, or promissory notes.

191 (l)~~(m)~~ Section 831.09, relating to uttering forged bank  
192 bills, checks, drafts, or promissory notes.

193 Section 4. Paragraph (e) is added to subsection (1) of  
194 section 435.04, Florida Statutes, and subsection (4) is added to  
195 that section, to read:

196 435.04 Level 2 screening standards.—

197 (1)  
 198 (e) Vendors who submit fingerprints on behalf of employers  
 199 must:

200 1. Use technology that is compliant with systems used by  
 201 the Department of Law Enforcement; and

202 2. Have the ability to communicate electronically with the  
 203 state agency accepting screening results from the Department of  
 204 Law Enforcement.

205 (4) Fingerprints required for screening under this section  
 206 shall be retained for any person who is screened on or after  
 207 July 1, 2014.

208 Section 5. Paragraph (d) is added to subsection (2) of  
 209 section 435.06, Florida Statutes, to read:

210 435.06 Exclusion from employment.—

211 (2)

212 (d) An employer may hire an employee to a position that  
 213 requires background screening before the employee completes the  
 214 screening process for training and orientation purposes.

215 However, the employee may not have direct contact with  
 216 vulnerable persons until the screening process is completed and  
 217 the employee demonstrates that he or she exhibits no behaviors  
 218 that warrant the denial or termination of employment.

219 Section 6. Subsection (6) is added to section 435.07,  
 220 Florida Statutes, to read:

221 435.07 Exemptions from disqualification.—Unless otherwise  
 222 provided by law, the provisions of this section apply to  
 223 exemptions from disqualification for disqualifying offenses  
 224 revealed pursuant to background screenings required under this

225 chapter, regardless of whether those disqualifying offenses are  
 226 listed in this chapter or other laws.

227 (6) Personnel of a qualified entity as described in s.  
 228 943.0542, who are required to be screened pursuant to s. 435.04,  
 229 may apply for an exemption pursuant to this chapter.

230 Section 7. Section 408.809, Florida Statutes, is amended  
 231 to read:

232 408.809 Background screening; prohibited offenses.—

233 (1) Level 2 background screening pursuant to chapter 435  
 234 must be conducted through the agency on each of the following  
 235 persons, who are considered employees for the purposes of  
 236 conducting screening under chapter 435:

237 (a) The licensee, if an individual.

238 (b) The administrator or a similarly titled person who is  
 239 responsible for the day-to-day operation of the provider.

240 (c) The financial officer or similarly titled individual  
 241 who is responsible for the financial operation of the licensee  
 242 or provider.

243 (d) Any person who is a controlling interest if the agency  
 244 has reason to believe that such person has been convicted of any  
 245 offense prohibited by s. 435.04. For each controlling interest  
 246 who has been convicted of any such offense, the licensee shall  
 247 submit to the agency a description and explanation of the  
 248 conviction at the time of license application.

249 (e) Any person, as required by authorizing statutes,  
 250 seeking employment with a licensee or provider who is expected  
 251 to, or whose responsibilities may require him or her to, provide  
 252 personal care or services directly to clients or have access to

253 client funds, personal property, or living areas; and any  
 254 person, as required by authorizing statutes, contracting with a  
 255 licensee or provider whose responsibilities require him or her  
 256 to provide personal care or personal services directly to  
 257 clients. Evidence of contractor screening may be retained by the  
 258 contractor's employer or the licensee.

259 (2) Every 5 years following his or her licensure,  
 260 employment, or entry into a contract in a capacity that under  
 261 subsection (1) would require level 2 background screening under  
 262 chapter 435, each such person must submit to level 2 background  
 263 rescreening as a condition of retaining such license or  
 264 continuing in such employment or contractual status. For any  
 265 such rescreening, the agency shall request the Department of Law  
 266 Enforcement to forward the person's fingerprints to the Federal  
 267 Bureau of Investigation for a national criminal history record  
 268 check. If the fingerprints of such a person are not retained by  
 269 the Department of Law Enforcement under s. 943.05(2)(g), the  
 270 person must file a complete set of fingerprints with the agency  
 271 and the agency shall forward the fingerprints to the Department  
 272 of Law Enforcement for state processing, and the Department of  
 273 Law Enforcement shall forward the fingerprints to the Federal  
 274 Bureau of Investigation for a national criminal history record  
 275 check. The fingerprints may be retained by the Department of Law  
 276 Enforcement under s. 943.05(2)(g). The cost of the state and  
 277 national criminal history records checks required by level 2  
 278 screening may be borne by the licensee or the person  
 279 fingerprinted. Proof of compliance with level 2 screening  
 280 standards submitted within the previous 5 years to meet any

281 provider or professional licensure requirements of the agency,  
 282 the Department of Health, the Agency for Persons with  
 283 Disabilities, the Department of Children and Family Services, or  
 284 the Department of Financial Services for an applicant for a  
 285 certificate of authority or provisional certificate of authority  
 286 to operate a continuing care retirement community under chapter  
 287 651 satisfies the requirements of this section if the person  
 288 subject to screening has not been unemployed for more than 90  
 289 days and such proof is accompanied, under penalty of perjury, by  
 290 an affidavit of compliance with the provisions of chapter 435  
 291 and this section using forms provided by the agency.

292 (3) All fingerprints must be provided in electronic  
 293 format. Screening results shall be reviewed by the agency with  
 294 respect to the offenses specified in s. 435.04 and this section,  
 295 and the qualifying or disqualifying status of the person named  
 296 in the request shall be maintained in a database. The qualifying  
 297 or disqualifying status of the person named in the request shall  
 298 be posted on a secure website for retrieval by the licensee or  
 299 designated agent on the licensee's behalf.

300 (4) In addition to the offenses listed in s. 435.04, all  
 301 persons required to undergo background screening pursuant to  
 302 this part or authorizing statutes must not have an arrest  
 303 awaiting final disposition for, must not have been found guilty  
 304 of, regardless of adjudication, or entered a plea of nolo  
 305 contendere or guilty to, and must not have been adjudicated  
 306 delinquent and the record not have been sealed or expunged for  
 307 any of the following offenses or any similar offense of another  
 308 jurisdiction:

- 309 (a) Any authorizing statutes, if the offense was a felony.
- 310 (b) This chapter, if the offense was a felony.
- 311 (c) Section 409.920, relating to Medicaid provider fraud.
- 312 (d) Section 409.9201, relating to Medicaid fraud.
- 313 (e) Section 741.28, relating to domestic violence.
- 314 (f) Section 817.034, relating to fraudulent acts through
- 315 mail, wire, radio, electromagnetic, photoelectronic, or
- 316 photooptical systems.
- 317 (g) Section 817.234, relating to false and fraudulent
- 318 insurance claims.
- 319 (h) Section 817.505, relating to patient brokering.
- 320 (i) Section 817.568, relating to criminal use of personal
- 321 identification information.
- 322 (j) Section 817.60, relating to obtaining a credit card
- 323 through fraudulent means.
- 324 (k) Section 817.61, relating to fraudulent use of credit
- 325 cards, if the offense was a felony.
- 326 (l) Section 831.01, relating to forgery.
- 327 (m) Section 831.02, relating to uttering forged
- 328 instruments.
- 329 (n) Section 831.07, relating to forging bank bills,
- 330 checks, drafts, or promissory notes.
- 331 (o) Section 831.09, relating to uttering forged bank
- 332 bills, checks, drafts, or promissory notes.
- 333 (p) Section 831.30, relating to fraud in obtaining
- 334 medicinal drugs.
- 335 (q) Section 831.31, relating to the sale, manufacture,
- 336 delivery, or possession with the intent to sell, manufacture, or



337 deliver any counterfeit controlled substance, if the offense was  
 338 a felony.

339 (5) A person who serves as a controlling interest of, is  
 340 employed by, or contracts with a licensee on July 31, 2010, who  
 341 has been screened and qualified according to standards specified  
 342 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in  
 343 compliance with the following schedule. ~~The agency may adopt~~  
 344 ~~rules to establish a schedule to stagger the implementation of~~  
 345 ~~the required rescreening over the 5-year period, beginning July~~  
 346 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such  
 347 person has a disqualifying offense that was not a disqualifying  
 348 offense at the time of the last screening, but is a current  
 349 disqualifying offense and was committed before the last  
 350 screening, he or she may apply for an exemption from the  
 351 appropriate licensing agency and, if agreed to by the employer,  
 352 may continue to perform his or her duties until the licensing  
 353 agency renders a decision on the application for exemption if  
 354 the person is eligible to apply for an exemption and the  
 355 exemption request is received by the agency within 30 days after  
 356 receipt of the rescreening results by the person. The  
 357 rescreening schedule shall be:

358 (a) Individuals for whom the last screening was conducted  
 359 on or before December 31, 2004, must be rescreened by July 31,  
 360 2013.

361 (b) Individuals for whom the last screening conducted was  
 362 between January 1, 2005, and December 31, 2008, must be  
 363 rescreened by July 31, 2014.

364 (c) Individuals for whom the last screening conducted was

365 between January 1, 2009, through July 31, 2011, must be  
 366 rescreened by July 31, 2015.

367 (6)~~(5)~~ The costs associated with obtaining the required  
 368 screening must be borne by the licensee or the person subject to  
 369 screening. Licensees may reimburse persons for these costs. The  
 370 Department of Law Enforcement shall charge the agency for  
 371 screening pursuant to s. 943.053(3). The agency shall establish  
 372 a schedule of fees to cover the costs of screening.

373 (7)~~(6)~~(a) As provided in chapter 435, the agency may grant  
 374 an exemption from disqualification to a person who is subject to  
 375 this section and who:

376 1. Does not have an active professional license or  
 377 certification from the Department of Health; or

378 2. Has an active professional license or certification  
 379 from the Department of Health but is not providing a service  
 380 within the scope of that license or certification.

381 (b) As provided in chapter 435, the appropriate regulatory  
 382 board within the Department of Health, or the department itself  
 383 if there is no board, may grant an exemption from  
 384 disqualification to a person who is subject to this section and  
 385 who has received a professional license or certification from  
 386 the Department of Health or a regulatory board within that  
 387 department and that person is providing a service within the  
 388 scope of his or her licensed or certified practice.

389 (8)~~(7)~~ The agency and the Department of Health may adopt  
 390 rules pursuant to ss. 120.536(1) and 120.54 to implement this  
 391 section, chapter 435, and authorizing statutes requiring  
 392 background screening and to implement and adopt criteria

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393 relating to retaining fingerprints pursuant to s. 943.05(2).

394 (9)~~(8)~~ There is no unemployment compensation or other  
 395 monetary liability on the part of, and no cause of action for  
 396 damages arising against, an employer that, upon notice of a  
 397 disqualifying offense listed under chapter 435 or this section,  
 398 terminates the person against whom the report was issued,  
 399 whether or not that person has filed for an exemption with the  
 400 Department of Health or the agency.

401 Section 8. Subsection (1) of section 464.203, Florida  
 402 Statutes, is amended to read:

403 464.203 Certified nursing assistants; certification  
 404 requirement.--

405 (1) The board shall issue a certificate to practice as a  
 406 certified nursing assistant to any person who demonstrates a  
 407 minimum competency to read and write and successfully passes the  
 408 required background screening pursuant to s. 400.215. If the  
 409 person has successfully passed the required background screening  
 410 pursuant to s. 400.215 or s. 408.809 within 90 days before  
 411 applying for a certificate to practice, the board shall waive  
 412 the requirement that the applicant successfully pass an  
 413 additional background screening pursuant to s. 400.215. The  
 414 person must also meet ~~and meets~~ one of the following  
 415 requirements:

416 (a) Has successfully completed an approved training  
 417 program and achieved a minimum score, established by rule of the  
 418 board, on the nursing assistant competency examination, which  
 419 consists of a written portion and skills-demonstration portion  
 420 approved by the board and administered at a site and by

421 personnel approved by the department.

422 (b) Has achieved a minimum score, established by rule of  
 423 the board, on the nursing assistant competency examination,  
 424 which consists of a written portion and skills-demonstration  
 425 portion, approved by the board and administered at a site and by  
 426 personnel approved by the department and:

- 427 1. Has a high school diploma, or its equivalent; or
- 428 2. Is at least 18 years of age.

429 (c) Is currently certified in another state; is listed on  
 430 that state's certified nursing assistant registry; and has not  
 431 been found to have committed abuse, neglect, or exploitation in  
 432 that state.

433 (d) Has completed the curriculum developed by the  
 434 Department of Education and achieved a minimum score,  
 435 established by rule of the board, on the nursing assistant  
 436 competency examination, which consists of a written portion and  
 437 skills-demonstration portion, approved by the board and  
 438 administered at a site and by personnel approved by the  
 439 department.

440 Section 9. The Department of Children and Family Services,  
 441 the Agency for Health Care Administration, the Department of  
 442 Elderly Affairs, the Department of Health, the Agency for  
 443 Persons with Disabilities, the Department of Juvenile Justice,  
 444 and the Department of Law Enforcement shall create a statewide  
 445 interagency background screening workgroup for the purpose of  
 446 developing a work plan for implementing a statewide system for  
 447 streamlining background screening processes and sharing  
 448 background screening information.

449       (1) The interagency workgroup shall be coordinated through  
 450 the Agency for Health Care Administration and shall include  
 451 representatives from each of the state agencies required to  
 452 create the workgroup.

453       (2) The interagency workgroup shall submit a work plan for  
 454 implementing a streamlined background screening system to the  
 455 President of the Senate and the Speaker of the House of  
 456 Representatives by November 1, 2012.

457       (3) The interagency workgroup work plan shall, at a  
 458 minimum, address the following:

459       (a) The feasibility of creating a single statewide  
 460 database that is accessible by all agencies participating on the  
 461 workgroup.

462       (b) The feasibility of collocating or consolidating  
 463 current screening processes.

464       (c) Standardized screening criteria.

465       (d) Consistent criminal history information.

466       (e) Centralized exemptions.

467       (f) State and national retention of prints.

468       (g) National rescreens.

469       (h) Responsibility for retained prints and resubmission.

470       (i) Access to information.

471       (j) Fees.

472       (k) Screening turnaround time.

473       (l) The need for cooperative agreements among agencies  
 474 that may access information.

475       (m) Legal considerations and the need for legislative  
 476 action necessary for accessing information by participating

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477 agencies.

478 (n) Guidelines for how the information shall be accessed,  
 479 used, and disseminated.

480 (o) The organizational level at which information may be  
 481 accessed and shared.

482 (p) The specific information to be maintained and shared  
 483 through the system.

484 (q) Registration of employee information regarding the  
 485 employment status of persons screened, including date of hire  
 486 and date of separation, to facilitate notifications of arrests  
 487 and dispositions to the appropriate provider.

488 (r) The costs of implementing the streamlined system to  
 489 the state, employers, employees, and volunteers.

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

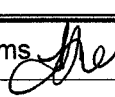
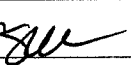


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 949 Juvenile Justice Education and Workforce Programs

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

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Williams 	Cunningham 
2) Appropriations Committee			
3) Education Committee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Department of Juvenile Justice (DJJ) oversees at-risk and adjudicated youth in prevention, detention, residential, nonresidential, day treatment, and rehabilitation programs throughout the state. Education is a vital component of each of these programs.

Section 1003.52, F.S., sets forth how educational services must be provided in DJJ programs and establishes the educational expectations for DJJ youth in such programs. The bill repeals this statute in its entirety and creates s. 1003.515, F.S., entitled "The Florida Juvenile Justice Education Act" (Act). The purpose of the Act is to provide performance-based outcome measures and accountability for juvenile justice education programs and to improve academic and workforce-related outcomes for adjudicated and at-risk youth. The Act:

- Imposes requirements on school districts, or private providers contracted by a school district, that offer education services to youth in juvenile justice programs;
- Requires school districts and private providers to ensure that specified youth participate in a juvenile justice education program;
- Imposes requirements on juvenile justice educational programs;
- Requires the Department of Education to identify school districts and private providers as having a high, adequate, or failing performance rating, and provides guidance in how to determine such rating;
- Provides accountability measures for juvenile justice educational programs;
- Provides requirements for youth exiting an educational program; and
- Requires school districts and private providers, in collaboration with others, to develop an education transition plan which will assist the youth in successful reintegration into the community.

The bill amends s. 985.46, F.S., to require that an individual transition plan be developed for each youth upon placement in a commitment program and provided to the youth upon release. The transition plan must include an education transition plan as well as information regarding relevant delinquency treatment and intervention services available upon release.

The bill substantially re-writes s. 985.618, F.S., relating to DJJ education and workforce-related programs, to require DJJ to verify that each juvenile justice education program, at a minimum, uses virtual courses and virtual counseling, provides instruction from credentialed individuals during specified time periods, and expends funds in a manner that directly supports the attainment of successful student outcomes and that allows youth to engage in real work situations whenever possible.

The bill may have a fiscal impact on state and local governments. See fiscal comments.

The bill is effective upon becoming a law.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background - DJJ Education Programs**

The Florida Department of Juvenile Justice (DJJ) oversees at-risk and adjudicated youth in prevention, detention, residential, nonresidential, day treatment, and rehabilitation programs throughout the state. Education is a vital component of each of these programs. In fact, the Legislature has found that education is the single most important factor in the rehabilitation of adjudicated youth.<sup>1</sup>

##### Section 1003.52, Florida Statutes

Section 1003.52, F.S., sets forth how educational services must be provided in DJJ programs and establishes the educational expectations for DJJ youth in such programs. The significant portions of this statute are outlined below.

The Department of Education (DOE) is the lead agency for juvenile justice education programs, curriculum, support services, and resources; however, district school boards are responsible for actually providing educational services to youth in juvenile justice programs.<sup>2</sup> Educational services consist of basic academic, career, or exceptional curricula that support treatment goals and reentry, and that may lead to the completion of a high school diploma or its equivalent.<sup>3</sup> These services can be provided by the district school board itself or by a private provider through a contract with the board.<sup>4</sup>

District school boards must recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs.<sup>5</sup> Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program must be selected by the district school board in consultation with the director of the juvenile justice facility.<sup>6</sup>

Generally, student participation in educational programming is mandatory.<sup>7</sup> DOE, with the assistance of the school districts, is required to select a student assessment instrument and protocol for measuring student learning gains and student progression.<sup>8</sup> Progress monitoring plans must be developed for students who score below the specified levels in reading, writing, and math.<sup>9</sup> These plans must address academic, literacy, and life skills and shall include provisions for intensive remedial instruction in the areas of weakness.<sup>10</sup> Each district school board must maintain an academic record of each student enrolled in a juvenile justice program.<sup>11</sup>

DOE, in consultation with DJJ, district school boards, and contracted providers, must establish quality assurance standards for educational programs in DJJ commitment facilities.<sup>12</sup> These standards are

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<sup>1</sup> Section 1003.52(1), F.S.

<sup>2</sup> Section 1003.52(1), (3), and (4), F.S.

<sup>3</sup> Section 1003.52(5), F.S.

<sup>4</sup> Section 1003.52(11), F.S.

<sup>5</sup> Section 1003.52(10), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Students of noncompulsory school-attendance age who have not received a high school diploma or its equivalent must participate in educational programs unless the student files a formal declaration of his or her intent to terminate school enrollment and is given the opportunity to take the GED test and attain a high school diploma prior to release from a facility. Students with a high school diploma or its equivalent and who are not employed must participate in workforce development or other career or technical education or college courses. Section 1003.52(6), F.S.

<sup>8</sup> Section 1003.52(3)(b), F.S. DOE selected the Basic Achievement Skills Inventory as the assessment instrument to assess the learning gains of juvenile justice students in grades 3 through 12 in reading, math, and language arts. OPPAGA Report 10-07, (<http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=22>)(last visited on January 20, 2012).

<sup>9</sup> Section 1003.52(7), F.S.

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

<sup>11</sup> Section 1003.52(8), F.S.

<sup>12</sup> Section 1003.52(15)(a), F.S.

used to rate a district school board's performance, both as a provider and as a contractor.<sup>13</sup> DOE must also develop a quality assurance review process to assess each educational program.<sup>14</sup> Assessments are performed through site visits.<sup>15</sup> If a district school board fails to meet the minimum thresholds for the standards, as established by DOE, the board will be given 6 months to achieve compliance.<sup>16</sup> If still below the minimum thresholds after 6 months has passed, DOE must sanction the board in accordance with rules adopted by the State Board of Education.<sup>17</sup> If a provider under contract with a district school board fails to meet the minimum thresholds, the board must cancel the provider's contract unless compliance is achieved within 6 months or unless there are documented extenuating circumstances.<sup>18</sup>

Each district school board must negotiate a cooperative agreement with DJJ regarding the delivery of educational programming to DJJ youth. These agreements must include provisions that address certain issues, such as:

- Curriculum and delivery of instruction;
- Classroom management procedures and attendance policies;
- Procedures for provision of qualified instructional personnel;
- Improving skills in teaching and working with juvenile delinquents;
- Transition plans for students moving into and out of juvenile facilities; and
- Strategies for correcting and deficiencies found through the quality assurance process.<sup>19</sup>

DOE and DJJ must each designate a coordinator to resolve issues not addressed by the district school boards and to provide each department's participation in:

- Training, collaborating, and coordinating with DJJ, district school boards, educational contract providers, and juvenile justice providers, whether state-operated or contracted;
- Collecting and reporting information on the academic performance of students in juvenile justice programs;
- Developing academic and career protocols that provide guidance to district school boards and providers in educational programming; and
- Prescribing the roles of program personnel and school district or provider collaboration strategies.<sup>20</sup>

DJJ and the DOE must develop a cooperative agreement and plan for juvenile justice education service enhancement, which must be submitted to the Secretary of Juvenile Justice and the Commissioner of Education on an annual basis.<sup>21</sup>

After consulting with the district schools boards and local providers, DOE and DJJ must report annually to the Legislature on the progress towards developing effective educational programs for youth in the juvenile justice system. This report must include the results of the quality assessment reviews, including recommendations for system improvement.<sup>22</sup>

#### 2010 OPPAGA Report

In 2010, the Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report entitled, "Youth Entering the State's Juvenile Justice Programs Have Substantial Educational Deficits; Available Data is Insufficient to Assess Learning Gains of Students."<sup>23</sup> This report examined educational services provided to youth in DJJ residential and day treatment programs. In sum,

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<sup>13</sup> Section 1003.52(15)(a), F.S.

<sup>14</sup> Section 1003.52(15)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 1003.52(15)(c), F.S.

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

<sup>18</sup> *Id.*

<sup>19</sup> Section 1003.52(13), F.S.

<sup>20</sup> Section 1003.52(1), F.S.

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

<sup>22</sup> Section 1003.52(19), F.S.

<sup>23</sup> OPPAGA Report 10-07, (<http://www.oppaga.state.fl.us/ReportsYearList.aspx?yearID=22>)(last visited on January 20, 2012).

