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# **Criminal Justice Subcommittee**

**January 31, 2012**

**12:30 PM**

**404 HOB**

**Dean Cannon  
Speaker**

**Gayle Harrell  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

(AMENDED 1/27/2012 4:27:36PM)

Amended(1)

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, January 31, 2012 12:30 pm  
**End Date and Time:** Tuesday, January 31, 2012 03:00 pm  
**Location:** 404 HOB  
**Duration:** 2.50 hrs

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

HB 5 Parole for Juvenile Offenders by Weinstein  
HB 137 Offenses Against Unborn Children by Ahern, Trujillo  
HB 455 Criminal Offenders by Glorioso  
HB 497 Juvenile Expunction by Porth  
HB 947 Possession of a Firearm or Destructive Device During Commission of an Offense by Boyd  
HB 1045 Mental Health by Schwartz  
HB 1097 Sexually Violent Predators by Kreegel  
HB 1099 Stalking and Aggravated Stalking by Plakon  
CS/HB 1143 Licensing of Health Care Practitioners by Health & Human Services Quality Subcommittee, Costello  
HB 1187 Sentencing Alternatives by Perry  
HB 1331 Property Fraud by Wood  
HB 1385 Child Pornography by Trujillo

**NOTICE FINALIZED on 01/27/2012 16:27 by hudson.jessica**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5 Parole for Juvenile Offenders  
**SPONSOR(S):** Weinstein and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 212

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

### SUMMARY ANALYSIS

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Florida abolished parole in 1995.

In 2010, the United States Supreme Court held that the 8th Amendment of the U.S. Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. The Court further held that states must give juvenile non-homicide offenders sentenced to life without parole a meaningful opportunity to obtain release.

The bill amends s. 947.16, F.S., to provide that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for parole.

The bill may have a positive but indeterminate fiscal impact. See "fiscal section."

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### *Parole*

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Parole is not available for most crimes that were committed on or after October 1, 1983.<sup>1</sup> There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,360 Florida inmates still eligible for parole consideration and about 439 parolees under supervision in the community.<sup>2</sup>

###### *Graham v. Florida*

In 2010, the United States Supreme Court held that the 8<sup>th</sup> Amendment of the U.S. Constitution<sup>3</sup> prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.<sup>4</sup> The case was *Graham v. Florida*, which originated from crimes committed in Jacksonville.<sup>5</sup> The Court's opinion stated:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.<sup>6</sup>

###### *Post-Graham Decision*

Subsequent to the *Graham* decision, inmates who were convicted of nonhomicide offenses and sentenced to life imprisonment began petitioning for and receiving resentencing hearings. There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was seventeen years old was resentenced to a split sentence of 7 years in prison followed by 20 years of probation.<sup>7</sup>
- An inmate sentenced to four life sentences for armed robberies committed in 2004 and 2005 when he was 14 and 15 years old was resentenced to a term of 30 years.<sup>8</sup>
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.<sup>9</sup>

In addition to resentencing hearings, juvenile offenders are appealing lengthy prison sentences as a violation of the *Graham* decision on the grounds that they effectively constitute a life sentence. Two

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

<sup>2</sup>Florida Parole Commission. 2012 Analysis of HB 5.

<sup>3</sup>The 8<sup>th</sup> Amendment of the U.S. Constitution forbids the government from imposing cruel and unusual punishment.

<sup>4</sup>*Graham v. Florida*, 130 S.Ct. 2011 (2010).

<sup>5</sup>*Id.*

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

<sup>7</sup>"Rapist who was serving life sentence will get second chance," August 30, 2011, <http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/> (last visited on January 24, 2012).

<sup>8</sup>"Man who served 11 years fails to persuade Hillsborough judge to set him free," October 6, 2011, <http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464> (last visited on January 24, 2012).

<sup>9</sup>"Teenage rapist Jose Walle resentenced to 65 years in prison," November 18, 2010, <http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-re-sentenced-to-65-years-in-prison/1134862> (last visited on January 24, 2012).

recent Florida 1<sup>st</sup> District Court of Appeal cases have held that a 70-year and 50-year prison sentence were not the functional equivalent of a life sentence for the purposes of *Graham*.<sup>10</sup>

### **Effect of the Bill**

The bill amends s. 947.16, F.S., to provide that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for parole.