OPPAGA found that most students entering juvenile justice programs were older, academically behind their peers, and were likely to have had attendance problems at school.<sup>24</sup> Additionally, teachers at juvenile justice facilities tended to have less experience than those at traditional schools, and were more likely to have temporary teaching certificates and to teach subject areas and grade levels for which they lacked certification.<sup>25</sup> Most importantly, OPPAGA found that DOE had not collected sufficient information to assess the learning gains (or lack thereof) of students in juvenile justice programs.<sup>26</sup> Only 48 of the 141 programs (34%) reported complete information for at least half of their students.<sup>27</sup> For those programs that did report data, the nature of the assessment instrument made it difficult to determine whether students were making appropriate educational progress.<sup>28</sup>

### DJJ Education Program Outcomes

DOE has provided data on youth released from DJJ programs over several years using information from the Florida Education and Training Placement Information Program (FETPIP).<sup>29</sup> DOE tracked youth in DJJ residential programs to determine occupational, educational, and subsequent judicial placement in the years following release from the program. To provide context, DOE provided the same outcome information for high school dropouts and graduates. The chart below shows that youth released from DJJ are returning to school at progressively lower rates over time. In addition, DJJ youth are similar to dropouts in that low percentages enroll in postsecondary education. Youth released from DJJ were also less likely to be employed than dropouts or high school graduates. Finally, DJJ youth, following release, are more likely to be incarcerated as adults than dropouts or high school graduates. Of those who were later incarcerated by the Department of Corrections, they were less likely to earn full time equivalent wages after leaving the DJJ program.

### **Information on DJJ Youth in Comparison to School Dropouts and High School Graduates**

	Year Students Left Or Graduated 2006-07			Year Students Left or Graduated 2007-08		
	DJJ Leavers	Dropouts	HS Grads	DJJ Leavers	Dropouts	HS Grads
1. Number of students	7,395	25,144	127,258	6,041	19,640	131,128
2. Number and percent who returned to HS or MS at any point following release	2430	7,879	NA	634	5,471	NA
	33%	31%		10%	28%	
3. Number and percentage of DJJ Leavers who received a GED	1,557	NA	NA	1,288	NA	NA
	21%			21%		
4. Number and percent who enrolled in Postsecondary ED in the year following their release - continuing education	390	1,520	80,057	364	1,274	82,741
	0%	6%	63%	6%	6%	63%
5. Number and percent who were employed in the year after release	1,502	9,234	69,117	866	5,437	62,890
	20%	37%	54%	14%	28%	48%

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Because the Basic Achievement Skills Inventory is a norm-referenced test, students' academic gains must be compared to those achieved by the students used to provide the normed performance expectations. OPPAGA noted that while national norms are available for this test, they are inappropriate to use to interpret the academic gains of juvenile justice students. *Id.*

<sup>29</sup> See, <http://www.fldoe.org/fetpip/> (last visited on January 20, 2012).

	Year Students Left Or Graduated 2006-07			Year Students Left or Graduated 2007-09		
	DJJ Leavers	Dropouts	HS Grads	DJJ Leavers	Dropouts	HS Grads
6. Of those who were employed, number and percent who were employed with full time equivalent wages in the year after their release <sup>30</sup>	231 15%	2,011 22%	15,032 22%	135 16%	1,239 28%	10,613 17%
7. Number and percent who were later incarcerated in a DOC facility (Followed through 2009-10)	1,197 16%	874 3%	271 0%	600 10%	503 3%	159 0%
8. Of those that were later incarcerated in a DOC facility, the number and percent employed in the year after release with full time equivalent wages <sup>1</sup>	20 2%	16 2%	29 11%	3 0%	2 0%	8 5%

Source: Florida Education and Training Placement Information Program

\* Percentages less than .50% are rounded to (whole percentages) 0%.

### Juvenile Justice Education Workgroup

The Juvenile Justice Education Workgroup was created in the summer of 2011 to bring together stakeholders in juvenile justice education. The workgroup heard testimony concerning youth education outcomes in juvenile justice facilities. Cognizant of the significant challenges these youth will face in obtaining gainful employment, the workgroup recommended a revised accountability structure to evaluate the effectiveness of the education. In particular, the workgroup recommended evaluating DJJ education programs on the following: youth attainment of industry certifications in targeted, high-demand and high-wage fields; continuing education at the secondary or postsecondary level; job placement or self-employment; and attainment of postsecondary credit.<sup>31</sup>

### **Effect of the Bill**

#### The Florida Juvenile Justice Education Act

The bill repeals s. 1003.52, F.S., in its entirety. The bill creates s. 1003.515, F.S., entitled "The Florida Juvenile Justice Education Act" (Act). The purpose of the Act is to provide performance-based outcome measures and accountability for juvenile justice education programs; and to improve academic and workforce-related outcomes for adjudicated and at-risk youth.

#### *Education Services Providers - Requirements*

The bill provides that a school district or private provider contracted by a school district to offer education services to youth in a juvenile justice program must:

- Provide rigorous and relevant academic and workforce related curricula that will lead to industry certification or articulate to secondary or postsecondary-level coursework.
- Support state, local, and regional economic development demands.
- Make high-wage and high-demand careers more assessable.
- Reduce rates of recidivism.
- Provide access to appropriate courses and instruction for standard high school diploma or GED examination.
- Provide access to virtual education courses that are appropriate to meet the requirements of academic or workforce related programs.

<sup>30</sup> Full-time is determined by the wages equal to or greater than "minimum wages \*13 weeks\* 40 hours." If the wage amount is equal to or greater than this number, FETPIP considers the individual full-time for the quarter.

<sup>31</sup> See, The Florida Senate, Committee on Education Pre-K – 12. Delivery of Education Services in the Department of Juvenile Justice Facilities. Interim Report 2012-119. October, 2011.

- Provide opportunities for earning credit toward high school graduation or credits that articulate to postsecondary education instructions.
- Ensure that the credits and partial credits earned are transferred and included in the youth's transition plan.
- Ensure that the education program consist of the appropriate academic, workforce-related, or exceptional education curricula and related services that directly support performance outcomes.
- Ensure that youth in a program for less than 40 days continue his or her education or workforce-related training that leads to industry certification.
- Maintain an academic record of youth and ensure that the coursework, credits, partial credits, occupational completion points, and industry certifications earned by the youth are transferred and included in the youth's transition plan.

The bill requires school districts and private providers to ensure that the following youth participate in a juvenile justice education program:

- Youth of compulsory school attendance age.
- Youth not of compulsory school attendance age and who have not received a high school diploma or its equivalent. Such youth must participate in a workforce-related education program that leads to industry certification in an occupational area of high demand or job placement earning full-time wages.
- Youth who have attained a high school diploma or its equivalent and who are not employed. Such youth must participate in a workforce-related education program that leads to industry certification in an occupational area of high demand or gainful employment earning full-time wages.

#### *Educational Programming - Requirements*

The bill requires each juvenile justice education program to, in collaboration with the regional workforce board or economic development agency and local postsecondary institutions, determine the appropriate occupational areas for the program. Juvenile justice education programs must also:

- Ensure that rigorous academic and workforce-related coursework is offered and meets or exceeds appropriate state-approved subject area standards, and results in the attainment of industry certification and postsecondary credit, when appropriate;
- Ensure workforce-related instruction by industry-certified faculty;
- Maximize the use of private sector personnel;
- Use strategies to maximize the delivery of virtual instruction;
- Maximize instructional efficiency;
- Provide opportunities to earn weighted or dual enrollment credit for high-level courses;
- Promote credit recovery; and
- Provide instruction that results in competency, certification, or credentials in workplace skills.

#### *Educational Programming - Performance Ratings and Outcomes*

The bill requires DOE to identify school districts and private providers as having a high, adequate, or failing performance rating as defined by the State Board of Education. The bill requires the performance ratings to be weighted based on the level of rigor associated with attaining a specified outcome. The bill requires DOE to use specified criteria in determining the performance rating. These criteria differ based on the age-appropriate needs of the youth.

Middle-school age youth would be required to meet at least one of the following outcomes:

- Attainment of an industry certification in a targeted occupation<sup>32</sup> and participation in continuing education upon release;<sup>33</sup>

<sup>32</sup> In order to provide workforce skills in high demand occupations, the bill requires that industry certifications for these students be limited to those included on the Industry Certification Funding List pursuant to s. 1011.62(1)(o), F.S.

<sup>33</sup> For purposes of measuring student outcomes, continuing education would be defined based on the individual youth. Students of

- Attainment of occupational completion points<sup>34</sup> in a targeted occupation and participation in continuing education upon release;
- Completion of secondary coursework and participation in continuing education upon release; or
- Achievement of academic progress in reading and mathematics<sup>35</sup> and participation in continuing education upon release.

High-school age youth would be required to meet at least one of the following outcomes:

- Achievement of academic progress in reading and mathematics<sup>36</sup> and participation in continuing education upon release;
- Earning secondary or postsecondary credit upon release and participating in continuing education upon release;
- Attainment of a high school diploma or its equivalent and participation in continuing education at the postsecondary level upon release;
- Attainment of a high school diploma or its equivalent and job placement or self employment in a position earning full-time wages;
- Attainment of an industry certification in a targeted occupation and attainment of job placement or self-employment earning full-time wages in position for which the student attained an industry certification;<sup>37</sup>
- Attainment of occupational completion points in a targeted occupation and attainment of job placement or self-employment earning full-time wages; or
- Attainment of occupational completion points in a targeted occupation and participation in continuing education to complete the industry certification.

For purposes of determining performance ratings, school districts and private providers are held accountable for student outcomes until such time that the youth is released from DJJ supervision.

The bill requires DOE to make available a common student assessment to measure the academic progress in reading and mathematics of youth in juvenile justice programs by September 1, 2012.

#### *Educational Programming - Accountability*

The bill provides that if a school district or private provider earns two consecutive failing performance ratings or two failing performance ratings in any 3-year period, the school district must enter into a contract with a school district or private provider that has a high-performance rating to deliver education services to the youth in the program. The bill authorizes DJJ to use its statutory authority to sanction or prohibit a private provider from delivering education services to youth under the department's supervision due to non-education reasons.

The bill provides that school districts that contract for educational services may not dictate personnel decisions beyond requirements for the health, safety and welfare of the youth if the contracted provider maintains a high performance rating.

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compulsory attendance age, for example, would be expected to continue their education within the secondary school arena in a supportive environment and an academic area that has meaning to them. Older youth who have attained a partial industry certification would enroll in an educational environment to complete the training, while those having attained full industry certification may wish to enhance those credentials with additional coursework.

<sup>34</sup> Occupational Completion Points (OCPs) are selected sets of student performance standards that fall between established occupational completion points, as identified in vocational job preparatory course descriptions. These selected standards guide the student in completing a modified program and developing marketable skills. *See*, <http://www.fldoe.org/workforce/programs/ss5.asp>. (last visited on January 20, 2012).

<sup>35</sup> Section 1003.52(3)(b), F.S., requires DOE to select a valid assessment tool to measure learning gains in mathematics and reading.

<sup>36</sup> Section 1003.52(3)(b), F.S., requires DOE to select a common assessment tool to measure academic progress in mathematics and reading.

<sup>37</sup> The Industry Certification Funding List is available at: <https://www.fldoe.org/workforce/fcpea/pdf/1011icfl.pdf>. (last visited on January 20, 2012).

### *Exiting an Educational Program*

When determining educational placement for a youth who enrolls in a school district upon release from a juvenile justice program, the bill requires the school district to consult with the lead educator of the juvenile justice program to which the youth was last assigned and to adhere to the transition plan established pursuant to s. 985.46(6), F.S.

The bill provides requirements for youth exiting an educational program which include:

- Attaining an industry certification in a targeted occupation;
- Enrolling in a program to complete an industry certification;
- Gaining employment and earning full-time wages; or
- Enrolling in and continuing education based on the youth's transition and post-release plan.

### *Education Transition Plans*

The bill requires school districts and private providers, in collaboration with others, to develop an education transition plan which will assist the youth in successful reintegration into the community. The development of this plan must begin upon a youth's placement in a juvenile justice program and must include academic and workforce services to be provided during the youth's stay in the program and upon the youth's release.

The bill requires that an educational transition plan component be incorporated into the transition plan required by s. 985.46(6), F.S.

### *Educational Programs - Funding*

In regards to educational program funding, the bill provides the following:

- Youth who are participating in GED preparation programs while under the supervision of DJJ must be funded at the basic program cost factor for juvenile justice programs in the Florida Education Finance Program (FEFP).
- Juvenile justice education programs operated through a contract with DJJ and under the purview of DOE's quality assurance standards and performance outcomes must receive the appropriate FEFP funding for juvenile justice programs.
- A district school board must fund the education program in a juvenile justice facility at the same or higher level of funding for equivalent students in the district school system based on the funds generated through FEFP and funds allocated from federal programs.
- District school boards must request an alternative full-time equivalent (FTE) survey for juvenile justice programs experiencing fluctuations in student enrollment.
- The State Board of Education must prescribe rules relating to FTE count periods which must be the same for juvenile justice programs and other public school programs.

### *Rulemaking Authority*

The bill requires the State Board of Education to collaborate with DJJ, the Department of Economic Opportunity, school districts and private providers to adopt rules to administer "The Florida Juvenile Justice Education Act."

### Chapter 985, F.S. - Transition Plans

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program which is intended to promote rehabilitation and prevent recidivism.<sup>38</sup> Section 985.46, F.S., requires each juvenile committed to a residential commitment program to be assessed to determine the need for conditional release services upon release from the commitment program.

The bill amends s. 985.46, F.S., to require that an individual transition plan be developed for each youth upon placement in a commitment program and provided to the youth upon release. The transition plan must be developed in collaboration with the youth, commitment program

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<sup>38</sup> Section 985.03, F.S.

representatives, school district personnel, and conditional release or post-commitment probation program representatives, if appropriate. The transition plan must include an education transition plan as well as information regarding relevant delinquency treatment and intervention services available upon release.

The bill requires the transition plan for youth released on conditional release or post commitment probation status to be incorporated into the conditions of release. For youth not released on conditional release or post commitment probation status, the transition plan must be explained to the youth and provided to the youth upon release, with all necessary referrals made 30 days before the youth exits the program.

#### Chapter 985, F.S. – Education and Workforce-Related Programs

Section 985.618, F.S., currently contains a variety of provisions relating to DJJ education and workforce-related programs. These provisions include:

- Legislative findings;
- Requirements that DJJ have specified objectives when adopting or modifying master plans for juvenile work programs and educational and career training programs;
- Guidelines for the operation of juvenile education and career-related programs;
- Guidelines for evaluating juvenile educational and career-related programs; and
- Authorization for DJJ to contract with the private sector for substantial involvement in juvenile industry programs.

The bill substantially re-writes s. 985.618, F.S. In regards to legislative intent, the bill provides that the Legislature intends for youth in juvenile justice programs to be provided a quality education that includes workforce-related skills that lead to continuing education or meaningful employment, or both, and that results in reduced rates of recidivism.

The bill requires DJJ to verify that each juvenile justice education program, at a minimum:

- Uses virtual course offerings that maximize learning opportunities for adjudicated youth;
- Uses virtual counseling to address the educational and workforce needs of adjudicated youth;
- Provides instruction from individuals who hold industry credentials in the occupational area in which they teach;
- Provides instruction during evenings and weekends;
- Considers, before placement, the age, interests, prior education, training, work experience, emotional and mental abilities, and physical capabilities of the youth and the duration of the term of placement imposed; and
- Expends funds in a manner that directly supports the attainment of successful student outcomes and that allows youth to engage in real work situations whenever possible.

The bill requires that juvenile justice education program effectiveness be determined by implementing systematic data collection, data analysis, and education and workforce-related program evaluations pursuant to ss. 985.632 and 1003.515, F.S.

The bill also requires DJJ to:

- Monitor the education performance of youth in juvenile justice facilities.
- Prohibit school districts or private providers that have failing performance rating from delivering educational services.
- Verify that a school district enters into a contract with a high-performing school district or provider, pursuant to s. 1003.515, F.S., to deliver educational services.

The bill requires DJJ, with assistance from DOE, school districts, and private providers, to submit an annual report to the Legislature, beginning December 31, 2013, containing the education performance outcomes of youth in juvenile justice education programs. The report must:



- Delineate the performance outcomes of youth in the state, in each school district, and by each private provider, including the performance outcomes of all major student populations and genders, as determined by DJJ.
- Address the use and successful completion of virtual education courses and the successful implementation of transition and reintegration plans.
- Include an analysis of the performance of youth over time, including, but not limited to, additional educational attainment, employment, earnings, industry certification, and rates of recidivism.
- Provide recommendations for improving outcome measures and additional cost savings.

The bill also requires DJJ to collaborate with DOE, the Department of Economic Opportunity, school districts, and private providers to adopt rules to administer s. 985.618, F.S.

#### Chapter 985 – Quality Assurance and Cost Effectiveness

Section 985.632, F.S., currently requires DJJ to:

- Report and collect uniform cost data for state-operated and contracted programs so that comparisons can be made among programs.
- Ensure that there is accurate cost accounting for state-operated services, including market equivalent rent and other shared costs.

The bill amends s. 985.632, F.S., to specify that DJJ is only required to collect and report the above-described information for *educational* programs.

#### Conforming Changes

The bill amends ss. 1001.42, (Powers and duties of district school board); 1002.20, (K-12 student and parent rights); 1002.45, (Virtual instruction programs); and 1011.62, F.S., (Funds for operation of schools) to conform those sections of statute to the changes made by the bill.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 985.46, F.S., relating to conditional release.

Section 2. Amends s. 985.618, F.S., relating to educational and career-related programs.

Section 3. Amends s. 985.632, F.S., relating to quality assurance and cost-effectiveness.

Section 4. Amends s. 1001.42, F.S., relating to powers and duties of district school board.

Section 5. Amends s. 1002.20, F.S., relating to K-12 student and parent rights.

Section 6. Amends s. 1002.45, F.S., relating to virtual instruction programs.

Section 7. Creates s. 1003.515, F.S., relating to The Florida Juvenile Justice Education Act.

Section 8. Repeals s. 1003.52, F.S., relating to educational services in Department of Juvenile Justice programs.

Section 9. Amends s. 1011.62 F.S., relating to funds for operation of schools.

Section 10. Provides an effective date upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill provides that if a school district or private provider earns two consecutive failing performance ratings or two failing performance ratings in any 3-year period, the school district must enter into a contract with a school district or private provider that has a high-performance rating to deliver education services to the youth in the program. As a result, high-performing school districts may experience a positive revenue impact.

#### 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 provides that if a school district or private provider earns two consecutive failing performance ratings or two failing performance ratings in any 3-year period, the school district must enter into a contract with a school district or private provider that has a high-performance rating to deliver education services to the youth in the program. As a result, low-performing providers may experience a reduction in revenue, while high-performing providers may experience a positive fiscal impact.

### 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 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:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>39</sup> Rulemaking authority is delegated by the Legislature<sup>40</sup> through statute and authorizes an

<sup>39</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>40</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1<sup>st</sup> DCA 2000).

agency to "adopt, develop, establish, or otherwise create"<sup>41</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>42</sup> To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>43</sup> The grant of rulemaking authority itself need not be detailed.<sup>44</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>45</sup>

The bill requires DJJ, in consultation with DOE, the Department of Economic Opportunity, school districts, and private providers, to adopt rules to administer s. 985.618, F.S. The bill also provides rulemaking authority to the State Board of Education in collaboration with DJJ, the Department of Economic Opportunity, school districts and private provides to administer "The Florida Juvenile Justice Education Act." This authority appears to be adequate under ch. 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>41</sup> Section 120.52(17), F.S.

<sup>42</sup> Section 120.54(1)(a), F.S.

<sup>43</sup> Sections 120.52(8) and 120.536(1), F.S.

<sup>44</sup> *Supra Save the Manatee Club, Inc.*, at 599.

<sup>45</sup> *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

1                                   A bill to be entitled  
2           An act relating to juvenile justice education and  
3           workforce programs; amending s. 985.46, F.S.;

4           requiring that each juvenile committed to a juvenile  
5           justice commitment program have a transition plan upon  
6           release; requiring that the transition plan include an  
7           education transition plan component and information  
8           regarding delinquency treatment and intervention  
9           services that are accessible upon exiting the program;

10          amending s. 985.618, F.S.; providing legislative  
11          intent regarding juvenile justice education and  
12          workforce-related programs; requiring that the  
13          Department of Juvenile Justice verify that each  
14          juvenile justice education program meets specified  
15          minimum standards; requiring that the effectiveness of  
16          the programs be determined by implementing systematic  
17          data collection, data analysis, and evaluations;

18          requiring that the programs be evaluated based on  
19          student performance outcomes; providing duties for the  
20          department; requiring that an annual report be  
21          submitted to the Governor and the Legislature by a  
22          specified date; requiring that the department  
23          collaborate with certain entities to adopt rules;

24          amending ss. 985.632 and 1001.42, F.S.; conforming  
25          provisions to changes made by the act; conforming  
26          cross-references; amending ss. 1002.20 and 1002.45,  
27          F.S.; conforming cross-references; creating s.  
28          1003.515, F.S.; providing a short title; providing

29 purposes of the Florida Juvenile Justice Education  
 30 Act; providing responsibilities for school districts  
 31 and private providers contracted by school districts  
 32 to offer education services to youth in juvenile  
 33 justice education programs; requiring that each  
 34 juvenile justice education program involve the  
 35 regional workforce board or economic development  
 36 agency and local postsecondary institutions to  
 37 determine the occupational areas for the education and  
 38 workforce-related program; providing requirements for  
 39 education and workforce-related services in juvenile  
 40 justice programs; providing responsibilities for the  
 41 Department of Education; requiring that the department  
 42 identify school districts and private providers by  
 43 performance ratings; providing criteria for  
 44 determining performance ratings; requiring that the  
 45 department make available a common student assessment  
 46 to measure the academic progress in reading and  
 47 mathematics of youth in juvenile justice education  
 48 programs; requiring that school districts and private  
 49 providers be held accountable for student performance  
 50 outcomes; providing for program accountability;  
 51 requiring that a youth who exits the program attain an  
 52 industry certification, enroll in a program to  
 53 complete the industry certification, or enroll in and  
 54 continue his or her education based on a transition  
 55 plan; requiring that an education transition plan  
 56 component be incorporated in a youth's transition

57 | plan; requiring that each school district and private  
 58 | provider develop the education transition plan  
 59 | component during the course of the youth's stay in a  
 60 | juvenile justice program; providing funding  
 61 | requirements for the juvenile justice education  
 62 | programs; prohibiting a district school board from  
 63 | being charged rent, maintenance, utilities, or  
 64 | overhead on facilities; requiring that the Department  
 65 | of Juvenile Justice provide maintenance, repairs, and  
 66 | remodeling of existing facilities; requiring that the  
 67 | State Board of Education collaborate with the  
 68 | Department of Juvenile Justice, the Department of  
 69 | Economic Opportunity, school districts, and private  
 70 | providers to adopt rules; repealing s. 1003.52, F.S.,  
 71 | relating to educational services in Department of  
 72 | Juvenile Justice programs; amending s. 1011.62, F.S.;  
 73 | conforming a cross-reference; providing an effective  
 74 | date.

75 |  
 76 | Be It Enacted by the Legislature of the State of Florida:

77 |  
 78 | Section 1. Subsection (6) is added to section 985.46,  
 79 | Florida Statutes, to read:

80 | 985.46 Conditional release.—

81 | (6) Each juvenile committed to a commitment program shall  
 82 | have a transition plan upon release. Transition planning shall  
 83 | begin for each juvenile upon placement in a commitment program  
 84 | and shall result in an individual transition plan for each youth

85 before he or she is released. The transition plan shall be  
 86 developed with the participation of the youth, representatives  
 87 of the commitment program, school district personnel, and  
 88 representatives of conditional release or postcommitment  
 89 probation programs, if appropriate. The transition plan shall  
 90 include an education transition plan component as provided in s.  
 91 1003.515(9), as well as information regarding pertinent  
 92 delinquency treatment and intervention services that are  
 93 accessible upon exiting the program.

94 (a) For a juvenile who is released on conditional release  
 95 or postcommitment probation status, the transition plan shall be  
 96 incorporated into the conditions of release.

97 (b) For a juvenile who is not released on conditional  
 98 release or postcommitment probation status, the transition plan  
 99 shall be explained to the youth and provided upon release, with  
 100 all necessary referrals having been made at least 30 days before  
 101 the youth exits the program.

102 (c) For a juvenile who participates in a day treatment  
 103 program, the transition plan shall be explained to the youth and  
 104 provided upon release. For a juvenile who participates in a day  
 105 treatment program and who is released on conditional release or  
 106 postcommitment probation status, the transition plan shall be  
 107 incorporated into the conditions of release.

108 Section 2. Section 985.618, Florida Statutes, is amended  
 109 to read:

110 (Substantial rewording of section. See  
 111 s. 985.618, F.S., for present text.)

112 985.618 Education and workforce-related programs.—

113        (1) The Legislature intends for youth in juvenile justice  
 114 programs to be provided a quality education that includes  
 115 workforce-related skills that lead to continuing education or  
 116 meaningful employment, or both, and that results in reduced  
 117 rates of recidivism.

118        (2) The department shall verify that each juvenile justice  
 119 education program, at a minimum:

120            (a) Uses virtual course offerings that maximize learning  
 121 opportunities for adjudicated youth.

122            (b) Uses virtual counseling to address the educational and  
 123 workforce needs of adjudicated youth.

124            (c) Provides instruction from individuals who hold  
 125 industry credentials in the occupational area in which they  
 126 teach.

127            (d) Provides instruction during evenings and weekends.

128            (e) Considers, before placement, the age, interests, prior  
 129 education, training, work experience, emotional and mental  
 130 abilities, and physical capabilities of the youth and the  
 131 duration of the term of placement imposed.

132            (f) Expends funds in a manner that directly supports the  
 133 attainment of successful student outcomes as specified in s.  
 134 1003.515(6) and that allows youth to engage in real work  
 135 situations whenever possible.

136        (3) (a) Program effectiveness shall be determined by  
 137 implementing systematic data collection, data analysis, and  
 138 education and workforce-related program evaluations pursuant to  
 139 ss. 985.632 and 1003.515.

140        (b) The evaluation of juvenile justice education and



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141 workforce-related programs shall be based on the performance  
142 outcomes provided in s. 1003.515(6).

143 (4) The department shall:

144 (a) Monitor the education performance of youth in juvenile  
145 justice facilities.

146 (b) Prohibit school districts or private providers that  
147 have failing performance ratings from delivering the education  
148 services as provided in s. 1003.515(7).

149 (c) Verify that a school district enters into a contract  
150 with a high-performing school district or provider pursuant to  
151 s. 1003.515(7) to deliver education services.

152 (5) The department, in collaboration with the Department  
153 of Education and in consultation with the school districts and  
154 private juvenile justice education program providers, shall  
155 prepare an annual report containing the education performance  
156 outcomes, based on the criteria in s. 1003.515(6), of youth in  
157 juvenile justice education programs. The report shall delineate  
158 the performance outcomes of youth in the state, in each school  
159 district, and by each private provider, including the  
160 performance outcomes of all major student populations and  
161 genders, as determined by the Department of Juvenile Justice.  
162 The report shall address the use and successful completion of  
163 virtual instruction courses and the successful implementation of  
164 transition and reintegration plans. The report must include an  
165 analysis of the performance of youth over time, including, but  
166 not limited to, additional education attainment, employment,  
167 earnings, industry certification, and rates of recidivism. The  
168 report must also include recommendations for improving

169 performance outcomes and for additional cost savings and  
 170 efficiencies. The report shall be submitted to the Governor, the  
 171 President of the Senate, and the Speaker of the House of  
 172 Representatives by December 31, 2013, and each year thereafter.

173 (6) The department shall collaborate with the Department  
 174 of Education, the Department of Economic Opportunity, school  
 175 districts, and private providers to adopt rules to administer  
 176 this section.

177 Section 3. Subsection (3) of section 985.632, Florida  
 178 Statutes, is amended to read:

179 985.632 Quality assurance and cost-effectiveness.—

180 (3) The department shall annually collect and report cost  
 181 data for every program operated by the department or its  
 182 contracted provider ~~or contracted by the department~~. The cost  
 183 data shall conform to a format approved by the department and  
 184 the Legislature. Uniform cost data shall be reported and  
 185 collected for each education program operated by a school  
 186 district or private provider contracted by a school district  
 187 ~~state-operated and contracted programs~~ so that comparisons can  
 188 be made among programs. The Department of Education shall ensure  
 189 that there is accurate cost accounting for education programs  
 190 operated by school districts and private providers, state-  
 191 ~~operated services~~ including market-equivalent rent and other  
 192 shared costs ~~cost~~. The cost of the education ~~educational~~ program  
 193 ~~provided to a residential facility~~ shall be reported and  
 194 included in the cost of a program. The Department of Education  
 195 shall submit ~~an~~ annual cost data ~~report~~ to the department  
 196 ~~President of the Senate, the Speaker of the House of~~

197 ~~Representatives, the Minority Leader of each house of the~~  
 198 ~~Legislature, the appropriate substantive and fiscal committees~~  
 199 ~~of each house of the Legislature, and the Governor, no later~~  
 200 ~~than December 1 of each year. The annual cost data shall be~~  
 201 ~~included in the annual report required under s. 985.618(5).~~  
 202 Cost-benefit analysis for juvenile justice education educational  
 203 programs shall will be developed and implemented in  
 204 collaboration with and in cooperation with the Department of  
 205 Education, local providers, and local school districts. ~~Cost~~  
 206 ~~data for the report shall include data collected by the~~  
 207 ~~Department of Education for the purposes of preparing the annual~~  
 208 ~~report required by s. 1003.52(19).~~

209 Section 4. Paragraph (b) of subsection (18) of section  
 210 1001.42, Florida Statutes, is amended to read:

211 1001.42 Powers and duties of district school board.—The  
 212 district school board, acting as a board, shall exercise all  
 213 powers and perform all duties listed below:

214 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—  
 215 Maintain a state system of school improvement and education  
 216 accountability as provided by statute and State Board of  
 217 Education rule. This system of school improvement and education  
 218 accountability shall be consistent with, and implemented  
 219 through, the district's continuing system of planning and  
 220 budgeting required by this section and ss. 1008.385, 1010.01,  
 221 and 1011.01. This system of school improvement and education  
 222 accountability shall comply with the provisions of ss. 1008.33,  
 223 1008.34, 1008.345, and 1008.385 and include the following:

224 (b) Public disclosure.—The district school board shall

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225 provide information regarding the performance of students in and  
 226 education ~~educational~~ programs as required pursuant to ss.  
 227 1008.22 and 1008.385 and implement a system of school reports as  
 228 required by statute and State Board of Education rule which  
 229 shall include schools operating for the purpose of providing  
 230 education ~~educational~~ services to youth in juvenile justice  
 231 education ~~Department of Juvenile Justice~~ programs, and for those  
 232 programs ~~schools~~, report on the data and education outcomes  
 233 ~~elements~~ specified in s. 1003.515(6) ~~1003.52(19)~~. Annual public  
 234 disclosure reports shall be in an easy-to-read report card  
 235 format and shall include the school's grade, high school  
 236 graduation rate calculated without GED tests, disaggregated by  
 237 student ethnicity, and performance data as specified in state  
 238 board rule.

239 Section 5. Subsection (20) of section 1002.20, Florida  
 240 Statutes, is amended to read:

241 1002.20 K-12 student and parent rights.—Parents of public  
 242 school students must receive accurate and timely information  
 243 regarding their child's academic progress and must be informed  
 244 of ways they can help their child to succeed in school. K-12  
 245 students and their parents are afforded numerous statutory  
 246 rights including, but not limited to, the following:

247 (20) JUVENILE JUSTICE PROGRAMS.—Students who are in  
 248 juvenile justice programs have the right to receive educational  
 249 programs and services in accordance with the provisions of s.  
 250 1003.515 ~~1003.52~~.

251 Section 6. Paragraph (b) of subsection (1) of section  
 252 1002.45, Florida Statutes, is amended to read:

253 1002.45 Virtual instruction programs.—  
 254 (1) PROGRAM.—  
 255 (b) Each school district that is eligible for the sparsity  
 256 supplement pursuant to s. 1011.62(7) shall provide all enrolled  
 257 public school students within its boundaries the option of  
 258 participating in part-time and full-time virtual instruction  
 259 programs. Each school district that is not eligible for the  
 260 sparsity supplement shall provide at least three options for  
 261 part-time and full-time virtual instruction. All school  
 262 districts must provide parents with timely written notification  
 263 of an open enrollment period for full-time students of at least  
 264 90 days that ends no later than 30 days prior to the first day  
 265 of the school year. The purpose of the program is to make  
 266 quality virtual instruction available to students using online  
 267 and distance learning technology in the nontraditional  
 268 classroom. A school district virtual instruction program shall  
 269 provide the following:  
 270 1. Full-time virtual instruction for students enrolled in  
 271 kindergarten through grade 12.  
 272 2. Part-time virtual instruction for students enrolled in  
 273 grades 9 through 12 courses that are measured pursuant to  
 274 subparagraph (8)(a)2.  
 275 3. Full-time or part-time virtual instruction for students  
 276 enrolled in dropout prevention and academic intervention  
 277 programs under s. 1003.53, Department of Juvenile Justice  
 278 education programs under s. 1003.515 ~~1003.52~~, core-curricula  
 279 courses to meet class size requirements under s. 1003.03, or  
 280 Florida College System institutions under this section.

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281 Section 7. Section 1003.515, Florida Statutes, is created  
 282 to read:

283 1003.515 The Florida Juvenile Justice Education Act.—

284 (1) SHORT TITLE.—This section may be cited as the "Florida  
 285 Juvenile Justice Education Act."

286 (2) LEGISLATIVE FINDING.—The Legislature finds that an  
 287 education is the single most important factor in the  
 288 rehabilitation of adjudicated youth who are in Department of  
 289 Juvenile Justice programs.

290 (3) PURPOSES.—The purposes of this section are to:

291 (a) Provide performance-based outcome measures and  
 292 accountability for juvenile justice education programs; and

293 (b) Improve academic and workforce-related outcomes so  
 294 that adjudicated and at-risk youth may successfully complete the  
 295 transition to and reenter the academic and workforce  
 296 environments.

297 (4) SCHOOL DISTRICT AND CONTRACTED EDUCATION PROVIDER  
 298 RESPONSIBILITIES.—

299 (a) A school district or private provider contracted by a  
 300 school district to offer education services to youth in a  
 301 juvenile justice education program shall:

302 1. Provide rigorous and relevant academic and workforce-  
 303 related curricula that will lead to industry certifications in  
 304 an occupational area of high demand identified in the Industry  
 305 Certification Funding list adopted by the State Board of  
 306 Education, or articulate to secondary or postsecondary-level  
 307 coursework, as appropriate.

308 2. Support state, local, and regional economic development

- 309 demands.
- 310 3. Make high-wage and high-demand careers more accessible
- 311 to adjudicated and at-risk youth.
- 312 4. Reduce rates of recidivism for adjudicated youth.
- 313 5. Provide access to the appropriate courses and
- 314 instruction to prepare youth for a standard high school diploma
- 315 or the GED examination, as appropriate.
- 316 6. Provide access to virtual education courses that are
- 317 appropriate to meet the requirements of academic or workforce-
- 318 related programs and the requirements for continuing education
- 319 specified in the youth's transition and postrelease plans.
- 320 7. Provide opportunities for earning credits toward high
- 321 school graduation or credits that articulate to postsecondary
- 322 education institutions while the youth are in residential and
- 323 nonresidential juvenile justice facilities.
- 324 8. Ensure that the credits and partial credits earned by
- 325 youth are transferred and included in the youth's records as
- 326 part of the transition plan.
- 327 9. Ensure that the education program consists of the
- 328 appropriate academic, workforce-related, or exceptional
- 329 education curricula and related services that directly support
- 330 performance outcomes, which must be specified in each youth's
- 331 transition plan as required by subsection (9).
- 332 10. If the duration of a youth's stay in a program is less
- 333 than 40 days, ensure that the youth continues his or her
- 334 education or workforce-related training that leads to industry
- 335 certification in an occupational area of high demand.
- 336 11. Maintain an academic record for each youth who is

337 enrolled in a juvenile justice facility, as required by s.  
 338 1003.51, and ensure that the coursework, credits, partial  
 339 credits, occupational completion points, and industry  
 340 certifications earned by the youth are transferred and included  
 341 in the youth's transition plan pursuant to s. 985.46.

342 (b) Each school district and private provider shall ensure  
 343 that the following youth participate in the program:

344 1. Youth who are of compulsory school attendance age  
 345 pursuant to s. 1003.21.

346 2. Youth who are not of compulsory school attendance age  
 347 and who have not received a high school diploma or its  
 348 equivalent, if the youth is in a juvenile justice facility. Such  
 349 youth must participate in a workforce-related education program  
 350 that leads to industry certification in an occupational area of  
 351 high demand or job placement earning full-time wages.

352 3. Youth who have attained a high school diploma or its  
 353 equivalent and who are not employed. Such youth must participate  
 354 in a workforce-related education program that leads to industry  
 355 certification in an occupational area of high demand or gainful  
 356 employment earning full-time wages.

357 (5) PROGRAM REQUIREMENTS.—In compliance with the strategic  
 358 5-year plan under s. 1003.491, each juvenile justice education  
 359 program shall, in collaboration with the regional workforce  
 360 board or economic development agency and local postsecondary  
 361 institutions, determine the appropriate occupational areas for  
 362 the program. Juvenile justice education programs must:

363 (a) Ensure that rigorous academic and workforce-related  
 364 coursework is offered and meets or exceeds appropriate state-



365 approved subject area standards, and results in the attainment  
 366 of industry certification and postsecondary credit, when  
 367 appropriate;

368 (b) Ensure workforce-related instruction by industry-  
 369 certified faculty;

370 (c) Maximize the use of private sector personnel;

371 (d) Use strategies to maximize the delivery of virtual  
 372 instruction;

373 (e) Maximize instructional efficiency for youth in  
 374 juvenile justice facilities;

375 (f) Provide opportunities for youth to earn weighted or  
 376 dual enrollment credit for higher-level courses, when  
 377 appropriate;

378 (g) Promote credit recovery; and

379 (h) Provide instruction that results in competency,  
 380 certification, or credentials in workplace skills, including,  
 381 but not limited to, communication skills, interpersonal skills,  
 382 decisionmaking skills, work ethic, and the importance of  
 383 attendance and timeliness in the work environment.

384 (6) DEPARTMENT RESPONSIBILITIES.—

385 (a) The Department of Education shall identify school  
 386 districts and private providers as having one of the following  
 387 performance ratings as defined by State Board of Education rule:

- 388 1. High performance.
- 389 2. Adequate performance.
- 390 3. Failing performance.

391 (b) The department shall consider the level of rigor  
 392 associated with the attainment of a particular outcome when

393 assigning weight to the outcome. The department shall use the  
 394 following criteria in determining a school district's or private  
 395 provider's performance rating:

396 1. One or more of the following outcomes for a youth who  
 397 is middle school age or younger:

398 a. Attaining an industry certification in an occupational  
 399 area of high demand identified in the Industry Certification  
 400 Funding list adopted by the State Board of Education, if  
 401 available and appropriate, and participating in continuing  
 402 education upon release from a juvenile justice facility.

403 b. Attaining occupational completion points in an  
 404 occupational area of high demand identified in the Industry  
 405 Certification Funding list adopted by the State Board of  
 406 Education and participating in continuing education upon release  
 407 from a juvenile justice facility.

408 c. Completing secondary coursework and participating in  
 409 continuing education upon release from a juvenile justice  
 410 facility.

411 d. Achieving academic progress in reading and mathematics,  
 412 as measured by the statewide common assessment adopted by the  
 413 department for use in juvenile justice education programs, and  
 414 participating in continuing education upon release from a  
 415 juvenile justice facility.

416 2. One or more of the following outcomes for a youth who  
 417 is high school age:

418 a. Achieving academic progress in reading and mathematics,  
 419 as measured by the statewide common assessment adopted by the  
 420 department for use in juvenile justice education programs, and

421 participating in continuing education upon release from a  
 422 juvenile justice facility.

423 b. Earning secondary or postsecondary credit upon release  
 424 from a juvenile justice facility and participating in continuing  
 425 education upon release from a juvenile justice facility.

426 c. Attaining a high school diploma or its equivalent and  
 427 participating in continuing education at the postsecondary level  
 428 upon release from a juvenile justice facility.

429 d. Attaining a high school diploma or its equivalent and  
 430 obtaining job placement or self-employment in a position earning  
 431 full-time wages.

432 e. Attaining an industry certification in an occupational  
 433 area of high demand identified in the Industry Certification  
 434 Funding list adopted by the State Board of Education and  
 435 attaining job placement or self-employment earning full-time  
 436 wages in a position for which the student attained an industry  
 437 certification.

438 f. Attaining occupational completion points in an  
 439 occupational area of high demand identified in the Industry  
 440 Certification Funding list adopted by the State Board of  
 441 Education and job placement or self-employment in a position  
 442 earning full-time wages.

443 g. Attaining occupational completion points in an  
 444 occupational area of high demand identified in the Industry  
 445 Certification Funding list adopted by the State Board of  
 446 Education and participation in continuing education in order to  
 447 complete the industry certification in that occupation.

448 (c) By September 1, 2012, the department shall make

449 available a common student assessment to measure the academic  
 450 progress in reading and mathematics of youth who are assigned to  
 451 juvenile justice education programs.

452  
 453 For purposes of performance ratings, school districts and  
 454 private providers shall be held accountable for the performance  
 455 outcomes of youth until they are released from supervision by  
 456 the Department of Juvenile Justice. This subsection does not  
 457 abrogate the provisions of s. 1002.22 which relate to education  
 458 records or the requirements of 20 U.S.C. s. 1232g, the Family  
 459 Educational Rights and Privacy Act.

460 (7) PROGRAM ACCOUNTABILITY.—

461 (a) If a school district or private provider earns two  
 462 consecutive failing performance ratings or two failing  
 463 performance ratings in any 3-year period, as provided in  
 464 subsection (6), the school district shall enter into a contract  
 465 with a school district or private provider that has a high-  
 466 performance rating to deliver the education services to the  
 467 youth in the program. The Department of Juvenile Justice may use  
 468 its statutory authority to sanction or prohibit a private  
 469 provider from delivering education services to youth under the  
 470 department's supervision due to noneducation reasons.

471 (b) Except as provided in paragraph (a), the school  
 472 district of the county in which the residential or  
 473 nonresidential care facility or juvenile assessment facility is  
 474 located shall deliver education services to youth in Department  
 475 of Juvenile Justice programs. A school district may enter into a  
 476 contract with a private provider to deliver the education

477 services in lieu of directly providing the education services.  
 478 The contract shall include performance criteria as provided in  
 479 subsection (6).

480 (c) When determining educational placement for youth who  
 481 enroll in a school district upon release, the school district  
 482 must consult with the lead educator of the juvenile justice  
 483 program to which the youth was last assigned and adhere to the  
 484 transition plan established under s. 985.46(6).

485 (d) If a private provider under contract with a school  
 486 district maintains a high-performance rating pursuant to  
 487 subsection (6), the school district may not require a private  
 488 provider to use the school district's personnel or require  
 489 qualifications of private provider personnel beyond those that  
 490 are necessary to protect the health, safety, and welfare of the  
 491 students, as determined by the Department of Juvenile Justice.

492 (e) Each school district must provide juvenile justice  
 493 education programs access to substitute classroom teachers used  
 494 by the school district.

495 (8) EXITING PROGRAM.—Upon exiting a program, a youth must:

496 (a) Attain an industry certification in an occupational  
 497 area of high demand identified in the Industry Certification  
 498 Funding list adopted by the State Board of Education;

499 (b) Enroll in a program to complete the industry  
 500 certification;

501 (c) Be gainfully employed and earning full-time wages; or

502 (d) Enroll in and continue his or her education based on  
 503 the transition and postrelease plan provided in s. 958.46.

504 (9) EDUCATION TRANSITION PLAN COMPONENT.—

505 (a) The education transition plan component shall be  
 506 incorporated in the transition plan pursuant to s. 985.46(6).

507 (b) Each school district and private provider must develop  
 508 an education transition plan component during the course of a  
 509 youth's stay in a juvenile justice program which coordinates  
 510 academic and workforce services and assists the youth in  
 511 successful community reintegration upon the youth's release.

512 (c) The development of the education transition plan  
 513 component shall begin upon a youth's placement in the program.  
 514 The education transition plan component must include the  
 515 academic and workforce services to be provided during the  
 516 program stay and the establishment of services to be implemented  
 517 upon release. The appropriate personnel in the juvenile justice  
 518 education program, members of the community, the youth, and the  
 519 youth's family, when appropriate, shall collaborate to develop  
 520 the education transition plan component.

521 (d) Education planning for reintegration shall begin when  
 522 placement decisions are made and continue throughout the youth's  
 523 stay in order to provide for continuing education, job  
 524 placement, and other necessary services. Individuals who are  
 525 responsible for reintegration shall coordinate activities to  
 526 ensure that the education transition plan component is  
 527 successfully implemented and a youth is provided access to  
 528 support services that will sustain the youth's success once he  
 529 or she is no longer under the supervision of the Department of  
 530 Juvenile Justice. The education transition plan component must  
 531 provide for continuing education, workforce development, or  
 532 meaningful job placement pursuant to the performance outcomes in

533 subsection (6). For purposes of this section, the term  
 534 "reintegration" means the process by which a youth returns to  
 535 the community following release from a juvenile justice program.