The bill defines:

- “Juvenile offender” as an offender who was less than 18 years of age at the time the nonhomicide offense was committed.
- “Nonhomicide offense” as an offense that did not result in the death of a human being.

The bill requires the Parole Commission to conduct an initial eligibility interview with the juvenile offender to determine whether he or she has demonstrated maturity and reform while in the custody of the Department of Corrections to justify granting parole. The initial eligibility interview may only occur after the juvenile has served 25 years of incarceration for the offense for which parole is sought. The bill also provides that the initial eligibility interview and any subsequent eligibility interview may occur only if the juvenile offender has received no approved disciplinary reports for at least 3 years prior to the scheduled eligibility interview.

In determining whether the juvenile offender has demonstrated maturity and reform and whether he or she should be granted parole, the bill requires the commission to consider all of the following:

- The wishes of the victim or the opinions of the victim's next of kin.
- Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or domination of another person.
- Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.
- Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected her or his behavior.
- Whether the juvenile offender, while in the custody of the department, has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates.
- Whether the juvenile offender has successfully completed any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program.
- Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before she or he committed the offense.
- The results of any mental health assessment or evaluation of the juvenile offender.

The bill provides that if the juvenile offender is not granted parole after the initial eligibility interview, he or she is eligible for a reinterview 7 years after the date of the denial of the grant of parole and every 7 years thereafter.

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

Section 1. Cites the act as the “Graham Compliance Act.”

Section 2. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 3. Provides the act shall take effect upon becoming a law.

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<sup>10</sup> See *Gridine v. State*, 2011 WL 6849649 (Fla. App. 1st DCA 2011); *Thomas v. State*, 2011 WL 6847814 (Fla. App. 1st DCA 2011).

## 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 Department of Corrections (DOC) reports that any fiscal impact would be positive but indeterminate because any releases resulting from this bill will be at the discretion of the Parole Commission.<sup>11</sup> In addition, the pool of inmates that might be impacted by the bill indicates that the effect on DOC will be negligible.<sup>12</sup> DOC states that there are currently 219 inmates in custody who meet the age and life sentence criteria for consideration under the bill. Of these, 10 have served 25 years and another 2 are within one year of serving 25 years. Of these 12, only 5 meet the criteria of no disciplinary report within 3 years.<sup>13</sup>

The Parole Commission reports that the fiscal impact would be indeterminate because the target population of juvenile offenders is so small.<sup>14</sup> While the Parole Commission anticipates a workload increase from reviewing existing and future cases, it does not foresee that the number of adolescent offenders eligible for parole under the bill would be significant enough to warrant requiring additional staff at this time.<sup>15</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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.

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<sup>11</sup> Department of Corrections. 2012 Analysis of HB 5.

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

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

<sup>14</sup> Florida Parole Commission. 2012 Analysis of HB 5.

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

**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**



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A bill to be entitled  
 An act relating to parole for juvenile offenders;  
 providing a short title; amending s. 947.16, F.S.;  
 providing definitions; providing that a juvenile  
 offender who was less than 18 years of age at the time  
 of commission of a nonhomicide offense and who is  
 sentenced to life imprisonment is eligible for parole  
 if the offender has been incarcerated for a minimum  
 period; requiring an initial eligibility interview to  
 determine whether the juvenile offender has  
 demonstrated maturity and reform for parole; providing  
 criteria to determine maturity and reform; providing  
 eligibility for a reinterview after a specified period  
 for juvenile offenders denied parole; providing an  
 effective date.

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

Section 1. This act may be cited as the "Graham Compliance Act."

Section 2. Subsections (2) through (6) of section 947.16, Florida Statutes, are renumbered as subsections (3) through (7), respectively, and a new subsection (2) is added to that section to read:

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

(2)(a) As used in this subsection, the term:

1. "Juvenile offender" means an offender who was less than

29 18 years of age at the time the nonhomicide offense was  
 30 committed.

31 2. "Nonhomicide offense" means an offense that did not  
 32 result in the death of a human being.

33 (b) Notwithstanding subsection (1) or any other provision  
 34 of law to the contrary, a juvenile offender who is sentenced to  
 35 life imprisonment for a nonhomicide offense may be eligible for  
 36 parole as provided in this subsection.