536 (10) FUNDING.—

537 (a) Youth who are participating in GED preparation  
 538 programs while under the supervision of the Department of  
 539 Juvenile Justice shall be funded at the basic program cost  
 540 factor for juvenile justice programs in the Florida Education  
 541 Finance Program (FEFP). Juvenile justice education programs  
 542 shall be funded in the appropriate FEFP program based on the  
 543 education services needed by the students in the programs  
 544 pursuant to s. 1011.62.

545 (b) Juvenile justice education programs operated through a  
 546 contract with the Department of Juvenile Justice and under the  
 547 purview of the department's quality assurance standards and  
 548 performance outcomes shall receive the appropriate FEFP funding  
 549 for juvenile justice programs.

550 (c) A district school board shall fund the education  
 551 program in a juvenile justice facility at the same or higher  
 552 level of funding for equivalent students in the district school  
 553 system based on the funds generated through the FEFP and funds  
 554 allocated from federal programs.

555 (d) Consistent with the rules of the State Board of  
 556 Education, district school boards shall request an alternative  
 557 full-time equivalent (FTE) survey for juvenile justice programs  
 558 experiencing fluctuations in student enrollment.

559 (e) The State Board of Education shall prescribe rules  
 560 relating to FTE count periods which must be the same for

561 juvenile justice programs and other public school programs. The  
 562 summer school period for students in juvenile justice programs  
 563 shall begin on the day immediately preceding the subsequent  
 564 regular school year. Students may be funded for no more than 25  
 565 hours per week of direct instruction; however, students shall be  
 566 provided access to virtual instruction in order to maximize the  
 567 most efficient use of time.

568 (11) FACILITIES.—The district school board may not be  
 569 charged any rent, maintenance, utilities, or overhead on the  
 570 facilities. Maintenance, repairs, and remodeling of existing  
 571 facilities shall be provided by the Department of Juvenile  
 572 Justice.

573 (12) RULEMAKING.—The State Board of Education shall  
 574 collaborate with the Department of Juvenile Justice, the  
 575 Department of Economic Opportunity, school districts, and  
 576 private providers to adopt rules pursuant to ss. 120.536(1) and  
 577 120.54 to administer this section.

578 Section 8. Section 1003.52, Florida Statutes, is repealed.

579 Section 9. Paragraph (f) of subsection (1) of section  
 580 1011.62, Florida Statutes, is amended to read:

581 1011.62 Funds for operation of schools.—If the annual  
 582 allocation from the Florida Education Finance Program to each  
 583 district for operation of schools is not determined in the  
 584 annual appropriations act or the substantive bill implementing  
 585 the annual appropriations act, it shall be determined as  
 586 follows:

587 (1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR  
 588 OPERATION.—The following procedure shall be followed in



589 determining the annual allocation to each district for  
 590 operation:

591 (f) Supplemental academic instruction; categorical fund.—

592 1. There is created a categorical fund to provide  
 593 supplemental academic instruction to students in kindergarten  
 594 through grade 12. This paragraph may be cited as the  
 595 "Supplemental Academic Instruction Categorical Fund."

596 2. Categorical funds for supplemental academic instruction  
 597 shall be allocated annually to each school district in the  
 598 amount provided in the General Appropriations Act. These funds  
 599 shall be in addition to the funds appropriated on the basis of  
 600 FTE student membership in the Florida Education Finance Program  
 601 and shall be included in the total potential funds of each  
 602 district. These funds shall be used to provide supplemental  
 603 academic instruction to students enrolled in the K-12 program.  
 604 Supplemental instruction strategies may include, but are not  
 605 limited to: modified curriculum, reading instruction, after-  
 606 school instruction, tutoring, mentoring, class size reduction,  
 607 extended school year, intensive skills development in summer  
 608 school, and other methods for improving student achievement.  
 609 Supplemental instruction may be provided to a student in any  
 610 manner and at any time during or beyond the regular 180-day term  
 611 identified by the school as being the most effective and  
 612 efficient way to best help that student progress from grade to  
 613 grade and to graduate.

614 3. Effective with the 1999-2000 fiscal year, funding on  
 615 the basis of FTE membership beyond the 180-day regular term  
 616 shall be provided in the FEFP only for students enrolled in

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617 juvenile justice education programs or in education programs for  
 618 juveniles placed in secure facilities or programs under s.  
 619 985.19. Funding for instruction beyond the regular 180-day  
 620 school year for all other K-12 students shall be provided  
 621 through the supplemental academic instruction categorical fund  
 622 and other state, federal, and local fund sources with ample  
 623 flexibility for schools to provide supplemental instruction to  
 624 assist students in progressing from grade to grade and  
 625 graduating.

626 4. The Florida State University School, as a lab school,  
 627 is authorized to expend from its FEFP or Lottery Enhancement  
 628 Trust Fund allocation the cost to the student of remediation in  
 629 reading, writing, or mathematics for any graduate who requires  
 630 remediation at a postsecondary educational institution.

631 5. ~~Beginning in the 1999-2000 school year,~~ Dropout  
 632 prevention programs as defined in ss. 1003.515 ~~1003.52~~,  
 633 1003.53(1)(a), (b), and (c), and 1003.54 shall be included in  
 634 group 1 programs under subparagraph (d)3.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1021 Agriculture  
**SPONSOR(S):** Albritton  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 2 N	Kaiser	Blalock
2) Criminal Justice Subcommittee		Cunningham	Cunningham
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

This bill addresses several issues relating to agriculture in the state.

- Current law prohibits a county from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural, under certain circumstances. Current law also permits any county that, before March 1, 2009, had adopted certain ordinances or resolutions, to continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, under certain circumstances. The bill replaces the word "county" with "governmental entity" in the provisions described above to expand the types of governmental entities that the above provisions apply to.
- Current law provides that a person who uses motor fuel for agricultural or aquacultural purposes in farm equipment that has not been driven or operated upon the public highways of the state is entitled to a refund of state taxes imposed on the motor fuel. The public highway use restriction does not apply to the movement of a farm vehicle or farm equipment between farms. The bill adds citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above. The bill also amends the Florida Uniform Traffic Control Law to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by such machinery.
- The bill revises the powers and duties of the Department of Agriculture and Consumer Services (department) to include enforcing the state laws and rules relating to the use of commercial feed stocks. In addition, the bill requires the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. If adopted, such standards must be developed in consultation with the Commercial Feed Technical Council.
- The bill also provides that a person, who knowingly enters any nonpublic area of a farm, and without prior written consent of the farm's owner or the owner's authorized representative, operates the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation commits a first degree misdemeanor. The bill provides definitions and certain exceptions. The effective date for this provision of the bill is October 1, 2012.

The bill appears to have a fiscal impact on state and local governments by exempting certain individuals from state and local fees and taxes. However, the Revenue Estimating Conference has not yet reviewed this legislation, so the fiscal impacts are currently indeterminate. The bill may also have a negative jail bed impact on local governments.

Except as noted above, the bill is effective July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1021b.CRJS

DATE: 1/23/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Stormwater Management Assessments**

In 2011, the Legislature overrode the veto of CS/HB 7103, which passed the House and Senate during the 2010 Legislative Session. CS/HB 7103, in part, amended s. 163.3162(3)(b), F.S., to provide that a county cannot charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, environmental resources permit (ERP), or works-of-the-district permit or implements best management practices (BMPs)<sup>1</sup>.

In addition, CS/HB 7103 amended s. 163.3162(3)(c), F.S., to provide that each county that, before March 1, 2009, adopted a stormwater utility ordinance or resolution, adopted an ordinance or resolution establishing a municipal services benefit unit, or adopted a resolution stating the county's intent to use the uniform method of collection for such stormwater ordinances, can continue to charge an assessment or fee for stormwater management on a bona fide farm operation on agricultural land, if the ordinance or resolution provides credits against the assessment or fee on a bona fide farm operation for the water quality or flood control benefit of:

- The implementation of BMPs;<sup>2</sup>
- The stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or
- The implementation of BMPs or alternative measures, which the landowner demonstrates to the county to be of equivalent or greater stormwater benefit than the BMPs adopted by the Department of Environmental Protection, Department of Agriculture and Consumer Services, or a water management district as part of a statewide or regional program, or stormwater quality and quantity measures required as part of an NPDES permit, ERP, or works-of-the-district permit.

Since the veto override of CS/HB 7103, the City of Palm Coast has adopted and implemented a stormwater fee that affects thousands of acres of timber and agricultural lands. However, since the stormwater management assessment provisions described above currently only apply to counties, they do not currently apply to the City of Palm Coast.

##### Effect of Proposed Changes

The bill creates s. 163.3162(2)(d), F.S., to define the term "governmental entity" as "having the same meaning as provided in s. 164.1031, F.S."<sup>3</sup>, and amends ss. 163.3162(3)(b) and 163.3162(3)(c), F.S., by replacing the word "county" with the words "governmental entity" in the provisions of those sections described above. This has the effect of expanding the types of entities that are prohibited from charging an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural if the farm operation has an NPDES permit, ERP, or works-of-the-district permit or implements best management practices (BMPs), and that can continue, if certain requirements are met, to charge an assessment or fee for stormwater management on a bona fide farm operation on land classified as agricultural.

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<sup>1</sup> The BMPs must have been adopted as rules under Chapter 120, F.S., by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

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

<sup>3</sup> Governmental entity is defined in s. 164.1031, F.S., to include local and regional governmental entities. "Local governmental entities" includes municipalities, counties, school boards, special districts, and other local entities within the jurisdiction of one county created by general or special law or local ordinance. "Regional governmental entities" includes regional planning councils, metropolitan planning organizations, water supply authorities that include more than one county, local health councils, water management districts, and other regional entities that are authorized and created by general or special law that have duties or responsibilities extending beyond the jurisdiction of a single county.

### **Motor Fuel Tax Refund**

Section 206.41(4)(c), F.S., provides that a person who uses motor fuel for agricultural, aquacultural, commercial fishing, or commercial aviation purposes that has paid the local option fuel tax, an additional tax designated as the "State Comprehensive Enhanced Transportation System Tax," or fuel sales tax, is entitled to a refund of such tax. For the purpose of establishing what activities qualify for the tax refund, "agricultural and aquacultural purposes" means "motor fuel used in any tractor, vehicle, or other farm equipment that is used exclusively on a farm or for processing farm products on the farm, and no part of which fuel is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction from being driven or operated upon the public highways of the State does not apply to the movement of a farm vehicle or farm equipment between farms.

#### Effect of Proposed Changes

The bill amends s. 206.41(4)(c), F.S., to add citrus harvesting equipment and citrus fruit loaders to the types of equipment that can move between farms on public highways in the State and not violate the public highway use restriction for the purpose of qualifying for the motor fuel tax refund described above.

### **Transporting Farm Products**

Section 316, F.S., establishes the Florida Uniform Traffic Control Law. Section 316.515(5)(a), F.S., provides that, notwithstanding any other provisions of law, certain agricultural equipment such as straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry, including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit, or a self-propelled agricultural implement or an agricultural tractor, is authorized to transport peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section of law.

#### Effect of Proposed Changes

The bill amends s. 316.515(5)(a), F.S., to include citrus harvesting equipment and citrus fruit loaders, not exceeding 50 feet in length, to the list of machinery that are authorized to transport certain perishable farm products, and also includes citrus in the list of perishable farm products specified in statute that are authorized to be transported by specified equipment.

### **DACS – Rulemaking Authority**

The Department of Agriculture and Consumer Services (department) has the authority pursuant to s. 570.07, F.S., to enforce the laws and rules of the state relating to the registration, labeling, inspection, sale, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds.

Chapter 580, F.S., provides for the regulation of commercial feed and feedstuff. Section 580.036, F.S., authorizes the department to adopt rules pursuant to chapter 120, F.S., to enforce the provisions of chapter 580, F.S., and provides that such rules must be consistent with the rules and standards of the United States Food and Drug Administration and United States Department of Agriculture, when applicable. Such rules must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff and permissible tolerances for pesticide chemicals, chemical additives, non-nutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry and their products, which are used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feedstuff.

- Establishing definitions and reasonable standards for the certification of laboratories for the conduct of testing and analyses as required by Florida law.
- Establishing product labeling requirements for distributors.
- Limiting the use of drugs in commercial feed and prescribe feeding directions to be used to ensure safe usage of medicated feed.
- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.

### Effect of Proposed Changes

The bill amends s. 570.07, F.S., to give the department the authority to enforce laws and rules of the state relating to the use of commercial feed and feedstuff.

The bill also amends s. 580.036, F.S., to require the department to adopt rules establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal health, safety, and welfare and, to the extent that meat, poultry, and other animal products may be affected by commercial feed or feedstuff, with the safety of these products for human consumption. These standards, if adopted, must be developed in consultation with the Commercial Feed Technical Council.

### **Unauthorized Entry on Farm**

Section 810.08, F.S., provides that a person commits the offense of trespass in a structure or conveyance<sup>4</sup> when they, without being authorized, licensed, or invited, willfully enter or remain in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuse to do so. The offense is generally a second degree misdemeanor<sup>5</sup> but can be enhanced in certain instances (e.g., if a human was present in the structure or conveyance, if a firearm was carried, etc.).<sup>6</sup>

Section 810.09, F.S., provides that a person trespasses on property other than a structure or conveyance when they, without being authorized, licensed, or invited, willfully enter upon or remain in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.11, F.S.; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

The offense is a generally a first degree misdemeanor<sup>7</sup> but can be enhanced depending on the type of premises trespassed upon.<sup>8</sup>

Florida currently prohibits persons from intercepting wire, oral, or electronic communications and from using certain devices to intercept wire, oral, or electronic communications unless prior consent has been given by both parties.<sup>9</sup> Florida also prohibits persons from engaging in video voyeurism, which generally involves viewing or recording a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy.<sup>10</sup> Currently, Florida law does not contain any provisions that specifically make it a crime for a person to covertly make an audio or video recording in agricultural production areas.

<sup>4</sup> Section 810.011, F.S., defines the terms "structure" and "conveyance."

<sup>5</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 810.08, F.S.

<sup>7</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> For example, it is a third degree felony for a person to trespass upon lands posted as commercial horticulture property and agricultural sites for testing and research. Section 810.09(2)(e) and (f), F.S.

<sup>9</sup> Section 934.03, F.S.

<sup>10</sup> Section 810.145, F.S.

In order to expose animal abuse on farms and in agricultural processing facilities around the country, certain people pose as potential employees and record activities on the farm or processing facility using hidden cameras. In late 2010, an undercover investigator for the Humane Society of the United States (HSUS) was employed at the Cal-Maine egg plant in Waelder, Texas for 28 days.<sup>11</sup> A video obtained by the investigator while posing as an employee documents claims of unsanitary conditions and cruel treatment of the animals and was posted on the HSUS website. Another group, Mercy for Animals, a non-profit animal rights organization focused on promoting a vegetarian diet, sends undercover investigators into agricultural processing facilities to document claims of inhumane treatment of animals and posts these videos on the internet.<sup>12</sup>

### Effect of Proposed Changes

The bill creates s. 810.127, F.S., to make it a first degree misdemeanor for a person to knowingly enter upon any nonpublic area of a farm and, without prior written consent of the farm's owner or the owner's authorized representative, operate the audio or video recording function of any device with the intent of recording sounds or images of the farm or farm operation. This offense does not apply to:

- An employee or agent of the Department of Agriculture and Consumer Services acting under s. 570.15, F.S.
- An employee or agent of the Department of Business and Professional Regulation acting under Chapter 450, F.S.
- A law enforcement officer conducting a lawful inspection or investigation.
- Any other government employee conducting official regulatory business.
- An engineer or his or her agent or employee acting under s. 471.027, F.S.
- A land surveyor and mapper or his or her subordinate, agent, or employee, as necessary for conducting any activity under chapter 472, F.S.
- A person acting on behalf of an insurer for inspection, underwriting, or claims purposes.

The bill provides the following definitions:

- "Audio or video recording function" means "the capability of a camera, an audio or video recorder, or any other device to record, store, transfer, broadcast, or transmit sound or images by means of any technology now known or later developed, regardless of the recording media or format, including, but not limited to, photographs or film; magnetic storage, including audio cassette tapes, videocassette tapes, hard disk drives, and floppy disk drives; flash memory, including memory cards, flash drives, and solid state drives; optical disc storage media, including compact discs, digital versatile discs, and blu-ray discs; streaming media; and any other electrical, magnetic, optical, or form of data storage."
- "Farm", "farm operation", and "farm product" have the same meaning as provided in s. 823.14, F.S.<sup>13</sup> For the purposes of this section of law, the term "farm" also includes any other land upon which a legal farm operation is being conducted and upon which farm products are being produced.

This section of the bill takes effect October 1, 2012.

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<sup>11</sup> See <http://vegan.com/blog/2010/11/17/hsus-undercover-investigation-at-texas-cal-maine-egg-farm/html> (Last visited on 1/2/12)

<sup>12</sup> See <http://www.mercyforanimals.org/html> (Last visited on 1/2/12)

<sup>13</sup> Section 823.14, F.S., defines "farm" as "the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products". "Farm operation" means "all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor". "Farm product" means "any plant, as defined in s. 581.011, F.S., or animal useful to humans and includes, but is not limited to, any product derived therefrom".



**B. SECTION DIRECTORY:**

Section 1: Amends s. 163.3162, F.S., relating to agricultural lands and practices.

Section 2: Amends s. 206.41, F.S., relating to state taxes imposed on motor fuel.

Section 3: Amends s. 316.515, F.S., relating to maximum width, height, length.

Section 4: Amends s. 570.07, F.S., relating to Department of Agriculture and Consumer Services; functions, powers, and duties.

Section 5: Amends s. 580.036, F.S., relating to powers and duties.

Section 6: Creates s. 810.27, F.S., relating to unauthorized entry and use of recording device on farm; penalties.

Section 7: Providing an effective date of July 1, 2012.

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

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

**1. Revenues:**

By providing a tax refund for fuel taxes on citrus harvesting equipment or citrus fruit loaders, the state will experience a loss of sales tax revenue. Because this bill has not yet been reviewed by the conference, the fiscal impact on state government is indeterminate at this time.

**2. Expenditures:**

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

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

**1. Revenues:**

In 2009, the Revenue Estimating Conference (conference) made the following comment regarding identical legislation that is in section 1 of the bill: "Provisions of this bill that prohibit a county or municipality from imposing an assessment or fee for stormwater management on certain lands will have a negative indeterminate impact on local government revenues as determined by the conference."

**2. Expenditures:**

The bill creates a new misdemeanor offense, which may have a negative jail bed impact on local governments.

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

The bill provides relief to agricultural producers who are being assessed with stormwater management fees by certain governmental entities.

The bill provides relief to citrus producers who pay certain taxes on motor fuel for use in citrus harvesting equipment or citrus fruit loaders.

Persons who are convicted of conducting audio or video surveillance on a farm without the owner's permission may incur a fine of \$1,000.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill prohibits a governmental entity from imposing an assessment or fee for stormwater management on certain lands. However, because this legislation has not yet been reviewed by the Revenue Estimating Conference, it is unclear if the reduction in revenues meets the threshold of the mandate or if an exemption applies.

**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**

1                                   A bill to be entitled  
2           An act relating to agriculture; amending s. 163.3162,  
3           F.S.; defining the term "governmental entity";  
4           prohibiting certain governmental entities from  
5           charging stormwater management assessments or fees on  
6           certain bona fide farm operations except under certain  
7           circumstances; providing for applicability; amending  
8           s. 206.41, F.S.; revising the definition of the term  
9           "agricultural and aquacultural purposes" for purposes  
10          of the required refund of state taxes imposed on motor  
11          fuel used for such purposes; amending s. 316.515,  
12          F.S.; revising the Florida Uniform Traffic Control Law  
13          to authorize the use of citrus harvesting equipment  
14          and citrus fruit loaders to transport certain  
15          agricultural products and to authorize the use of  
16          certain motor vehicles to transport citrus; amending  
17          s. 570.07, F.S.; revising the powers and duties of the  
18          Department of Agricultural and Consumer Services to  
19          enforce laws and rules relating to the use of  
20          commercial stock feeds; amending s. 580.036, F.S.;  
21          authorizing the department to adopt rules establishing  
22          certain standards for regulating commercial feed or  
23          feedstuff; requiring the department to consult with  
24          the Commercial Feed Technical Council in the  
25          development of such rules; creating s. 810.127, F.S.;  
26          defining terms; prohibiting the knowing entry upon and  
27          unauthorized recording of sounds or images of a farm

28 or farm operation; providing for applicability;  
 29 providing a penalty; providing effective dates.

30

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

32

33 Section 1. Paragraph (d) is added to subsection (2) of  
 34 section 163.3162, Florida Statutes, and paragraphs (b), (c), and  
 35 (i) of subsection (3) of that section are amended to read:

36 163.3162 Agricultural Lands and Practices.—

37 (2) DEFINITIONS.—As used in this section, the term:

38 (d) "Governmental entity" has the same meaning as provided  
 39 in s. 164.1031.

40 (3) DUPLICATION OF REGULATION.—Except as otherwise  
 41 provided in this section and s. 487.051(2), and notwithstanding  
 42 any other law, including any provision of chapter 125 or this  
 43 chapter:

44 (b) A governmental entity ~~county~~ may not charge an  
 45 assessment or fee for stormwater management on a bona fide farm  
 46 operation on land classified as agricultural land pursuant to s.  
 47 193.461, if the farm operation has a National Pollutant  
 48 Discharge Elimination System permit, environmental resource  
 49 permit, or works-of-the-district permit or implements best  
 50 management practices adopted as rules under chapter 120 by the  
 51 Department of Environmental Protection, the Department of  
 52 Agriculture and Consumer Services, or a water management  
 53 district as part of a statewide or regional program.

54 (c) For each governmental entity ~~county~~ that, before March  
 55 1, 2009, adopted a stormwater utility ordinance or resolution,

56 adopted an ordinance or resolution establishing a municipal  
 57 services benefit unit, or adopted a resolution stating the  
 58 governmental entity's ~~county's~~ intent to use the uniform method  
 59 of collection pursuant to s. 197.3632 for such stormwater  
 60 ordinances, the governmental entity ~~county~~ may continue to  
 61 charge an assessment or fee for stormwater management on a bona  
 62 fide farm operation on land classified as agricultural pursuant  
 63 to s. 193.461, if the ordinance or resolution provides credits  
 64 against the assessment or fee on a bona fide farm operation for  
 65 the water quality or flood control benefit of:

66 1. The implementation of best management practices adopted  
 67 as rules under chapter 120 by the Department of Environmental  
 68 Protection, the Department of Agriculture and Consumer Services,  
 69 or a water management district as part of a statewide or  
 70 regional program;

71 2. The stormwater quality and quantity measures required  
 72 as part of a National Pollutant Discharge Elimination System  
 73 permit, environmental resource permit, or works-of-the-district  
 74 permit; or

75 3. The implementation of best management practices or  
 76 alternative measures which the landowner demonstrates to the  
 77 governmental entity ~~county~~ to be of equivalent or greater  
 78 stormwater benefit than those provided by implementation of best  
 79 management practices adopted as rules under chapter 120 by the  
 80 Department of Environmental Protection, the Department of  
 81 Agriculture and Consumer Services, or a water management  
 82 district as part of a statewide or regional program, or  
 83 stormwater quality and quantity measures required as part of a

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84 National Pollutant Discharge Elimination System permit,  
 85 environmental resource permit, or works-of-the-district permit.

86 (i) The provisions of this subsection that limit a  
 87 governmental entity's ~~county's~~ authority to adopt or enforce any  
 88 ordinance, regulation, rule, or policy, or to charge any  
 89 assessment or fee for stormwater management, apply only to a  
 90 bona fide farm operation as described in this subsection.

91 Section 2. Paragraph (c) of subsection (4) of section  
 92 206.41, Florida Statutes, is amended to read:

93 206.41 State taxes imposed on motor fuel.—

94 (4)

95 (c)1. Any person who uses any motor fuel for agricultural,  
 96 aquacultural, commercial fishing, or commercial aviation  
 97 purposes on which fuel the tax imposed by paragraph (1)(e),  
 98 paragraph (1)(f), or paragraph (1)(g) has been paid is entitled  
 99 to a refund of such tax.

100 2. For the purposes of this paragraph, "agricultural and  
 101 aquacultural purposes" means motor fuel used in any tractor,  
 102 vehicle, or other farm equipment which is used exclusively on a  
 103 farm or for processing farm products on the farm, and no part of  
 104 which fuel is used in any vehicle or equipment driven or  
 105 operated upon the public highways of this state. This  
 106 restriction does not apply to the movement of a farm vehicle, ~~or~~  
 107 farm equipment, citrus harvesting equipment, or citrus fruit  
 108 loaders between farms. The transporting of bees by water and the  
 109 operating of equipment used in the apiary of a beekeeper shall  
 110 be also deemed an agricultural purpose.

111 3. For the purposes of this paragraph, "commercial fishing

112 and aquacultural purposes" means motor fuel used in the  
 113 operation of boats, vessels, or equipment used exclusively for  
 114 the taking of fish, crayfish, oysters, shrimp, or sponges from  
 115 salt or fresh waters under the jurisdiction of the state for  
 116 resale to the public, and no part of which fuel is used in any  
 117 vehicle or equipment driven or operated upon the highways of  
 118 this state; however, the term may in no way be construed to  
 119 include fuel used for sport or pleasure fishing.

120 4. For the purposes of this paragraph, "commercial  
 121 aviation purposes" means motor fuel used in the operation of  
 122 aviation ground support vehicles or equipment, no part of which  
 123 fuel is used in any vehicle or equipment driven or operated upon  
 124 the public highways of this state.

125 Section 3. Paragraph (a) of subsection (5) of section  
 126 316.515, Florida Statutes, is amended to read:

127 316.515 Maximum width, height, length.—

128 (5) IMPLEMENTS OF HUSBANDRY AND FARM EQUIPMENT;  
 129 AGRICULTURAL TRAILERS; FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.—

130 (a) Notwithstanding any other provisions of law, straight  
 131 trucks, agricultural tractors, citrus harvesting equipment,  
 132 citrus fruit loaders, and cotton module movers, not exceeding 50  
 133 feet in length, or any combination of up to and including three  
 134 implements of husbandry, including the towing power unit, and  
 135 any single agricultural trailer with a load thereon or any  
 136 agricultural implements attached to a towing power unit, or a  
 137 self-propelled agricultural implement or an agricultural  
 138 tractor, is authorized for the purpose of transporting peanuts,  
 139 grains, soybeans, citrus, cotton, hay, straw, or other

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140 | perishable farm products from their point of production to the  
 141 | first point of change of custody or of long-term storage, and  
 142 | for the purpose of returning to such point of production, or for  
 143 | the purpose of moving such tractors, movers, and implements from  
 144 | one point of agricultural production to another, by a person  
 145 | engaged in the production of any such product or custom hauler,  
 146 | if such vehicle or combination of vehicles otherwise complies  
 147 | with this section. The Department of Transportation may issue  
 148 | overlength permits for cotton module movers greater than 50 feet  
 149 | but not more than 55 feet in overall length. Such vehicles shall  
 150 | be operated in accordance with all safety requirements  
 151 | prescribed by law and rules of the Department of Transportation.

152 | Section 4. Paragraph (c) of subsection (16) of section  
 153 | 570.07, Florida Statutes, is amended to read:

154 | 570.07 Department of Agriculture and Consumer Services;  
 155 | functions, powers, and duties.—The department shall have and  
 156 | exercise the following functions, powers, and duties:

- 157 | (16) To enforce the state laws and rules relating to:  
 158 | (c) Registration, labeling, inspection, sale, use,  
 159 | composition, formulation, wholesale and retail distribution, and  
 160 | analysis of commercial stock feeds and registration, labeling,  
 161 | inspection, and analysis of commercial fertilizers;

162 |  
 163 | In order to ensure uniform health and safety standards, the  
 164 | adoption of standards and fines in the subject areas of  
 165 | paragraphs (a)-(n) is expressly preempted to the state and the  
 166 | department. Any local government enforcing the subject areas of  
 167 | paragraphs (a)-(n) must use the standards and fines set forth in



168 the pertinent statutes or any rules adopted by the department  
 169 pursuant to those statutes.

170 Section 5. Paragraph (g) is added to subsection (2) of  
 171 section 580.036, Florida Statutes, to read:

172 580.036 Powers and duties.—

173 (2) The department is authorized to adopt rules pursuant  
 174 to ss. 120.536(1) and 120.54 to enforce the provisions of this  
 175 chapter. These rules shall be consistent with the rules and  
 176 standards of the United States Food and Drug Administration and  
 177 the United States Department of Agriculture, when applicable,  
 178 and shall include:

179 (g) Establishing standards for the sale, use, and  
 180 distribution of commercial feed or feedstuff to ensure usage  
 181 that is consistent with animal health, safety, and welfare and,  
 182 to the extent that meat, poultry, and other animal products may  
 183 be affected by commercial feed or feedstuff, with the safety of  
 184 these products for human consumption. Such standards, if  
 185 adopted, must be developed in consultation with the Commercial  
 186 Feed Technical Council created under s. 580.151.

187 Section 6. Effective October 1, 2012, section 810.127,  
 188 Florida Statutes, is created to read:

189 810.127 Unauthorized entry and use of recording device on  
 190 farm; penalties.—

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

192 (a) "Audio or video recording function" means the  
 193 capability of a camera, an audio or video recorder, or any other  
 194 device to record, store, transfer, broadcast, or transmit sound  
 195 or images by means of any technology now known or later

196 developed, regardless of the recording media or format,  
 197 including, but not limited to, photographs or film; magnetic  
 198 storage, including audio cassette tapes, videocassette tapes,  
 199 hard disk drives, and floppy disk drives; flash memory,  
 200 including memory cards, flash drives, and solid state drives;  
 201 optical disc storage media, including compact discs, digital  
 202 versatile discs, and blu-ray discs; streaming media; and any  
 203 other electrical, magnetic, optical, or form of data storage.

204 (b) "Farm" has the same meaning as provided in s. 823.14.  
 205 For purposes of this section, the term also includes any other  
 206 land upon which a legal farm operation is being conducted and  
 207 upon which farm products are being produced.

208 (c) "Farm operation" has the same meaning as provided in  
 209 s. 823.14.

210 (d) "Farm product" has the same meaning as provided in s.  
 211 823.14.

212 (2) A person may not knowingly enter upon any nonpublic  
 213 area of a farm and, without the prior written consent of the  
 214 farm's owner or the owner's authorized representative, operate  
 215 the audio or video recording function of any device with the  
 216 intent of recording sound or images of the farm or farm  
 217 operation.

218 (3) This section does not apply to:

219 (a) An employee or agent of the Department of Agriculture  
 220 and Consumer Services acting under s. 570.15.

221 (b) An employee or agent of the Department of Business and  
 222 Professional Regulation acting under chapter 450.

223 |       (c) A law enforcement officer conducting a lawful  
 224 | inspection or investigation.

225 |       (d) Any other government employee conducting official  
 226 | regulatory business.

227 |       (e) An engineer or his or her agent or employee acting  
 228 | under s. 471.027.

229 |       (f) A land surveyor and mapper or his or her subordinate,  
 230 | agent, or employee, as necessary for conducting any activity  
 231 | under chapter 472.

232 |       (g) A person acting on behalf of an insurer for  
 233 | inspection, underwriting, or claims purposes.



234 |       (4) A person who violates this section commits a  
 235 | misdemeanor of the first degree, punishable as provided in s.  
 236 | 775.082 or s. 775.083.

237 |       Section 7. Except as otherwise expressly provided in this  
 238 | act, this act shall take effect July 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1173 Criminal Gang Prevention  
SPONSOR(S): Ingram and others  
TIED BILLS: None IDEN./SIM. BILLS: SB 1846

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

SUMMARY ANALYSIS

House Bill 1173 contains a variety of provisions relating to criminal gangs. Specifically, the bill:

- Increases the penalty for violating s. 810.0975(2), F.S. (trespassing in school safety zones), from a second degree misdemeanor to a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs).
- Amends s. 874.05, F.S., to make it a second degree felony, ranked in Level 5 of the offense severity ranking chart, for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. The bill makes second or subsequent violations of this provision a first degree felony, ranked in Level 7 of the offense severity ranking chart.
- Authorizes jails to designate an individual to be responsible for determining the gang status of each inmate entering the jail using specified criteria and to assess each current inmate for any gang activity or gang affiliation.
- Amends the criminal gang multiplier in s. 921.0024, F.S., so that the multiplier will be able to be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang in instances where the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative fiscal impact on both prison and jail beds. See fiscal section.

The bill is effective October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **School Safety Zones**

Section 810.0975, F.S., relates to trespassing in "school safety zones," which is defined as "in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education." Subsection (2) of the statute:

- Requires public and private school principals to notify law enforcement to prohibit specified persons<sup>1</sup> from loitering in a school safety zone.<sup>2</sup>
- Prohibits specified persons<sup>3</sup> from entering the premises or trespassing within a school safety zone or remaining on such premises or within such school safety zone.<sup>4</sup>
- Prohibits specified persons<sup>5</sup> from willfully failing to remove themselves from a school safety zone after a principal, who has a reasonable belief that the person will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests the person to leave the school safety zone.<sup>6</sup>

A violation of s. 810.0975(2), F.S., is currently a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.<sup>7</sup>

##### *Effect of the Bill*

The bill makes a violation of s. 810.0975(2), F.S., a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs). A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine.<sup>8</sup>

##### **Causing, Encouraging, Soliciting, or Recruiting Criminal Gang Membership**

Section 874.05, F.S., makes it a third degree felony<sup>9</sup> for a person to intentionally cause, encourage, solicit, or recruit another person to become a criminal gang member<sup>10</sup> where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 4 (22 sentencing points) of the offense severity ranking chart (ranking chart).<sup>11</sup> Second or subsequent

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<sup>1</sup> These persons include those who do not have legitimate business in the school safety zone, those who do not have authorization or license to enter or remain in a school safety zone, and those who do not have invitee status in the school safety zone. Section 810.0975(2)(a), F.S.

<sup>2</sup> Section 810.0975(2)(a), F.S.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> This prohibition only applies during the period from one hour before the start of a school session until one hour after the conclusion of a school session. Section 810.0975(2)(b), F.S.

<sup>5</sup> *Supra* note 1.

<sup>6</sup> Section 810.0975(2)(c), F.S.

<sup>7</sup> Sections 775.082 and 775.083, F.S.

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

<sup>9</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>10</sup> Section 874.03(3), F.S., defines the term "criminal gang member" as a person who meets two or more of the following criteria: admits to criminal gang membership; is identified as a criminal gang member by a parent or guardian; is identified as a criminal gang member by a documented reliable informant; adopts the style of dress of a criminal gang; adopts the use of a hand sign identified as used by a criminal gang; has a tattoo identified as used by a criminal gang; associates with one or more known criminal gang members; is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information; is identified as a criminal gang member by physical evidence; has been observed in the company of one or more known criminal gang members four or more times; has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

<sup>11</sup> Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence

violations of the statute are second degree felonies, ranked in Level 5 (28 sentencing points) of the ranking chart.<sup>12</sup>

#### *Effect of the Bill*

The bill amends s. 874.05, F.S., to make it a second degree felony for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 5 of the ranking chart. The bill makes second or subsequent violations of this provision a first degree felony, ranked in Level 7 (56 sentencing points) of the ranking chart.<sup>13</sup>

#### **Jails – Inmate Gang Status**

Section 951.23, F.S., contains a variety of provisions relating to county and municipal detention facilities (jails). For example, the statute requires county detention facilities to provide specified inmate data to the Department of Corrections, requires that jail model standards be developed, requires jails to contract for firesafety inspections, authorizes commissaries to be operated in jails and provides requirements for such operation, and provides criminal penalties for jail inmates who violate certain jail rules.<sup>14</sup>

#### *Effect of the Bill*

The bill amends s. 951.23, F.S., to authorize jails to designate an individual to be responsible for determining the gang status of each inmate entering the jail using the criteria contained in s. 874.03, F.S., and to assess each current inmate for any gang activity or gang affiliation using such criteria. The bill specifies that such person should at least once biweekly reconcile information with the arresting law enforcement agency and the statewide criminal gang database.<sup>15</sup>

#### **Criminal Gang Offenses – Penalty Enhancements and Sentencing Multipliers**

Criminal offenses are ranked in the ranking chart from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors such as: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. The Criminal Punishment Code worksheet, found in s. 921.0024, F.S., is used to compute a defendant's total sentence points.

The Criminal Punishment Code worksheet contains a variety of sentencing multipliers that act to multiply a defendant's sentencing points by a certain number, thereby increasing the defendant's lowest permissible sentence. The worksheet currently contains a criminal gang multiplier that multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang as prohibited under s. 874.04, F.S.

Section 874.04, F.S., provides that upon a finding by the factfinder that a defendant committed the charged offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang, the penalty for such offense can be enhanced. The statute specifies the extent to which such enhancement can be made and requires each of the findings required as a basis for such enhancement to be found beyond a reasonable doubt.

As noted above, the criminal gang multiplier in the worksheet multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the

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points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence.

<sup>12</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>13</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>14</sup> Section 951.23, F.S.

<sup>15</sup> Pursuant to s. 874.09, F.S., the Florida Department of Law Enforcement manages a statewide criminal gang database where gang intelligence information is shared among all law enforcement agencies statewide. Information is entered into the database by local law enforcement agencies who, after carrying out any arrest of any individual whom they believe is a member or associate of a criminal gang, may create or update that individual's electronic file within the database.

interests of a criminal gang *as prohibited under s. 874.04, F.S.* Section 874.04, F.S., requires the factfinder (i.e., the jury) to find that a defendant committed the offense for such purposes. This limits the instances in which the criminal gang multiplier can be used to those instances in which the jury has made the required finding. If the reference to s. 874.04, F.S., were removed from the multiplier, a *judge* could made the required finding so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.<sup>16</sup>

#### *Effect of the Bill*

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied without a finding by *the jury* that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 810.0975, F.S., relating to school safety zones; definition; trespass prohibited; penalty.

Section 2. Amends s. 874.05, F.S., relating to causing, encouraging, soliciting, or recruiting criminal gang membership.

Section 3. Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.

Section 4. Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 5. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6. Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.

Section 7. Provides an effective date of October 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 Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill will likely have a negative prison bed impact in that it:

- Amends s. 874.05, F.S., to make it a second degree felony, ranked in Level 5 of the ranking chart, for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime.
- Makes second or subsequent violations of the above provision a first degree felony, ranked in Level 7 of the ranking chart.

<sup>16</sup> See *Mathew v. State*, 837 So.2d 1167 (Fla. 4<sup>th</sup> DCA 2003); *Apprendi v. New Jersey*, 530 U.S. 466 (2000).



- Amends s. 921.0024, F.S., in a manner that may result in the sentencing multiplier being used more frequently.

#### 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 increases the penalty for violating s. 810.0975(2), F.S. (trespassing in school safety zones), from a second degree misdemeanor to a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs). This may have a negative jail bed impact on local governments.

#### 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:

It is unclear why there is a reference to s. 921.243, F.S., on line 103. This section of statute requires the court to indicate on the judgment that the victim of the offense was a minor.

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for such purposes. However, a judge would not be permitted to make this finding if using the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the charged offense.<sup>17</sup> This should be noted in the worksheet so that prosecutors are aware of the multiplier's limitations.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>17</sup> See *Mathew v. State*, 837 So.2d 1167 (Fla. 4<sup>th</sup> DCA 2003)(holding that pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a jury must find that the facts necessary to impose a domestic violence multiplier exist beyond a reasonable doubt when the multiplier results in a sentence that exceeds the statutory maximum for the charged offense).

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A bill to be entitled  
 An act relating to criminal gang prevention; amending  
 s. 810.0975, F.S.; providing enhanced criminal  
 penalties for certain trespassing offenses in school  
 safety zones by a person convicted of certain gang-  
 related offenses; amending s. 874.05, F.S.; providing  
 enhanced criminal penalties for a person who  
 intentionally causes, encourages, solicits, or  
 recruits another person under a specified age to  
 become a criminal gang member in certain  
 circumstances; amending s. 951.23, F.S.; authorizing  
 county and municipal detention facilities to designate  
 an individual to be responsible for determining the  
 gang status of each inmate entering the facility and  
 to assess each current inmate for gang activity or  
 gang affiliation; providing duties of such  
 individuals; amending ss. 435.04 and 921.0022, F.S.;  
 conforming cross-references and assigning offense  
 severity rankings for violations of s. 874.05, F.S.;  
 amending s. 921.0024, F.S.; revising the criteria for  
 application of the sentencing multiplier for offenses  
 related to criminal gangs; providing an effective  
 date.

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

Section 1. Section 810.0975, Florida Statutes, is amended  
 to read:

29 810.0975 School safety zones; definition; trespass  
 30 prohibited; penalty.-

31 (1) For the purposes of this section, the term "school  
 32 safety zone" means in, on, or within 500 feet of any real  
 33 property owned by or leased to any public or private elementary,  
 34 middle, or high school or school board and used for elementary,  
 35 middle, or high school education.

36 (2)(a) Each principal or designee of each public or  
 37 private school in this state shall notify the appropriate law  
 38 enforcement agency to prohibit any person from loitering in the  
 39 school safety zone who does not have legitimate business in the  
 40 school safety zone or any other authorization, or license to  
 41 enter or remain in the school safety zone or does not otherwise  
 42 have invitee status in the designated safety zone.

43 (b)1. During the period from 1 hour prior to the start of  
 44 a school session until 1 hour after the conclusion of a school  
 45 session, it is unlawful for any person to enter the premises or  
 46 trespass within a school safety zone or to remain on such  
 47 premises or within such school safety zone when that person does  
 48 not have legitimate business in the school safety zone or any  
 49 other authorization, license, or invitation to enter or remain  
 50 in the school safety zone.

51 2.a. Except as provided in sub-subparagraph b., a ~~Any~~  
 52 person who violates this subsection commits a misdemeanor of the  
 53 second degree, punishable as provided in s. 775.082 or s.  
 54 775.083.

55 b. A person who violates this subsection and who has been  
 56 previously convicted of any offense contained in chapter 874

57 commits a misdemeanor of the first degree, punishable as  
 58 provided in s. 775.082 or s. 775.083.

59 (c) 1. Except a provided in subparagraph 2., a ~~Any~~ person  
 60 who does not have legitimate business in the school safety zone  
 61 or any other authorization, license, or invitation to enter or  
 62 remain in the school safety zone who shall willfully fail to  
 63 remove himself or herself from the school safety zone after the  
 64 principal or designee, having a reasonable belief that he or she  
 65 will commit a crime or is engaged in harassment or intimidation  
 66 of students entering or leaving school property, requests him or  
 67 her to leave the school safety zone commits a misdemeanor of the  
 68 second degree, punishable as provided in s. 775.082 or s.  
 69 775.083.

70 2. A person who violates subparagraph 1. and who has been  
 71 previously convicted of any offense contained in chapter 874  
 72 commits a misdemeanor of the first degree, punishable as  
 73 provided in s. 775.082 or s. 775.083.

74 (3) Nothing in This section does not shall be construed to  
 75 abridge or infringe upon the right of any person to peaceably  
 76 assemble and protest.

77 (4)-(3) This section does not apply to residents or persons  
 78 engaged in the operation of a licensed commercial business  
 79 within the school safety zone.

80 Section 2. Section 874.05, Florida Statutes, is amended to  
 81 read:

82 874.05 Causing, encouraging, soliciting, or recruiting  
 83 criminal gang membership.—

84 (1) (a) Except as provided in paragraph (b) ~~subsection (2),~~

85 a person who intentionally causes, encourages, solicits, or  
 86 recruits another person to become a criminal gang member where a  
 87 condition of membership or continued membership is the  
 88 commission of any crime commits a felony of the third degree,  
 89 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

90 ~~(b)(2)~~ A person who commits a second or subsequent  
 91 violation of this subsection commits a felony of the second  
 92 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 93 775.084.

94 (2)(a) Except as provided in paragraph (b), a person who  
 95 intentionally causes, encourages, solicits, or recruits another  
 96 person under 13 years of age to become a criminal gang member  
 97 where a condition of membership or continued membership is the  
 98 commission of any crime commits a felony of the second degree,  
 99 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

100 (b) A person who commits a second or subsequent violation  
 101 of this subsection commits a felony of the first degree,  
 102 punishable as provided in s. 775.082, s. 775.083, or s. 775.084  
 103 and s. 921.243.

104 Section 3. Subsection (11) is added to section 951.23,  
 105 Florida Statutes, to read:

106 951.23 County and municipal detention facilities;  
 107 definitions; administration; standards and requirements.—

108 (11) GANG STATUS OF INMATES.—A county or municipal  
 109 detention facility may designate an individual to be responsible  
 110 for determining the gang status of each inmate entering the  
 111 facility using the criteria in s. 874.03 and assess each current  
 112 inmate for any gang activity or gang affiliation using those

113 criteria. The individual should at least once biweekly reconcile  
 114 information with the arresting law enforcement agency and the  
 115 statewide criminal gang database.

116 Section 4. Paragraph (qq) of subsection (2) of section  
 117 435.04, Florida Statutes, is amended to read:

118 435.04 Level 2 screening standards.—

119 (2) The security background investigations under this  
 120 section must ensure that no persons subject to the provisions of  
 121 this section have been arrested for and are awaiting final  
 122 disposition of, have been found guilty of, regardless of  
 123 adjudication, or entered a plea of nolo contendere or guilty to,  
 124 or have been adjudicated delinquent and the record has not been  
 125 sealed or expunged for, any offense prohibited under any of the  
 126 following provisions of state law or similar law of another  
 127 jurisdiction:

128 (qq) Section 874.05~~(1)~~, relating to encouraging or  
 129 recruiting another to join a criminal gang.