37 (c) Before a juvenile offender may be granted parole under  
 38 this subsection, she or he must have an initial eligibility  
 39 interview to determine whether she or he has demonstrated  
 40 maturity and reform while in the custody of the department to  
 41 justify granting parole. The initial eligibility interview may  
 42 occur only after the juvenile offender has served 25 years of  
 43 incarceration for the offense for which parole is sought. The  
 44 initial eligibility interview and any subsequent eligibility  
 45 interviews may occur only if the juvenile offender has received  
 46 no approved disciplinary reports for at least 3 years before the  
 47 scheduled eligibility interview.

48 (d) In determining whether the juvenile offender has  
 49 demonstrated maturity and reform and whether she or he should be  
 50 granted parole, the commission must consider all of the  
 51 following:

52 1. The wishes of the victim or the opinions of the  
 53 victim's next of kin.

54 2. Whether the juvenile offender was a relatively minor  
 55 participant in the criminal offense or acted under extreme  
 56 duress or domination of another person.

57 3. Whether the juvenile offender has shown sincere and  
 58 sustained remorse for the criminal offense.

59 4. Whether the juvenile offender's age, maturity, and  
 60 psychological development at the time of the offense affected  
 61 her or his behavior.

62 5. Whether the juvenile offender, while in the custody of  
 63 the department, has aided inmates suffering from catastrophic or  
 64 terminal medical, mental, or physical conditions or has  
 65 prevented risk or injury to staff, citizens, or other inmates.

66 6. Whether the juvenile offender has successfully  
 67 completed any General Educational Development or other  
 68 educational, technical, work, vocational, or self-rehabilitation  
 69 program.

70 7. Whether the juvenile offender was a victim of sexual,  
 71 physical, or emotional abuse before she or he committed the  
 72 offense.

73 8. The results of any mental health assessment or  
 74 evaluation of the juvenile offender.

75 (e) A juvenile offender who is not granted parole under  
 76 this subsection after an initial eligibility interview is  
 77 eligible for a reinterview 7 years after the date of the denial  
 78 of the grant of parole and every 7 years thereafter.

79 Section 3. This act shall take effect upon becoming a law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 137 Offenses Against Unborn Children  
**SPONSOR(S):** Ahern; Trujillo and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 234

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

**SUMMARY ANALYSIS**

Currently, s. 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed murder in the same degree as that which would have been committed against the mother. The term "unborn quick child" is defined in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S, which provides that a "fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures."

The bill amends s. 782.09, F.S., by replacing the term "unborn quick child" with "unborn child." The bill defines the term "unborn child" as "the unborn offspring of a human being at any stage of gestation from fertilization until birth." The bill conforms terminology in the vehicular homicide and DUI manslaughter statutes to refer to "unborn child."

The bill also amends s. 782.09, F.S., to specify that the offense does not require the death of the mother or that the person engaging in the conduct:

- Had knowledge or should have had knowledge that the mother was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

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

This bill takes effect October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Federal Law**

In 2004, the Unborn Victims of Violence Act (act) was enacted to add new sections for the “protection of unborn children.”<sup>1</sup> Under the act, any person who commits certain specified offenses and thereby causes the death of, or bodily injury to, a child who is in utero during the commission of the offense is guilty of a separate offense. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. However, in no instance may be the death penalty be imposed. The act does not require proof that the person engaging in the offense had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the child in utero.

The act defines the phrase “child in utero” to mean “a member of the species homo sapiens, at any stage of development, who is carried in the womb.” The act also specifies that nothing in the act shall be construed to permit the prosecution:

- Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;
- Of any person for any medical treatment of the pregnant woman or her unborn child; or
- Of any woman with respect to her unborn child.

##### **State Law**

At least thirty-six states have statutes that criminalize the killing of a fetus or “unborn child.”<sup>2</sup> These statutes vary with respect to the point at which criminal liability will attach; that is, the states identify different gestational stages at which the killing of an embryo or fetus will result in criminal liability.<sup>3</sup>

Currently, three sections of Florida Statutes criminalize the killing of a “viable fetus” or an “unborn quick child.”