130 Section 5. Paragraphs (d), (e), and (g) of subsection (3)  
 131 of section 921.0022, Florida Statutes, are amended to read:

132 921.0022 Criminal Punishment Code; offense severity  
 133 ranking chart.—

134 (3) OFFENSE SEVERITY RANKING CHART

135 (d) LEVEL 4

136

Florida	Felony	
Statute	Degree	Description

137

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138	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
139	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
140	499.0051(2)	3rd	Failure to authenticate pedigree papers.
141	499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
142	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
143	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
144	784.075	3rd	Battery on detention or commitment facility staff.
	784.078	3rd	Battery of facility employee by

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			throwing, tossing, or expelling certain fluids or materials.
145			
	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
146			
	784.081(3)	3rd	Battery on specified official or employee.
147			
	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
148			
	784.083(3)	3rd	Battery on code inspector.
149			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
150			
	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
151			
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
152			



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153	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
154	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
155	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
156	790.115(2)(c)	3rd	Possessing firearm on school property.
157	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
158	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied

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			conveyance; unarmed; no assault or battery.
159	810.06	3rd	Burglary; possession of tools.
160	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
161	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
162	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
163	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
164	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03 (5) drugs.
165	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
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167	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
168	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
169	837.02(1)	3rd	Perjury in official proceedings.
170	837.021(1)	3rd	Make contradictory statements in official proceedings.
171	838.022	3rd	Official misconduct.
172	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
173	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
174	843.021	3rd	Possession of a concealed handcuff key by a person in custody.

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175	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
176	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
177	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
178	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
179	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
180	914.14(2)	3rd	Witnesses accepting bribes.
181	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.

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182	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
183	918.12	3rd	Tampering with jurors.
184	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
185	(e)	LEVEL 5	
186	Florida Statute	Felony Degree	Description
187	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
188	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
189	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
190	327.30(5)	3rd	Vessel accidents involving

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191			personal injury; leaving scene.
192	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
193	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
194	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
195	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
196	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
197	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
198	790.01(2)	3rd	Carrying a concealed firearm.

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199	790.162	2nd	Threat to throw or discharge destructive device.
200	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
201	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
202	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
203	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
204	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
205	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more

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			but less than \$50,000.
206	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
207	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
208	812.131(2)(b)	3rd	Robbery by sudden snatching.
209	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
210	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
211	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
212	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
213			



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	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
214	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
215	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
216	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
217	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion

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			picture, etc., which includes sexual conduct by a child.
218	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
219	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
220	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
221	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
222	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
223	<u>874.05(1)(b)</u> <del>874.05(2)</del>	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent

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offense.

224

874.05(2)(a)                      2nd      Encouraging or recruiting  
person under 13 to join a  
criminal gang.

225

893.13(1)(a)1.                      2nd      Sell, manufacture, or deliver  
cocaine (or other s.  
893.03(1)(a), (1)(b), (1)(d),  
(2)(a), (2)(b), or (2)(c)4.  
drugs).

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893.13(1)(c)2.                      2nd      Sell, manufacture, or deliver  
cannabis (or other s.  
893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)5.,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (3), or (4) drugs)  
within 1,000 feet of a child  
care facility, school, or  
state, county, or municipal  
park or publicly owned  
recreational facility or  
community center.

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893.13(1)(d)1.                      1st      Sell, manufacture, or deliver  
cocaine (or other s.

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228	893.13(1)(e)2.	2nd	893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
229	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
230	893.13(4)(b)	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
			Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,

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231			(2)(c)8., (2)(c)9., (3), or (4) drugs).
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
232			
233	(g)	LEVEL 7	
234			
	Florida	Felony	
	Statute	Degree	Description
235			
	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
236			
	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
237			
	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
238			

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239	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
240	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
241	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
242	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
243	456.065(2)	3rd	Practicing a health care profession without a license.
244	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
245	458.327(1)	3rd	Practicing medicine without a license.

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246	459.013(1)	3rd	Practicing osteopathic medicine without a license.
247	460.411(1)	3rd	Practicing chiropractic medicine without a license.
248	461.012(1)	3rd	Practicing podiatric medicine without a license.
249	462.17	3rd	Practicing naturopathy without a license.
250	463.015(1)	3rd	Practicing optometry without a license.
251	464.016(1)	3rd	Practicing nursing without a license.
252	465.015(2)	3rd	Practicing pharmacy without a license.
253	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
254	467.201	3rd	Practicing midwifery without a license.

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255	468.366	3rd	Delivering respiratory care services without a license.
256	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
257	483.901(9)	3rd	Practicing medical physics without a license.
258	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
259	484.053	3rd	Dispensing hearing aids without a license.
260	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
261	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.



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262	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
263	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
264	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
265	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
266	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
266	782.051(3)	2nd	Attempted felony murder of a person by a person other than

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			the perpetrator or the perpetrator of an attempted felony.
267	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
268	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
269	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
270	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
271	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
272			

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273	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
274	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
275	784.048(7)	3rd	Aggravated stalking; violation of court order.
276	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
277	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
278	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
279	784.081(1)	1st	Aggravated battery on specified official or employee.
280	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
	784.083(1)	1st	Aggravated battery on code

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281			inspector.
282	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
283	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
284	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
285	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
286	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
287	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

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288	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
289	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
290	796.03	2nd	Procuring any person under 16 years for prostitution.
291	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
292	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
293	806.01(2)	2nd	Maliciously damage structure by fire or explosive.

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294	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
295	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
296	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
297	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
298	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
299	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
	812.014 (2) (b) 3.	2nd	Property stolen, emergency

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medical equipment; 2nd degree grand theft.

300

812.014(2)(b)4.            2nd    Property stolen, law enforcement equipment from authorized emergency vehicle.

301

812.0145(2)(a)            1st    Theft from person 65 years of age or older; \$50,000 or more.

302

812.019(2)                1st    Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

303

812.131(2)(a)            2nd    Robbery by sudden snatching.

304

812.133(2)(b)            1st    Carjacking; no firearm, deadly weapon, or other weapon.

305

817.234(8)(a)            2nd    Solicitation of motor vehicle accident victims with intent to defraud.

306

817.234(9)                2nd    Organizing, planning, or participating in an intentional motor vehicle collision.

307

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308	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
309	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
310	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
311	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
312	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21



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			years of age or older.
313	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
314	838.015	2nd	Bribery.
315	838.016	2nd	Unlawful compensation or reward for official behavior.
316	838.021(3)(a)	2nd	Unlawful harm to a public servant.
317	838.22	2nd	Bid tampering.
318	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
319	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
320	872.06	2nd	Abuse of a dead human body.
321	<u>874.05(2)(b)</u>	<u>1st</u>	<u>Encouraging or recruiting person under 13 to join a</u>

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322	874.10	1st, PBL	<p><u>criminal gang; second or subsequent offense.</u></p> <p>Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.</p>
323	893.13(1)(c)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
324	893.13(1)(e)1.	1st	<p>Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or</p>

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			a specified business site.
325	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
326	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
327	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
328	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
329	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
330	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
331			

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332	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
333	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
334	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
335	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
336	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
337	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but

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338			less than \$20,000.
339	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
340	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
341	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
342	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
343	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

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344	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
345	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
346	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
347	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
348	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
349	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

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985.4815(12) 3rd Failure to report or providing  
false information about a  
sexual offender; harbor or  
conceal a sexual offender.

350

985.4815(13) 3rd Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification.

351

352 Section 6. Paragraph (b) of subsection (1) of section  
353 921.0024, Florida Statutes, is amended to read:

354 921.0024 Criminal Punishment Code; worksheet computations;  
355 scoresheets.-

356 (1)

357 (b) WORKSHEET KEY:

358

359 Legal status points are assessed when any form of legal status  
360 existed at the time the offender committed an offense before the  
361 court for sentencing. Four (4) sentence points are assessed for  
362 an offender's legal status.

363

364 Community sanction violation points are assessed when a  
365 community sanction violation is before the court for sentencing.  
366 Six (6) sentence points are assessed for each community sanction  
367 violation and each successive community sanction violation,  
368 unless any of the following apply:

369 1. If the community sanction violation includes a new

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370 felony conviction before the sentencing court, twelve (12)  
 371 community sanction violation points are assessed for the  
 372 violation, and for each successive community sanction violation  
 373 involving a new felony conviction.

374 2. If the community sanction violation is committed by a  
 375 violent felony offender of special concern as defined in s.  
 376 948.06:

377 a. Twelve (12) community sanction violation points are  
 378 assessed for the violation and for each successive violation of  
 379 felony probation or community control where:

380 (I) The violation does not include a new felony  
 381 conviction; and

382 (II) The community sanction violation is not based solely  
 383 on the probationer or offender's failure to pay costs or fines  
 384 or make restitution payments.

385 b. Twenty-four (24) community sanction violation points  
 386 are assessed for the violation and for each successive violation  
 387 of felony probation or community control where the violation  
 388 includes a new felony conviction.

389  
 390 Multiple counts of community sanction violations before the  
 391 sentencing court shall not be a basis for multiplying the  
 392 assessment of community sanction violation points.

393  
 394 Prior serious felony points: If the offender has a primary  
 395 offense or any additional offense ranked in level 8, level 9, or  
 396 level 10, and one or more prior serious felonies, a single  
 397 assessment of thirty (30) points shall be added. For purposes of



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398 | this section, a prior serious felony is an offense in the  
 399 | offender's prior record that is ranked in level 8, level 9, or  
 400 | level 10 under s. 921.0022 or s. 921.0023 and for which the  
 401 | offender is serving a sentence of confinement, supervision, or  
 402 | other sanction or for which the offender's date of release from  
 403 | confinement, supervision, or other sanction, whichever is later,  
 404 | is within 3 years before the date the primary offense or any  
 405 | additional offense was committed.

406

407 | Prior capital felony points: If the offender has one or more  
 408 | prior capital felonies in the offender's criminal record, points  
 409 | shall be added to the subtotal sentence points of the offender  
 410 | equal to twice the number of points the offender receives for  
 411 | the primary offense and any additional offense. A prior capital  
 412 | felony in the offender's criminal record is a previous capital  
 413 | felony offense for which the offender has entered a plea of nolo  
 414 | contendere or guilty or has been found guilty; or a felony in  
 415 | another jurisdiction which is a capital felony in that  
 416 | jurisdiction, or would be a capital felony if the offense were  
 417 | committed in this state.

418

419 | Possession of a firearm, semiautomatic firearm, or machine gun:  
 420 | If the offender is convicted of committing or attempting to  
 421 | commit any felony other than those enumerated in s. 775.087(2)  
 422 | while having in his or her possession: a firearm as defined in  
 423 | s. 790.001(6), an additional eighteen (18) sentence points are  
 424 | assessed; or if the offender is convicted of committing or  
 425 | attempting to commit any felony other than those enumerated in

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426 s. 775.087(3) while having in his or her possession a  
 427 semiautomatic firearm as defined in s. 775.087(3) or a machine  
 428 gun as defined in s. 790.001(9), an additional twenty-five (25)  
 429 sentence points are assessed.

430

431 Sentencing multipliers:

432

433 Drug trafficking: If the primary offense is drug trafficking  
 434 under s. 893.135, the subtotal sentence points are multiplied,  
 435 at the discretion of the court, for a level 7 or level 8  
 436 offense, by 1.5. The state attorney may move the sentencing  
 437 court to reduce or suspend the sentence of a person convicted of  
 438 a level 7 or level 8 offense, if the offender provides  
 439 substantial assistance as described in s. 893.135(4).

440

441 Law enforcement protection: If the primary offense is a  
 442 violation of the Law Enforcement Protection Act under s.  
 443 775.0823(2), (3), or (4), the subtotal sentence points are  
 444 multiplied by 2.5. If the primary offense is a violation of s.  
 445 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points  
 446 are multiplied by 2.0. If the primary offense is a violation of  
 447 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
 448 Protection Act under s. 775.0823(10) or (11), the subtotal  
 449 sentence points are multiplied by 1.5.

450

451 Grand theft of a motor vehicle: If the primary offense is grand  
 452 theft of the third degree involving a motor vehicle and in the  
 453 offender's prior record, there are three or more grand thefts of

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454 the third degree involving a motor vehicle, the subtotal  
 455 sentence points are multiplied by 1.5.

456

457 Offense related to a criminal gang: If the offender is convicted  
 458 of the primary offense and committed that offense for the  
 459 purpose of benefiting, promoting, or furthering the interests of  
 460 a criminal gang as defined in s. 874.03 ~~prohibited under s.~~  
 461 ~~874.04~~, the subtotal sentence points are multiplied by 1.5.

462

463 Domestic violence in the presence of a child: If the offender is  
 464 convicted of the primary offense and the primary offense is a  
 465 crime of domestic violence, as defined in s. 741.28, which was  
 466 committed in the presence of a child under 16 years of age who  
 467 is a family or household member as defined in s. 741.28(3) with  
 468 the victim or perpetrator, the subtotal sentence points are  
 469 multiplied by 1.5.

470 Section 7. This act shall take effect October 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1285 Criminal Conduct  
SPONSOR(S): Schwartz  
TIED BILLS: None IDEN./SIM. BILLS: SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham <i>JM</i>
2) Justice Appropriations Subcommittee			<i>JM</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

In 2001, s. 827.03, F.S. (the criminal child abuse statute), was challenged as being unconstitutionally vague based on the fact that the statute does not define the term "mental injury." In 2002, the Florida Supreme Court held that the statute was not unconstitutionally vague because "mental injury" was defined in chapter 39, F.S., a related child-protection statute. However, the court stated in its opinion that "while it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes."

The bill amends s. 827.03, F.S., to define the term "mental injury" as:

Injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony. A person may not give expert testimony regarding mental injury unless that person is a physician licensed under chapter 458 or chapter 459, board certified in psychiatry, or a psychologist licensed under chapter 490. The expert testimony requirements apply only to criminal court cases, not to family court or dependency court cases.

This definition significantly mirrors the definition found in s. 39.01, F.S. The bill also reorganizes s. 827.03, F.S., to improve its readability.

This bill also amends the definition of the terms "victim" and "crime" contained in chapter 960, F.S. (the victim assistance chapter). The definition of the term "victim" is expanded to include a person younger than 18 who was the victim of a felony or misdemeanor offender that resulted in a psychiatric or psychological injury, but who was not physically injured. The term "crime" is amended to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act. These changes expand the pool of persons eligible for victim compensation awards.

According to the Florida Office of the Attorney General, the bill's impact on the Crimes Compensation trust fund would be indeterminate but potentially very significant. The bill does not appear to have a fiscal impact on local governments.

The bill is effective October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Section 827.03, F.S. – Criminal Child Abuse**

Section 827.03, F.S., Florida's criminal child abuse statute, currently provides the following:

- (1) "Child abuse" means:
  - (a) Intentional infliction of physical or mental injury upon a child;
  - (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
  - (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.<sup>1</sup>

- (2) "Aggravated child abuse" occurs when a person:
  - (a) Commits aggravated battery on a child;
  - (b) Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or
  - (c) Knowingly and willfully abuses a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to a child.

A person who commits aggravated child abuse commits a first degree felony.<sup>2</sup>

In 2001, the criminal child abuse statute was challenged as being unconstitutionally vague based on the fact that the statute does not define the term "mental injury."<sup>3</sup> In 2002, the Florida Supreme Court held that the statute was not unconstitutionally vague because "mental injury" was defined in chapter 39, F.S.,<sup>4</sup> a related child-protection statute.<sup>5</sup> However, the court stated in its opinion that "while it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes."<sup>6</sup>

##### *Effect of the Bill*

The bill amends s. 827.03, F.S., to define the term "mental injury" as:

Injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony. A person may not give expert testimony regarding mental injury unless that person is a physician licensed under chapter 458 or chapter 459, board certified in psychiatry, or a psychologist licensed under chapter 490. The expert testimony requirements apply only to criminal court cases, not to family court or dependency court cases.

This definition significantly mirrors the definition found in s. 39.01, F.S. The bill also reorganizes s. 827.03, F.S., to improve its readability.

<sup>1</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> See *State v. DuFresne*, 782 So.2d 888 (Fla. 4<sup>th</sup> DCA 2001).

<sup>4</sup> Section 39.01(42), F.S., defines "mental injury" as "an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior."

<sup>5</sup> See *DuFresne v. State*, 826 So.2d 272 (Fla. 2002).

<sup>6</sup> *Id.* at 279.

The bill amends the following statutes to conform them to the organizational changes made to s. 827.03, F.S.:

- Section 775.084, F.S. (relating to violent career criminals, etc.)
- Section 775.0877, F.S. (relating to criminal transmission of HIV)
- Section 782.07, F.S. (relating to manslaughter, etc.)
- Section 921.0022, F.S. (the offense severity ranking chart)
- Section 948.062, F.S. (relating to reporting offenses committed by probationers)

### **Victim Assistance**

The Florida Office of the Attorney General's (OAG) Division of Victim Services serves as an advocate for crime victims and administers a compensation program to ensure financial assistance for innocent victims of crime.<sup>7</sup> Currently, injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses, and other out-of-pocket expenses directly related to the injury.<sup>8</sup> Payment is made from the Crime Compensation Trust Fund.<sup>9</sup> The OAG may adopt rules establishing compensation award limits, however, compensation awards may not exceed:

- \$10,000 for treatment;
- \$10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of \$25,000 for all compensable costs; or
- \$50,000 when the OAG makes a written finding that the victim has suffered a catastrophic injury as a direct result of the crime.<sup>10</sup>

While s. 960.03(14), F.S., defines the term "victim" to include persons who have suffered *physical* injury, the term also includes certain victims who suffer *mental* injuries. Children under 16 who are present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime but who are not physically injured are considered "victims" for compensation purposes, as are people who suffer a psychiatric or psychological injury as a direct result of a forcible felony<sup>11</sup> being committed upon them.<sup>12</sup>

Section 960.03(3), F.S., also defines the term "crime" for victim assistance purposes to include "a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death."

### *Effect of the Bill*

The bill amends s. 960.03, F.S., to expand the definition of the term "victim" to include a person younger than 18 who was the victim of a felony or misdemeanor offender that resulted in a psychiatric or psychological injury, but who was not physically injured.

The bill also amends the definition of the term "crime" to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act.

---

<sup>7</sup> Crime Victims' Services (<http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument>)(last visited on January 23, 2012).

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

<sup>9</sup> Section 960.21, F.S.

<sup>10</sup> Section 960.13, F.S.

<sup>11</sup> The term "forcible felony" means "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

<sup>12</sup> Section 960.03, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 827.03, F.S., relating to abuse, aggravated abuse, and neglect of a child; penalties.

Section 2. Amends s. 775.084, F.S., relating to violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.

Section 3. Amends s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 4. Amends s. 782.07, F.S., relating to manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

Section 5. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 6. Amends s. 948.062, F.S., relating to reviewing and reporting serious offenses committed by offenders placed on probation or community control.

Section 7. Amends s. 960.03, F.S., relating to definitions; ss. 960.01-960.28.

Section 8. This bill takes effect October 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 amends s. 960.03, F.S., to expand the definition of the term "victim" to include a person younger than 18 who was the victim of a felony or misdemeanor offense that resulted in a psychiatric or psychological injury, but who was not physically injured. The bill also expands the definition of the term "crime" to include felonies or misdemeanors committed by an adult or a juvenile which result in psychiatric or psychological injury to a person less than 18 years of age who was not physically injured by the criminal act.

The OAG reported that "unless Victims Compensation can estimate the number of persons under the age of 18 who received a psychiatric or psychological injury and the amount of assistance they will require, a fiscal estimate is difficult. Without additional data, the fiscal impact on the Crimes Compensation trust fund would be indeterminate but potentially very significant."<sup>13</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.

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<sup>13</sup> E-mail from Kimberly Case, Legislative Affairs Director, Florida Office of the Attorney General, dated January 23, 2012. On file with Criminal Justice Subcommittee staff.



C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons younger than 18 who are the victim of a criminal offense that resulted in a psychiatric or psychological injury, but no physical injury, will be eligible for victim compensation awards.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

3. Other:

Whether Speech Can Amount to Child Abuse

The criminal child abuse statute has been challenged as being unconstitutionally overbroad. The Florida Supreme Court explained the overbreadth doctrine in *Wyche v. State*:

When legislation is drafted so that it may be applied to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad. See *Southeastern Fisheries Ass'n, Inc. v. Department of Natural Resources*, 453 So.2d 1351, 1353 (Fla.1984). This overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court—those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503, (1985).<sup>14</sup>

In *State v. DuFresne*,<sup>15</sup> the state alleged that a teacher who screamed at an autistic student caused the student mental injury and charged the teacher with criminal child abuse. The defendant argued that the statute was overbroad because it applied to speech that is protected by the First Amendment. The 4<sup>th</sup> District Court of Appeal (DCA) held that in order for the criminal child abuse statute to withstand an overbreadth challenge, it could not apply to speech. In 2006, the 4<sup>th</sup> DCA reiterated this decision in *Munao v. State*.<sup>16</sup> In *Munao*, the court held that the defendant, who repeatedly told his six year-old child to get a knife and stab his mother, could not be charged with child abuse because, under *DuFresne*, the child abuse statute did not apply to speech.

Shortly after the *Munao* decision was issued, the 1<sup>st</sup> DCA decided *State v. Coleman*<sup>17</sup> disagreeing with the 4<sup>th</sup> DCA. In *Coleman*, the state charged the defendant with child abuse arguing that he caused mental injury by driving by young girls and asking them vulgar and offensive questions. In disagreeing with the 4<sup>th</sup> DCA, the court stated:

We do not agree with *DuFresne* and *Munao*, however, that, to withstand an overbreadth challenge to section 827.03(1), we must construe the statute to avoid its application to *all* speech. If section 827.03(1), can be construed to be applicable *only* to specifically described unprotected speech, it can withstand an overbreadth challenge.<sup>18</sup>

<sup>14</sup> 619 So.2d 231, 235 (Fla.1993).

<sup>15</sup> 782 So.2d 888 (Fla. 4<sup>th</sup> DCA 2001).

<sup>16</sup> 939 So.2d 125 (Fla. 4<sup>th</sup> DCA 2006).

<sup>17</sup> 937 So.2d 1226 (Fla. 1<sup>st</sup> DCA 2006).

<sup>18</sup> *Id.* at 1230.

The court then explained that, "If in applying section 827.03(1) to speech, courts define the proscribed speech by construing the statute *in pari materia* with the definitions in chapter 39, constitutional speech will not be implicated."<sup>19</sup> Recognizing that their opinion was in direct conflict with the *DuFresne* and *Munao* opinions, the 1<sup>st</sup> DCA certified the conflict to the Florida Supreme Court. To date, the Florida Supreme Court has not issued an opinion resolving this conflict.

**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>19</sup> *Id.*

1 A bill to be entitled  
 2 An act relating to criminal conduct; amending s.  
 3 827.03, F.S.; defining the term "mental injury" with  
 4 respect to the offenses of abuse, aggravated abuse,  
 5 and neglect of a child; requiring that a person acting  
 6 as an expert witness have certain credentials;  
 7 amending ss. 775.084, 775.0877, 782.07, 921.0022, and  
 8 948.062, F.S.; conforming cross-references; amending  
 9 s. 960.03, F.S.; redefining the term "crime" for  
 10 purposes of crime victims compensation to include  
 11 additional forms of injury; redefining the term  
 12 "victim" to conform with the modified definition of  
 13 the term "crime"; providing an effective date.  
 14

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

16  
 17 Section 1. Section 827.03, Florida Statutes, is amended to  
 18 read:

19 827.03 Abuse, aggravated abuse, and neglect of a child;  
 20 penalties.-

21 (1) DEFINITIONS.-As used in this section, the term:

22 (a) "Aggravated child abuse" occurs when a person:

23 1. Commits aggravated battery on a child;

24 2. Willfully tortures, maliciously punishes, or willfully  
 25 and unlawfully cages a child; or

26 3. Knowingly or willfully abuses a child and in so doing  
 27 causes great bodily harm, permanent disability, or permanent  
 28 disfigurement to the child.

29 (b) "Child abuse" means:

30 1.(a) Intentional infliction of physical or mental injury  
31 upon a child;

32 2.(b) An intentional act that could reasonably be expected  
33 to result in physical or mental injury to a child; or

34 3.(e) Active encouragement of any person to commit an act  
35 that results or could reasonably be expected to result in  
36 physical or mental injury to a child.

37

38 ~~A person who knowingly or willfully abuses a child without~~  
39 ~~causing great bodily harm, permanent disability, or permanent~~  
40 ~~disfigurement to the child commits a felony of the third degree,~~  
41 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

42 ~~(2) "Aggravated child abuse" occurs when a person:~~

43 ~~(a) Commits aggravated battery on a child;~~

44 ~~(b) Willfully tortures, maliciously punishes, or willfully~~  
45 ~~and unlawfully cages a child; or~~

46 ~~(c) Knowingly or willfully abuses a child and in so doing~~  
47 ~~causes great bodily harm, permanent disability, or permanent~~  
48 ~~disfigurement to the child.~~

49

50 ~~A person who commits aggravated child abuse commits a felony of~~  
51 ~~the first degree, punishable as provided in s. 775.082, s.~~  
52 ~~775.083, or s. 775.084.~~

53 (c) "Maliciously" means wrongfully, intentionally, and  
54 without legal justification or excuse. Maliciousness may be  
55 established by circumstances from which one could conclude that  
56 a reasonable parent would not have engaged in the damaging acts

57 toward the child for any valid reason and that the primary  
 58 purpose of the acts was to cause the victim unjustifiable pain  
 59 or injury.

60 (d) "Mental injury" means injury to the intellectual or  
 61 psychological capacity of a child as evidenced by a discernible  
 62 and substantial impairment in the ability of the child to  
 63 function within the normal range of performance and behavior as  
 64 supported by expert testimony. A person may not give expert  
 65 testimony regarding mental injury unless that person is a  
 66 physician licensed under chapter 458 or chapter 459, board  
 67 certified in psychiatry, or a psychologist licensed under  
 68 chapter 490. The expert testimony requirements apply only to  
 69 criminal court cases, not to family court or dependency court  
 70 cases.

71 (e)(3)(a) "Neglect of a child" means:

72 1. A caregiver's failure or omission to provide a child  
 73 with the care, supervision, and services necessary to maintain  
 74 the child's physical and mental health, including, but not  
 75 limited to, food, nutrition, clothing, shelter, supervision,  
 76 medicine, and medical services that a prudent person would  
 77 consider essential for the well-being of the child; or

78 2. A caregiver's failure to make a reasonable effort to  
 79 protect a child from abuse, neglect, or exploitation by another  
 80 person.

81  
 82 Except as otherwise provided in this section, neglect of a child  
 83 may be based on repeated conduct or on a single incident or  
 84 omission that results in, or could reasonably be expected to

85 result in, serious physical or mental injury, or a substantial  
 86 risk of death, to a child.

87 (2) OFFENSES.-

88 (a) A person who commits aggravated child abuse commits a  
 89 felony of the first degree, punishable as provided in s.  
 90 775.082, s. 775.083, or s. 775.084.

91 (b) A person who willfully or by culpable negligence  
 92 neglects a child and in so doing causes great bodily harm,  
 93 permanent disability, or permanent disfigurement to the child  
 94 commits a felony of the second degree, punishable as provided in  
 95 s. 775.082, s. 775.083, or s. 775.084.

96 (c) A person who knowingly or willfully abuses a child  
 97 without causing great bodily harm, permanent disability, or  
 98 permanent disfigurement to the child commits a felony of the  
 99 third degree, punishable as provided in s. 775.082, s. 775.083,  
 100 or s. 775.084.

101 (d)-(e) A person who willfully or by culpable negligence  
 102 neglects a child without causing great bodily harm, permanent  
 103 disability, or permanent disfigurement to the child commits a  
 104 felony of the third degree, punishable as provided in s.  
 105 775.082, s. 775.083, or s. 775.084.

106 ~~(4) For purposes of this section, "maliciously" means~~  
 107 ~~wrongfully, intentionally, and without legal justification or~~  
 108 ~~excuse. Maliciousness may be established by circumstances from~~  
 109 ~~which one could conclude that a reasonable parent would not have~~  
 110 ~~engaged in the damaging acts toward the child for any valid~~  
 111 ~~reason and that the primary purpose of the acts was to cause the~~  
 112 ~~victim unjustifiable pain or injury.~~

113 Section 2. Paragraph (d) of subsection (1) of section  
 114 775.084, Florida Statutes, is amended to read:

115 775.084 Violent career criminals; habitual felony  
 116 offenders and habitual violent felony offenders; three-time  
 117 violent felony offenders; definitions; procedure; enhanced  
 118 penalties or mandatory minimum prison terms.—

119 (1) As used in this act:

120 (d) "Violent career criminal" means a defendant for whom  
 121 the court must impose imprisonment pursuant to paragraph (4)(d),  
 122 if it finds that:

123 1. The defendant has previously been convicted as an adult  
 124 three or more times for an offense in this state or other  
 125 qualified offense that is:

126 a. Any forcible felony, as described in s. 776.08;

127 b. Aggravated stalking, as described in s. 784.048(3) and  
 128 (4);

129 c. Aggravated child abuse, as described in s.  
 130 827.03(2) (a);

131 d. Aggravated abuse of an elderly person or disabled  
 132 adult, as described in s. 825.102(2);

133 e. Lewd or lascivious battery, lewd or lascivious  
 134 molestation, lewd or lascivious conduct, or lewd or lascivious  
 135 exhibition, as described in s. 800.04 or s. 847.0135(5);

136 f. Escape, as described in s. 944.40; or

137 g. A felony violation of chapter 790 involving the use or  
 138 possession of a firearm.

139 2. The defendant has been incarcerated in a state prison  
 140 or a federal prison.

141 3. The primary felony offense for which the defendant is  
 142 to be sentenced is a felony enumerated in subparagraph 1. and  
 143 was committed on or after October 1, 1995, and:

144 a. While the defendant was serving a prison sentence or  
 145 other sentence, or court-ordered or lawfully imposed supervision  
 146 that is imposed as a result of a prior conviction for an  
 147 enumerated felony; or

148 b. Within 5 years after the conviction of the last prior  
 149 enumerated felony, or within 5 years after the defendant's  
 150 release from a prison sentence, probation, community control,  
 151 control release, conditional release, parole, or court-ordered  
 152 or lawfully imposed supervision or other sentence that is  
 153 imposed as a result of a prior conviction for an enumerated  
 154 felony, whichever is later.

155 4. The defendant has not received a pardon for any felony  
 156 or other qualified offense that is necessary for the operation  
 157 of this paragraph.

158 5. A conviction of a felony or other qualified offense  
 159 necessary to the operation of this paragraph has not been set  
 160 aside in any postconviction proceeding.

161 Section 3. Subsection (1) of section 775.0877, Florida  
 162 Statutes, is amended to read:

163 775.0877 Criminal transmission of HIV; procedures;  
 164 penalties.—

165 (1) In any case in which a person has been convicted of or  
 166 has pled nolo contendere or guilty to, regardless of whether  
 167 adjudication is withheld, any of the following offenses, or the  
 168 attempt thereof, which offense or attempted offense involves the



169 transmission of body fluids from one person to another:  
 170 (a) Section 794.011, relating to sexual battery;  
 171 (b) Section 826.04, relating to incest;  
 172 (c) Section 800.04, relating to lewd or lascivious  
 173 offenses committed upon or in the presence of persons less than  
 174 16 years of age;  
 175 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),  
 176 relating to assault;  
 177 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),  
 178 relating to aggravated assault;  
 179 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),  
 180 relating to battery;  
 181 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),  
 182 relating to aggravated battery;  
 183 (h) Section 827.03(2)(c)~~(1)~~, relating to child abuse;  
 184 (i) Section 827.03(2)(a), relating to aggravated child  
 185 abuse;  
 186 (j) Section 825.102(1), relating to abuse of an elderly  
 187 person or disabled adult;  
 188 (k) Section 825.102(2), relating to aggravated abuse of an  
 189 elderly person or disabled adult;  
 190 (l) Section 827.071, relating to sexual performance by  
 191 person less than 18 years of age;  
 192 (m) Sections 796.03, 796.07, and 796.08, relating to  
 193 prostitution; or  
 194 (n) Section 381.0041(11)(b), relating to donation of  
 195 blood, plasma, organs, skin, or other human tissue,  
 196

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197 the court shall order the offender to undergo HIV testing, to be  
 198 performed under the direction of the Department of Health in  
 199 accordance with s. 381.004, unless the offender has undergone  
 200 HIV testing voluntarily or pursuant to procedures established in  
 201 s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or  
 202 rule providing for HIV testing of criminal offenders or inmates,  
 203 subsequent to her or his arrest for an offense enumerated in  
 204 paragraphs (a)-(n) for which she or he was convicted or to which  
 205 she or he pled nolo contendere or guilty. The results of an HIV  
 206 test performed on an offender pursuant to this subsection are  
 207 not admissible in any criminal proceeding arising out of the  
 208 alleged offense.

209 Section 4. Subsection (3) of section 782.07, Florida  
 210 Statutes, is amended to read:

211 782.07 Manslaughter; aggravated manslaughter of an elderly  
 212 person or disabled adult; aggravated manslaughter of a child;  
 213 aggravated manslaughter of an officer, a firefighter, an  
 214 emergency medical technician, or a paramedic.-

215 (3) A person who causes the death of any person under the  
 216 age of 18 by culpable negligence under s. 827.03(2)(b)~~(3)~~  
 217 commits aggravated manslaughter of a child, a felony of the  
 218 first degree, punishable as provided in s. 775.082, s. 775.083,  
 219 or s. 775.084.

220 Section 5. Paragraphs (f), (g), and (i) of subsection (3)  
 221 of section 921.0022, Florida Statutes, are amended to read:

222 921.0022 Criminal Punishment Code; offense severity  
 223 ranking chart.-

224 (3) OFFENSE SEVERITY RANKING CHART

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225	(f)	LEVEL 6		
226				
	Florida	Felony		
	Statute	Degree		Description
227				
	316.193(2)(b)	3rd		Felony DUI, 4th or subsequent conviction.
228				
	499.0051(3)	2nd		Knowing forgery of pedigree papers.
229				
	499.0051(4)	2nd		Knowing purchase or receipt of prescription drug from unauthorized person.
230				
	499.0051(5)	2nd		Knowing sale or transfer of prescription drug to unauthorized person.
231				
	775.0875(1)	3rd		Taking firearm from law enforcement officer.
232				
	784.021(1)(a)	3rd		Aggravated assault; deadly weapon without intent to kill.
233				
	784.021(1)(b)	3rd		Aggravated assault; intent to commit felony.
234				
	784.041	3rd		Felony battery; domestic battery by

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			strangulation.
235			
	784.048 (3)	3rd	Aggravated stalking; credible threat.
236			
	784.048 (5)	3rd	Aggravated stalking of person under 16.
237			
	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
238			
	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
239			
	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
240			
	784.081 (2)	2nd	Aggravated assault on specified official or employee.
241			
	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
242			
	784.083 (2)	2nd	Aggravated assault on code inspector.
243			
	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
244			
	790.115 (2) (d)	2nd	Discharging firearm or weapon on school

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			property.
245	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
246	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
247	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
248	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
249	794.05(1)	2nd	Unlawful sexual activity with specified minor.
250	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
251	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
252	806.031(2)	2nd	Arson resulting in great bodily harm to

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			firefighter or any other person.
253	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
254	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
255	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
256	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
257	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
258	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
259	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
260	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
261			

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262	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
263	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
264	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
265	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
266	<u>827.03(2)(c)</u> <del>827.03(1)</del>	3rd	Abuse of a child.
267	<u>827.03(2)(d)</u> <del>827.03(3)(c)</del>	3rd	Neglect of a child.
268	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
269	836.05	2nd	Threats; extortion.
270	836.10	2nd	Written threats to kill or do bodily injury.

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271	843.12	3rd	Aids or assists person to escape.
272	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
273	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
274	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
275	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
276	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
277	944.40	2nd	Escapes.
278	944.46	3rd	Harboring, concealing, aiding escaped prisoners.



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279	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
280	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
281	(g) LEVEL 7		
282			
283	Florida Statute	Felony Degree	Description
284	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
285	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
286	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
287	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.

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288	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
289	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
290	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
291	456.065(2)	3rd	Practicing a health care profession without a license.
292	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
293	458.327(1)	3rd	Practicing medicine without a license.
294	459.013(1)	3rd	Practicing osteopathic medicine without a license.
295	460.411(1)	3rd	Practicing chiropractic medicine without a license.
	461.012(1)	3rd	Practicing podiatric medicine without a

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			license.
296			
	462.17	3rd	Practicing naturopathy without a license.
297			
	463.015(1)	3rd	Practicing optometry without a license.
298			
	464.016(1)	3rd	Practicing nursing without a license.
299			
	465.015(2)	3rd	Practicing pharmacy without a license.
300			
	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
301			
	467.201	3rd	Practicing midwifery without a license.
302			
	468.366	3rd	Delivering respiratory care services without a license.
303			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
304			
	483.901(9)	3rd	Practicing medical physics without a license.
305			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
306			

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307	484.053	3rd	Dispensing hearing aids without a license.
308	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
309	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
310	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
311	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
312	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

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313	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
314	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
315	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
316	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
317	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
318	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
319	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.

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320	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
321	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
322	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
323	784.048(7)	3rd	Aggravated stalking; violation of court order.
324	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
325	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
326	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
327	784.081(1)	1st	Aggravated battery on specified official or employee.
328	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

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329	784.083(1)	1st	Aggravated battery on code inspector.
330	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
331	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
332	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
333	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
334	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
335	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements

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336			provided for in s. 874.04.
337	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
338	796.03	2nd	Procuring any person under 16 years for prostitution.
339	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
340	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
341	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
342	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
343	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.



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344	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
345	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
346	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
347	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
348	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
349	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
350	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
	812.019 (2)	1st	Stolen property; initiates, organizes,

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351			plans, etc., the theft of property and traffics in stolen property.
352	812.131(2)(a)	2nd	Robbery by sudden snatching.
353	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
354	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
355	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
356	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
357	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
358	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.

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359	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
360	<u>827.03(2)</u> <del>827.03(3)(b)</del>	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
361	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
362	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
363	838.015	2nd	Bribery.
364	838.016	2nd	Unlawful compensation or reward for official behavior.
365	838.021(3)(a)	2nd	Unlawful harm to a public servant.
366	838.22	2nd	Bid tampering.
367	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

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368	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
369	872.06	2nd	Abuse of a dead human body.
370	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
371	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
372	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
	893.13(4)(a)	1st	Deliver to minor cocaine (or other s.

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893.03(1)(a), (1)(b), (1)(d), (2)(a),  
(2)(b), or (2)(c)4. drugs).

373

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25  
lbs., less than 2,000 lbs.

374

893.135 1st Trafficking in cocaine, more than 28  
(1)(b)1.a. grams, less than 200 grams.

375

893.135 1st Trafficking in illegal drugs, more than  
(1)(c)1.a. 4 grams, less than 14 grams.

376

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than  
28 grams, less than 200 grams.

377

893.135(1)(e)1. 1st Trafficking in methaqualone, more than  
200 grams, less than 5 kilograms.

378

893.135(1)(f)1. 1st Trafficking in amphetamine, more than  
14 grams, less than 28 grams.

379

893.135 1st Trafficking in flunitrazepam, 4 grams  
(1)(g)1.a. or more, less than 14 grams.

380

893.135 1st Trafficking in gamma-hydroxybutyric  
(1)(h)1.a. acid (GHB), 1 kilogram or more, less  
than 5 kilograms.

381

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382	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
383	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
384	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
385	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
386	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
387	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
388	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

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389	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
390	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
391	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
392	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
393	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
394	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
395	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
396	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

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397	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
398	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
399	(i) LEVEL 9		
400			
401	Florida Statute	Felony Degree	Description
402	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
403	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
404	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.
405	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
	560.123(8) (b) 3.	1st	Failure to report currency or payment



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406			instruments totaling or exceeding \$100,000 by money transmitter.
407	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
408	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
409	775.0844	1st	Aggravated white collar crime.
410	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
411	782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, and other specified felonies.
412	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

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413	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
414	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
415	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
416	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
417	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
418	790.161	1st	Attempted capital destructive device offense.
419	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.

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420	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
421	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
422	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
423	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
424	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
425	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
426	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
427	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.

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428	812.135(2)(b)	1st	Home-invasion robbery with weapon.
	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
429	<u>827.03(2)(a)</u>	1st	Aggravated child abuse.
	<del>827.03(2)</del>		
430	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
431	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
432	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
433	893.135	1st	Attempted capital trafficking offense.
434	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
435			

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436	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
437	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
438	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
439	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
440	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
441	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
442	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
443	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
444	896.101 (5) (c)	1st	Money laundering, financial instruments totaling or exceeding \$100,000.

896.104(4)(a)3. 1st Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.

445

446

Section 6. Subsection (1) of section 948.062, Florida Statutes, is amended to read:

447

448

948.062 Reviewing and reporting serious offenses committed by offenders placed on probation or community control.—

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(1) The department shall review the circumstances related to an offender placed on probation or community control who has been arrested while on supervision for the following offenses:

451

452

453

(a) Any murder as provided in s. 782.04;

454

455

(b) Any sexual battery as provided in s. 794.011 or s. 794.023;

456

457

(c) Any sexual performance by a child as provided in s. 827.071;

458

459

(d) Any kidnapping, false imprisonment, or luring of a child as provided in s. 787.01, s. 787.02, or s. 787.025;

460

461

(e) Any lewd and lascivious battery or lewd and lascivious molestation as provided in s. 800.04(4) or (5);

462

463

(f) Any aggravated child abuse as provided in s. 827.03(2)(a) ~~s. 827.03(2)~~;

464

465

(g) Any robbery with a firearm or other deadly weapon, home invasion robbery, or carjacking as provided in s.

466

812.13(2)(a), s. 812.135, or s. 812.133;

467

468

(h) Any aggravated stalking as provided in s. 784.048(3), (4), or (5);

469 (i) Any forcible felony as provided in s. 776.08,  
 470 committed by a ~~any~~ person on probation or community control who  
 471 is designated as a sexual predator; or

472 (j) Any DUI manslaughter as provided in s. 316.193(3)(c),  
 473 or vehicular or vessel homicide as provided in s. 782.071 or s.  
 474 782.072, committed by a ~~any~~ person who is on probation or  
 475 community control for an offense involving death or injury  
 476 resulting from a driving incident.

477 Section 7. Paragraph (a) of subsection (3) and subsection  
 478 (14) of section 960.03, Florida Statutes, are amended to read:  
 479 960.03 Definitions; ss. 960.01-960.28.—As used in ss.

480 960.01-960.28, unless the context otherwise requires, the term:

481 (3) "Crime" means:

482 (a) A felony or misdemeanor offense committed by either an  
 483 adult or a juvenile which results in physical injury or death,  
 484 including a felony or misdemeanor offense committed by either an  
 485 adult or a juvenile which results in psychiatric or  
 486 psychological injury to a person younger than 18 years of age  
 487 who was not physically injured by the criminal act. The term  
 488 also includes any ~~such~~ criminal act that ~~which~~ is committed  
 489 within this state but that ~~which~~ falls exclusively within  
 490 federal jurisdiction.

491 (14) "Victim" means:

492 (a) A person who suffers personal physical injury or death  
 493 as a direct result of a crime;

494 (b) A person younger than 18 years of age who was present  
 495 at the scene of a crime, saw or heard the crime, and suffered a  
 496 psychiatric or psychological injury because of the crime, but

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497 | who was not physically injured; ~~or~~

498 |       (c) A person younger than 18 years of age who was the  
 499 | victim of a felony or misdemeanor offense that resulted in a  
 500 | psychiatric or psychological injury, but who was not physically  
 501 | injured; or

502 |       (d)~~(e)~~ A person against whom a forcible felony was  
 503 | committed and who suffers a psychiatric or psychological injury  
 504 | as a direct result of that crime but who does not otherwise  
 505 | sustain a personal physical injury or death.



506 |       Section 8. This act shall take effect October 1, 2012.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1323 Metal Theft  
**SPONSOR(S):** Drake and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1324

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

### SUMMARY ANALYSIS

Throughout the industrialized world, stealing valuable metal has become a serious concern for police, businesses, public utilities, railroad companies, and the community at large. While efforts to combat metal theft have occurred for several decades, reports of dramatic increases in scrap metal theft are occurring throughout the United States. The stolen metals are usually sold to secondary metal recyclers at scrap yards.

In Florida, secondary metals recyclers are currently regulated under ch. 538, F.S. This chapter contains a variety of provisions that require or prohibit secondary metals recyclers to engage in certain acts. The chapter also imposes criminal penalties of secondary metals recyclers who do not comply with the chapter's provisions. For example, s. 538.23(1)(a), F.S., makes it a first degree misdemeanor for a secondary metals recycler to knowingly and intentionally:

- Engage in a pattern of failing to keep records as required by s. 538.19, F.S.;
- Fail to allow a law enforcement officer to inspect a recycler's records and purchased regulated metals property as required by s. 538.20, F.S.;
- Fail, pursuant to a request from law enforcement, to hold regulated metals property as required by s. 538.21, F.S.;
- Enter into any cash transaction in excess of \$1,000 for the purchase of regulated metals property; and
- Purchase regulated metals property from a seller where the metals were not transported in a motor vehicle.

A third or subsequent violation of these offenses is a third degree felony.