##### Vehicular Homicide

Section 782.071, F.S., defines vehicular homicide as “the killing of a human being, or the killing of a viable fetus by any injury to the mother, caused by the operation of a motor vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.”<sup>4</sup> The vehicular homicide statute specifies that a right of action for civil damages exists under s. 768.19, F.S.,<sup>5</sup> for all deaths described in the statute. The statute provides that a “fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

##### Killing of Unborn Quick Child by Injury to the Mother

Section 782.09, F.S., provides that the unlawful killing of an unborn quick child, by any injury to the mother of such child which would be murder if it resulted in the death of such mother, shall be deemed

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<sup>1</sup> Public Law 108-212, 18 U.S.C. 1841.

<sup>2</sup> State Homicide Laws that Recognize Unborn Victims ([http://www.nrlc.org/Unborn\\_Victims/Statehomicidelaws092302.html](http://www.nrlc.org/Unborn_Victims/Statehomicidelaws092302.html))(last visited on January 23, 2012).

<sup>3</sup> *Id.*

<sup>4</sup> Section 782.071, F.S.

<sup>5</sup> Section 768.19, F.S., provides that when the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

murder in the same degree as that which would have been committed against the mother.<sup>6</sup> Currently, the term "unborn quick child" is defined in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S. (vehicular homicide).

#### DUI Manslaughter

Section 316.193(3), F.S., provides, in part, that in order to prove a DUI manslaughter case, the state must establish the following elements:

- The defendant operated a vehicle.
- The defendant, by reason of such operation, caused or contributed to the cause of the death of any human being or unborn quick child.<sup>7</sup>
- At the time of such operation, the defendant was under the influence of alcoholic beverages or a controlled substance to the extent that the defendant's normal faculties were impaired or the defendant had a blood alcohol level of .08 or higher.

The statute defines the term "unborn quick child" in accordance with the definition of "viable fetus" set forth in s. 782.071, F.S. (vehicular homicide).

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

The bill cites the act as the "Florida Unborn Victims of Violence Act."

The bill amends s. 782.071, F.S. (vehicular homicide), by replacing the term "viable fetus" with "unborn child," and defining the term as "the unborn offspring of a human being at any stage of gestation from fertilization until birth." The bill specifies that the statute should not be construed to create or expand any civil cause of action for negligence based on statute or common law.

The bill amends s. 782.09, F.S. (killing of unborn child by injury to the mother), by replacing the term "unborn quick child" with "unborn child" and defines the term in accordance with s. 782.071, F.S. (vehicular homicide). The bill also amends the statute to specify that the offense does not require the death of the mother or that the person engaging in the conduct:

- Had knowledge or should have had knowledge that the mother was pregnant; or
- Intended to cause the death of, or bodily injury to, the unborn child.

The bill also amends s. 316.193, F.S. (DUI manslaughter) by replacing the term "unborn quick child" with "unborn child" and defining the term in accordance with s. 782.071, F.S. (vehicular homicide).

The bill also makes conforming changes to s 435.04, F.S., relating to employment screening standards, and s. 921.0022, F.S., the offense severity ranking chart.

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

Section 1. Cites the act as the "Florida Unborn Victims of Violence Act."

Section 2. Amends s. 782.071, F.S., relating to vehicular homicide.

Section 3. Amends s. 782.09, F.S., relating to killing of unborn quick child by injury to mother.

Section 4. Amends s. 316.193, F.S., relating to driving under the influence; penalties.

Section 5. Amends s. 435.04, F.S., relating to Level 2 screening standards.

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<sup>6</sup> This section of statute does not authorize the prosecution of any person in connection with a termination of pregnancy pursuant to ch. 390, F.S. Section 782.09(4), F.S.

<sup>7</sup> The term "unborn quick child" is defined as a "viable fetus" which is defined as a "fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures." See s. 782.071, F.S.

Section 6. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 7. 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:**

On December 14, 2011, the Criminal Justice Impact Conference determined that this bill would have an insignificant 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 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 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**





29 (b) A felony of the first degree, punishable as provided  
 30 in s. 775.082, s. 775.083, or s. 775.084, if:

31 1. At the time of the accident, the person knew, or should  
 32 have known, that the accident occurred; and

33 2. The person failed to give information and render aid as  
 34 required by s. 316.062.