The bill amends s. 538.23, F.S. to increase the criminal penalty for violations of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. The bill also increases the penalty for a third or subsequent violations of s. 528.23(1)(a), F.S., from a third degree felony to a first degree felony.

The bill also amends s. 812.145, F.S., (relating to theft of copper or other nonferrous metals), to make it a first degree felony for a person to knowingly and intentionally remove, or assist with the removal of, copper or other nonferrous metals from an electrical substation without authorization of the utility.

The bill may have a negative prison bed impact on the Department of Corrections and a positive jail bed impact on local governments. See fiscal section.

The bill is effective October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Metal Theft**

Throughout the industrialized world, stealing valuable metal has become a serious concern for police, businesses, public utilities, railroad companies, and the community at large.<sup>1</sup> While efforts to combat metal theft have occurred for several decades, reports of dramatic increases in scrap metal theft are occurring throughout the United States.<sup>2</sup> The stolen metals are usually sold to secondary metal recyclers at scrap yards.<sup>3</sup>

Florida has responded to this problem by enacting a variety of statutes that regulate secondary metal recyclers and that specifically criminalize theft of copper and other nonferrous metals.<sup>4</sup>

##### **Secondary Metal Recyclers**

Secondary metals recyclers<sup>5</sup> are currently regulated under ch. 538, F.S. This chapter contains a variety of provisions that require or prohibit secondary metals recyclers to engage in certain acts. Chapter 538, F.S., also imposes criminal penalties on secondary metals recyclers who do not comply with the chapter's provisions. For example, s. 538.23(1)(a), F.S., makes it a first degree misdemeanor<sup>6</sup> for a secondary metals recycler to knowingly and intentionally:

- Engage in a pattern of failing to keep records as required by s. 538.19, F.S.;
- Fail to allow a law enforcement officer to inspect a recycler's records and purchased regulated metals property as required by s. 538.20, F.S.;
- Fail, pursuant to a request from law enforcement, to hold regulated metals property as required by s. 538.21, F.S.;
- Enter into any cash transaction in excess of \$1,000 for the purchase of regulated metals property; and
- Purchase regulated metals property from a seller where the metals were not transported in a motor vehicle.

A secondary metal recycler who commits a third or subsequent violation of s. 538.23(1)(a), F.S., commits a third degree felony<sup>7,8</sup>.

##### *Effect of the Bill*

The bill increases the criminal penalty for violations of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. The bill also increases the penalty for a third or subsequent violations of s. 528.23(1)(a), F.S., from a third degree felony to a first degree felony<sup>9</sup>.

<sup>1</sup> Kooi, Brandon R. (2010). Theft of Scrap Metal. *Center for Problem-Oriented Policing, Guide No. 58.* ([http://www.popcenter.org/problems/metal\\_theft/1](http://www.popcenter.org/problems/metal_theft/1))(last visited on January 20, 2012).

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

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g.,* chapters 2008-69 and 2008-195, L.O.F.

<sup>5</sup> Section 538.18(8), F.S., defines the term "secondary metals recycler" as a person who:

- (a) Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- (b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

<sup>6</sup> A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>7</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 538.23(1)(b), F.S.

### **Theft of Copper or Other Nonferrous Metals**

In addition to enacting legislation to regulate secondary metals recyclers, Florida has responded to the growing problem of metal theft by enacting s. 812.145, F.S. This statute makes it a first degree felony for a person to knowingly and intentionally take copper or other nonferrous metals from a utility or communications services provider if the theft:

- Damages the facilities of a utility or communications services provider;
- Interrupts or interferes with utility service or communications services; or
- Interferes with the ability of a utility service or communications services provider to provide service.<sup>10</sup>

#### *Effect of the Bill*

The bill amends s. 812.145, F.S., to provide that a person who knowingly and intentionally removes, or assists with the removal of, copper or other nonferrous metals from an electrical substation without authorization of the utility commits a first degree felony.

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

Section 1. Amends s. 538.23, F.S., relating to violations and penalties.

Section 2. Amends s. 812.145, F.S., relating to theft of copper or other nonferrous metals.

Section 3. Provides an effective date of October 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 Criminal Justice Impact Conference has not yet met to consider the prison bed impact of the bill. However, the bill increases criminal penalties for a third or subsequent violations of s. 538.23(1)(a), F.S., from a third degree felony to a first degree felony. The bill also makes it a first degree felony for a person to knowingly and intentionally remove, or assist with the removal of, copper or other nonferrous metals from an electrical substation without authorization of the utility. As a result, the bill could have a prison bed impact on the Department of Corrections.

#### **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 increases the criminal penalty for a violation of s. 538.23(1)(a), F.S., from a first degree misdemeanor to a third degree felony. As a result, the bill may have a positive jail bed impact on local governments.

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<sup>9</sup> A first degree felony is punishable by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment and a maximum \$10,000 fine. Sections 775.082 and 775.083, F.S.  
<sup>10</sup> Section 812.145, F.S., defines the terms "copper or other nonferrous metals," "utility," "communications services provider," "utility service," and "communications services."

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:

The bill makes it a first degree felony for a person to knowingly and intentionally remove, or assist with the removal of, copper or other nonferrous metals from an *electrical substation* without authorization of the utility. However, the bill does not define the term *electrical substation*.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to metal theft; amending s. 538.23,  
 3 F.S.; increasing the criminal penalties for specified  
 4 violations relating to secondary metals recycling;  
 5 providing increased criminal penalties for third and  
 6 subsequent criminal violations; amending s. 812.145,  
 7 F.S.; prohibiting removing or assisting with the  
 8 removal of copper or other nonferrous metals from an  
 9 electrical substation site without authorization of  
 10 the utility; providing criminal penalties; providing  
 11 an effective date.

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

14  
 15 Section 1. Subsection (1) of section 538.23, Florida  
 16 Statutes, is amended to read:

17 538.23 Violations and penalties.—

18 (1)(a) Except as provided in paragraph (b), A secondary  
 19 metals recycler who knowingly and intentionally:

- 20 1. Violates s. 538.20 or s. 538.21;  
 21 2. Engages in a pattern of failing to keep records  
 22 required by s. 538.19;  
 23 3. Violates s. 538.26(4); or  
 24 4. Violates s. 538.235,  
 25  
 26 commits a felony of the third ~~misdemeanor of the first~~ degree,  
 27 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

28 (b) A secondary metals recycler who commits a third or

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29 subsequent violation of paragraph (a) commits a felony of the  
30 first ~~third~~ degree, punishable as provided in s. 775.082, s.  
31 775.083, or s. 775.084.

32 Section 2. Subsection (3) is added to section 812.145,  
33 Florida Statutes, to read:

34 812.145 Theft of copper or other nonferrous metals.—

35 (3) A person who knowingly and intentionally removes, or  
36 assists with the removal of, copper or other nonferrous metals  
37 from an electrical substation without authorization of the  
38 utility commits a felony of the first degree, punishable as  
39 provided in s. 775.082, s. 775.083, or s. 775.084.

40 Section 3. This act shall take effect October 1, 2012.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1443 Public Nuisances  
SPONSOR(S): Frishe  
TIED BILLS: None IDEN./SIM. BILLS: SB 1580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Krol TK	Cunningham <i>SK</i>
2) Community & Military Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 893.138, F.S., authorizes counties and municipalities to create an administrative board to hear complaints regarding certain public nuisances. These nuisances may include places or premises that have been used:

- On more than two occasions within a 6-month period, as the site of a violation of s. 796.07, F.S., relating to prostitution.
- On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance.
- On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance.

If the administrative board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt a procedure considered to be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

- The maintaining of the nuisance;
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

An order entered expires after 1 year or earlier if stated in the order.

The bill amends s. 893.138, F.S., to add the following to the list of places that may be declared to be a public nuisance and that are subject to the local administrative abatement procedures:

- Places or premises that have been used on two or more occasions within a 6-month period, as the site of any violation of s. 823.10, F.S., relating to places where controlled substances are illegally kept, sold, or used.

The bill also allows an administrative board to extend the term of the abatement order for up to 1 year upon a finding of recurring public nuisance activity or noncompliance and after hearing and notice.

The bill may have a positive fiscal impact on counties and municipalities. See fiscal comments.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Nuisances**

Chapter 823, F.S., contains a variety of provisions that declare certain places public nuisances. For example, s. 823.05(1), F.S., declares any building, booth, tent, or place a public nuisance if such building, booth, tent, or place:

- Tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S.;<sup>1</sup>
- Constitutes a place of prostitution, assignation, or lewdness;
- Is place or building where games of chance are engaged in violation of law; or
- Is a place where any law of the state is violated.<sup>2</sup>

Section 823.10, F.S., provides that a public nuisance is any store, shop, warehouse, dwelling house, building, structure, vehicle, ship, boat, vessel, or aircraft, or any place, which is:

- Visited by persons to unlawfully use any substance controlled under ch. 893, F.S.,<sup>3</sup> or any drugs as described in ch. 499, F.S.,<sup>4</sup> or
- Used to illegally keep, sell, or deliver the drugs described above.

Generally, the remedy for those harmed by a public nuisance is injunctive relief pursuant to the provisions of chapter 60, F.S. However, some statutes set forth criminal penalties for maintaining a public nuisance. For example, it is a third degree felony for any person to willfully keep or maintain a public nuisance described in s. 823.10, F.S., where such public nuisance is a warehouse, structure, or building.<sup>5</sup>

##### **Abatement of Public Nuisances**

Section 60.05, F.S., provides that when a nuisance as defined in s. 823.05, F.S., exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court may issue a temporary injunction without bond upon evidence<sup>6</sup> or affidavit that a location is shown to be a public nuisance, to enjoin:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists;
- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.<sup>7</sup>

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<sup>1</sup> A violation of s. 823.01, F.S., is a second degree misdemeanor and punishable by a fine of up to \$500. Section 775.083, F.S.

<sup>2</sup> Section 823.05(1), F.S., also provides that if a person is found guilty of maintaining a public nuisance, the building, erection, place, tent, or booth and the furniture, fixtures, and contents are declared a nuisance.

<sup>3</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>4</sup> Section 499.003(19), F.S., defines "drug" as "an article that is: (a) Recognized in the current edition of the United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of those publications; (b) Intended for use in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals; (c) Intended to affect the structure or any function of the body of humans or other animals; or (d) Intended for use as a component of any article specified in paragraph (a), paragraph (b), or paragraph (c), but does not include devices or their components, parts, or accessories." Section 499.003, F.S., also defines the following drugs: "compressed medical gas;" "contraband prescription drug;" "new drug;" "prescription drug;" "proprietary drug;" or "OTC drug;" and "veterinary prescription drug."

<sup>5</sup> A third degree felony is punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of the nuisance. Section 60.05(3), F.S.

<sup>7</sup> Section 60.05(2), F.S.

The injunction must specify the activities enjoined and must omit any lawful business unrelated to the maintenance of the nuisance complained of.<sup>8</sup> At least 3 days' notice in writing must be given to the defendant of the time and place of application for the temporary injunction.<sup>9</sup>

If the existence of the nuisance is proved at trial, the court will:

- Issue a permanent injunction;
- Order the costs to be paid by the person establishing or maintaining the nuisance; and
- Assess the costs as a lien on all personal property found in the place of the nuisance.<sup>10,11</sup>

In a proceeding abating a nuisance pursuant to s. 823.10, F.S., or s. 823.05, F.S., if a tenant has been convicted of an offense under ch. 893, F.S., or s. 796.07, F.S., the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.<sup>12</sup>

### **Abatement of Public Nuisances through Administrative Boards**

In addition to the abatement of public nuisances through court proceedings, s. 893.138, F.S., provides counties and municipalities with a local administrative action to abate criminal gang activity, and drug-related, prostitution-related, or stolen property-related public nuisances. Any county or municipality may, by ordinance, create an administrative board (board) to hear complaints regarding the public nuisances described below.<sup>13</sup>

Section 893.138(2) and (3), F.S., provides that the following places and premises may be declared a public nuisance if the place or premise has been used:

- On more than two occasions within a 6-month period, as the site of a violation of s. 796.07, F.S., relating to prostitution;
- On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;<sup>14</sup>
- On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03, F.S.,<sup>15</sup> or
- On more than two occasions within a 6-month period, as the site of a violation of s. 812.019, F.S., relating to dealing in stolen property; and
- Any pain-management clinic, as described in s. 458.3265, F.S., or s. 459.0137, F.S., if the location has been used on more than two occasions within a 6-month period as the site of a violation of:
  - Section 784.011, F.S., s. 784.021, F.S., s. 784.03, F.S., or s. 784.045, F.S., relating to assault and battery;
  - Section 810.02, F.S., relating to burglary;
  - Section 812.014, F.S., relating to dealing in theft;

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

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

<sup>10</sup> Section 60.05(4), F.S.

<sup>11</sup> Section 60.05(4), F.S., provides if the property is not enough to pay the costs then the lien will be placed on the real estate occupied by the nuisance. No lien will be attached to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within the 5 days provided.

<sup>12</sup> Section 60.05(4), F.S.

<sup>13</sup> Section 893.138(4), F.S.

<sup>14</sup> As used in this section, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563, F.S., or any imitation controlled substance defined in s. 817.564, F.S. Section 893.138(10), F.S.

<sup>15</sup> Section 874.03(4), F.S., defines "criminal gang-related activity" as "an activity committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing a person's own standing or position within a criminal gang; an activity in which the participants are identified as criminal gang members or criminal gang associates acting individually or collectively to further any criminal purpose of a criminal gang; an activity that is identified as criminal gang activity by a documented reliable informant; or an activity that is identified as criminal gang activity by an informant of previously untested reliability and such identification is corroborated by independent information."

- Section 812.131, F.S., relating to robbery by sudden snatching; or
- Section 893.13, F.S., relating to the unlawful distribution of controlled substances.

Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving at least 3 days' written notice of such complaint to the owner of the place or premises at the owner's last known address.<sup>16</sup> A hearing must then be held, where the board may consider any evidence<sup>17</sup> and the owner of the premises has an opportunity to present evidence in his or her defense. After such hearing, the board may declare the place or premises to be a public nuisance as described in subsection (2).<sup>18</sup>

If the board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to adopt a procedure considered to be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:

- The maintaining of the nuisance;
- The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.<sup>19</sup>

An order expires after 1 year or earlier if stated in the order.<sup>20</sup> The order may be enforced pursuant to the procedures contained in s. 120.69, F.S.<sup>21,22</sup>

The board may also bring a complaint under s. 60.05, F.S., seeking temporary and permanent injunctive relief against any nuisance described in subsection (2).<sup>23,24</sup>

Nothing contained within s. 893.138, F.S., prohibits a county or municipality from proceeding against a public nuisance by any other means.<sup>25</sup>

Section 893.138(11), F.S., provides that the provisions outlined above may be supplemented by a county or municipal ordinance, which may include, but is not limited to, provisions that establish additional penalties for public nuisances that:

- Include fines not to exceed \$250 per day;<sup>26</sup>
- Provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance;
- Establish penalties, including fines not to exceed \$500 per day for recurring public nuisances;<sup>27</sup>
- Provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
- Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and

<sup>16</sup> Section 893.138(4), F.S.

<sup>17</sup> Section 893.138(4), F.S., provides that evidence of the general reputation of the place or premises is admissible at the hearing.

<sup>18</sup> *Id.*

<sup>19</sup> Section 893.138(5), F.S.

<sup>20</sup> Section 893.138(6), F.S.

<sup>21</sup> Section 120.69, F.S., relates to enforcement of agency action. This section provides that an agency may seek enforcement of an action by filing a petition for enforcement in the circuit court where the subject matter of the enforcement is located.

<sup>22</sup> Section 893.138(7), F.S.

<sup>23</sup> Section 893.138(8), F.S.

<sup>24</sup> Section 893.138(9), F.S., provides that this section does not restrict the right of any person to proceed under s. 60.05, F.S., against any public nuisance.

<sup>25</sup> Section 893.138(11), F.S.

<sup>26</sup> Section 893.138(11), F.S., provides that the total fines imposed pursuant to the authority of this section shall not exceed \$15,000.

<sup>27</sup> *Id.*

- Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure.<sup>28</sup>

### **Effect of the Bill**

The bill contains the following whereas clauses:

- The Legislature recognizes that certain properties where controlled substances are kept, sold, or used are detrimental to the health, safety, and welfare of the residents of the counties and municipalities of this state;
- The Legislature desires to expand the scope of the powers of local nuisance abatement boards to permit such boards to declare such properties a public nuisance as provided in s. 893.138, F.S.;
- An order of a nuisance abatement board presently expires after 1 year or at such earlier time as may be stated in the order regardless of recurring nuisance activity or noncompliance; and
- The Legislature finds that a violation of or willful noncompliance with an order of a nuisance abatement board should serve as the basis for extending the term of the order by up to 1 additional year.

The bill amends s. 893.138(2), F.S., to add the following to the list of places that may be declared to be a public nuisance and that are subject to the local administrative abatement procedures established in s. 893.138, F.S.:

- Places or premises that have been used on two or more occasions within a 6-month period, as the site of any violation of s. 823.10, F.S., relating to places where controlled substances are illegally kept, sold, or used.

The bill also allows the administrative board to extend the term of the abatement order for up to 1 year upon a finding of recurring public nuisance activity or noncompliance and after hearing and notice.

The bill specifies that the above extension allows the administrative board continued jurisdiction over any place or premise that has been or is declared to be a public nuisance.

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

Section 1. Amends s. 893.138, F.S., relating to local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.

Section 2. Provides the act shall take effect upon becoming a 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 provides counties and municipalities with the ability to administer fines on public nuisances where the place or premise has been used on two or more occasions within a 6-month period as

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<sup>28</sup> Section 893.138(11), F.S., provides that no lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution.

the site of a violation of s. 823.10, F.S. This may provide counties and municipalities with increased revenue.

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 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:

The bill rennumbers a cross reference in s. 893.138(6), F.S., which is unrelated to the bill. Another statutory fix to renumber the same cross reference can be found in s. 893.138(7), F.S., which is not included in the bill.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled  
 An act relating to public nuisances; amending s.  
 893.138, F.S.; providing that two or more occasions  
 within a 6-month period, as the site of a violation of  
 s. 823.10, F.S., relating to places where controlled  
 substances are illegally kept, sold, or used, shall be  
 grounds to declare a place or premises to be a public  
 nuisance for purposes of local administrative action;  
 correcting a cross-reference; providing that a  
 violation of an order of a nuisance abatement board  
 may serve as the basis for extending the term of the  
 order for up to 1 year; providing an effective date.

WHEREAS, the Legislature recognizes that certain properties  
 where controlled substances are kept, sold, or used are  
 detrimental to the health, safety, and welfare of the residents  
 of the counties and municipalities of this state, and

WHEREAS, the Legislature desires to expand the scope of the  
 powers of local nuisance abatement boards to permit such boards  
 to declare such properties a public nuisance as provided in  
 section 893.138, Florida Statutes, and

WHEREAS, an order of a nuisance abatement board presently  
 expires after 1 year or at such earlier time as may be stated in  
 the order regardless of recurring nuisance activity or  
 noncompliance, and

WHEREAS, the Legislature finds that a violation of or  
 willful noncompliance with an order of a nuisance abatement

28 board should serve as the basis for extending the term of the  
 29 order by up to 1 additional year, NOW, THEREFORE,

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

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33 Section 1. Subsections (2), (6), and (11) of section  
 34 893.138, Florida Statutes, are amended to read:

35 893.138 Local administrative action to abate drug-related,  
 36 prostitution-related, or stolen-property-related public  
 37 nuisances and criminal gang activity.-

38 (2) Any place or premises that has been used:

39 (a) On more than two occasions within a 6-month period, as  
 40 the site of a violation of s. 796.07;

41 (b) On more than two occasions within a 6-month period, as  
 42 the site of the unlawful sale, delivery, manufacture, or  
 43 cultivation of any controlled substance;

44 (c) On one occasion as the site of the unlawful possession  
 45 of a controlled substance, where such possession constitutes a  
 46 felony and that has been previously used on more than one  
 47 occasion as the site of the unlawful sale, delivery,  
 48 manufacture, or cultivation of any controlled substance;

49 (d) By a criminal gang for the purpose of conducting  
 50 criminal gang activity as defined by s. 874.03; ~~or~~

51 (e) On more than two occasions within a 6-month period, as  
 52 the site of a violation of s. 812.019 relating to dealing in  
 53 stolen property; or

54 (f) On more than two occasions within a 6-month period, as  
 55 the site of a violation of s. 823.10 relating to places where



56 controlled substances are illegally kept, sold, or used,

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58 may be declared to be a public nuisance, and such nuisance may  
59 be abated pursuant to the procedures provided in this section.

60 (6) An order entered under subsection (5) ~~(4)~~ shall expire  
61 after 1 year or at such earlier time as is stated in the order.

62 The board, upon a finding of recurring public nuisance activity  
63 or noncompliance and after notice and hearing, may extend the  
64 term of the order for up to 1 year.

65 (11) The provisions of this section may be supplemented by  
66 a county or municipal ordinance. The ordinance may include, but  
67 is not limited to, provisions that establish additional  
68 penalties for public nuisances, including fines not to exceed  
69 \$250 per day; provide for the payment of reasonable costs,  
70 including reasonable attorney fees associated with  
71 investigations of and hearings on public nuisances; provide for  
72 continuing jurisdiction for a period of 1 year over any place or  
73 premises that has been or is declared to be a public nuisance,  
74 subject to extension for up to 1 additional year as provided in  
75 subsection (6); establish penalties, including fines not to  
76 exceed \$500 per day for recurring public nuisances; provide for  
77 the recording of orders on public nuisances so that notice must  
78 be given to subsequent purchasers, successors in interest, or  
79 assigns of the real property that is the subject of the order;  
80 provide that recorded orders on public nuisances may become  
81 liens against the real property that is the subject of the  
82 order; and provide for the foreclosure of property subject to a  
83 lien and the recovery of all costs, including reasonable

84 attorney fees, associated with the recording of orders and  
 85 foreclosure. A ~~No~~ lien created pursuant to ~~the provisions of~~  
 86 this section may not be foreclosed on real property that ~~which~~  
 87 is a homestead under s. 4, Art. X of the State Constitution.  
 88 Where a local government seeks to bring an administrative  
 89 action, based on a stolen property nuisance, against a property  
 90 owner operating an establishment where multiple tenants, on one  
 91 site, conduct their own retail business, the property owner is  
 92 ~~shall~~ not ~~be~~ subject to a lien against his or her property or  
 93 the prohibition of operation provision if the property owner  
 94 evicts the business declared to be a nuisance within 90 days  
 95 after notification by registered mail to the property owner of a  
 96 second stolen property conviction of the tenant. The total fines  
 97 imposed under ~~pursuant to the authority of~~ this section may  
 98 ~~shall~~ not exceed \$15,000. ~~Nothing contained within~~ This section  
 99 does not prohibit ~~prohibits~~ a county or municipality from  
 100 proceeding against a public nuisance by any other means.

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