35  
 36 This paragraph does not require that the person knew that the  
 37 accident resulted in injury or death.

38 (2) For purposes of this section, the term "unborn child"  
 39 means the unborn offspring of a human being at any stage of  
 40 gestation from fertilization until birth ~~a fetus is viable when~~  
 41 ~~it becomes capable of meaningful life outside the womb through~~  
 42 ~~standard medical measures.~~

43 (3) A right of action for civil damages shall exist under  
 44 s. 768.19, under all circumstances, for all deaths described in  
 45 this section. However, this section does not create or expand  
 46 any civil cause of action for negligence based on statute or  
 47 common law.

48 (4) In addition to any other punishment, the court may  
 49 order the person to serve 120 community service hours in a  
 50 trauma center or hospital that regularly receives victims of  
 51 vehicle accidents, under the supervision of a registered nurse,  
 52 an emergency room physician, or an emergency medical technician  
 53 pursuant to a voluntary community service program operated by  
 54 the trauma center or hospital.

55 Section 3. Section 782.09, Florida Statutes, is amended to  
 56 read:

HB 137

2012

57 782.09 Killing of unborn ~~quick~~ child by injury to mother.—

58 (1) The unlawful killing of an unborn ~~quick~~ child, by any  
 59 injury to the mother of such child which would be murder if it  
 60 resulted in the death of such mother, shall be deemed murder in  
 61 the same degree as that which would have been committed against  
 62 the mother. Any person, other than the mother, who unlawfully  
 63 kills an unborn ~~quick~~ child by any injury to the mother:

64 (a) Which would be murder in the first degree constituting  
 65 a capital felony if it resulted in the mother's death commits  
 66 murder in the first degree constituting a capital felony,  
 67 punishable as provided in s. 775.082.

68 (b) Which would be murder in the second degree if it  
 69 resulted in the mother's death commits murder in the second  
 70 degree, a felony of the first degree, punishable as provided in  
 71 s. 775.082, s. 775.083, or s. 775.084.

72 (c) Which would be murder in the third degree if it  
 73 resulted in the mother's death commits murder in the third  
 74 degree, a felony of the second degree, punishable as provided in  
 75 s. 775.082, s. 775.083, or s. 775.084.

76 (2) The unlawful killing of an unborn ~~quick~~ child by any  
 77 injury to the mother of such child which would be manslaughter  
 78 if it resulted in the death of such mother is ~~shall be deemed~~  
 79 manslaughter. A person who unlawfully kills an unborn ~~quick~~  
 80 child by any injury to the mother which would be manslaughter if  
 81 it resulted in the mother's death commits manslaughter, a felony  
 82 of the second degree, punishable as provided in s. 775.082, s.  
 83 775.083, or s. 775.084.

84 (3) The death of the mother resulting from the same act or

85 criminal episode that caused the death of the unborn ~~quick~~ child  
 86 does not bar prosecution under this section.

87 (4) This section does not authorize the prosecution of any  
 88 person in connection with a termination of pregnancy pursuant to  
 89 chapter 390.

90 (5) For purposes of this section, the definition of the  
 91 term "unborn ~~quick~~ child" shall be determined in accordance with  
 92 the definition of an unborn child ~~viable fetus~~ as set forth in  
 93 s. 782.071.

94 (6) An offense under this section does not require:

95 (a) That the person engaging in the conduct:

96 1. Had knowledge or should have had knowledge that the  
 97 mother was pregnant; or

98 2. Intended to cause the death of, or bodily injury to,  
 99 the unborn child.

100 (b) The death of the mother.

101 Section 4. Subsection (3) of section 316.193, Florida  
 102 Statutes, is amended to read:

103 316.193 Driving under the influence; penalties.-

104 (3) Any person:

105 (a) Who is in violation of subsection (1);

106 (b) Who operates a vehicle; and

107 (c) Who, by reason of such operation, causes or  
 108 contributes to causing:

109 1. Damage to the property or person of another commits a  
 110 misdemeanor of the first degree, punishable as provided in s.  
 111 775.082 or s. 775.083.

112 2. Serious bodily injury to another, as defined in s.

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113 316.1933, commits a felony of the third degree, punishable as  
 114 provided in s. 775.082, s. 775.083, or s. 775.084.

115 3. The death of any human being or unborn ~~quick~~ child  
 116 commits DUI manslaughter, and commits:

117 a. A felony of the second degree, punishable as provided  
 118 in s. 775.082, s. 775.083, or s. 775.084.

119 b. A felony of the first degree, punishable as provided in  
 120 s. 775.082, s. 775.083, or s. 775.084, if:

121 (I) At the time of the crash, the person knew, or should  
 122 have known, that the crash occurred; and

123 (II) The person failed to give information and render aid  
 124 as required by s. 316.062.

125

126 For purposes of this subsection, the definition of the term  
 127 "unborn ~~quick~~ child" shall be determined in accordance with the  
 128 definition of an unborn child ~~viable fetus~~ as set forth in s.  
 129 782.071. A person who is convicted of DUI manslaughter shall be  
 130 sentenced to a mandatory minimum term of imprisonment of 4  
 131 years.

132 Section 5. Paragraph (g) of subsection (2) of section  
 133 435.04, Florida Statutes, is amended to read:

134 435.04 Level 2 screening standards.—

135 (2) The security background investigations under this  
 136 section must ensure that no persons subject to the provisions of  
 137 this section have been arrested for and are awaiting final  
 138 disposition of, have been found guilty of, regardless of  
 139 adjudication, or entered a plea of nolo contendere or guilty to,  
 140 or have been adjudicated delinquent and the record has not been

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141 sealed or expunged for, any offense prohibited under any of the  
 142 following provisions of state law or similar law of another  
 143 jurisdiction:

144 (g) Section 782.09, relating to killing of an unborn ~~quick~~  
 145 child by injury to the mother.

146 Section 6. Paragraph (g) of subsection (3) of section  
 147 921.0022, Florida Statutes, is amended to read:

148 921.0022 Criminal Punishment Code; offense severity  
 149 ranking chart.—

150 (3) OFFENSE SEVERITY RANKING CHART

151 (g) LEVEL 7

152

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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

153

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who is in a patrol vehicle with  
siren and lights activated.

156

327.35 (3) (c) 2.            3rd    Vessel BUI resulting in serious  
bodily injury.

157

402.319 (2)                2nd    Misrepresentation and  
negligence or intentional act  
resulting in great bodily harm,  
permanent disfiguration,  
permanent disability, or death.

158

409.920                    3rd    Medicaid provider fraud;  
(2) (b) 1.a.                \$10,000 or less.

159

409.920                    2nd    Medicaid provider fraud; more  
(2) (b) 1.b.                than \$10,000, but less than  
\$50,000.

160

456.065 (2)                3rd    Practicing a health care  
profession without a license.

161

456.065 (2)                2nd    Practicing a health care  
profession without a license  
which results in serious bodily  
injury.

162

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163	458.327(1)	3rd	Practicing medicine without a license.
164	459.013(1)	3rd	Practicing osteopathic medicine without a license.
165	460.411(1)	3rd	Practicing chiropractic medicine without a license.
166	461.012(1)	3rd	Practicing podiatric medicine without a license.
167	462.17	3rd	Practicing naturopathy without a license.
168	463.015(1)	3rd	Practicing optometry without a license.
169	464.016(1)	3rd	Practicing nursing without a license.
170	465.015(2)	3rd	Practicing pharmacy without a license.
171	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.



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172	467.201	3rd	Practicing midwifery without a license.
173	468.366	3rd	Delivering respiratory care services without a license.
174	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
175	483.901(9)	3rd	Practicing medical physics without a license.
176	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
177	484.053	3rd	Dispensing hearing aids without a license.
178	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.
	560.123(8)(b)1.	3rd	Failure to report currency or

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179	560.125(5) (a)	3rd	<p>payment instruments exceeding \$300 but less than \$20,000 by a money services business.</p> <p>Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.</p>
180	655.50(10) (b) 1.	3rd	<p>Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.</p>
181	775.21(10) (a)	3rd	<p>Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.</p>
182	775.21(10) (b)	3rd	<p>Sexual predator working where children regularly congregate.</p>
183	775.21(10) (g)	3rd	<p>Failure to report or providing false information about a sexual predator; harbor or</p>

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184			conceal a sexual predator.
185	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
186	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
187	782.071	2nd	Killing of a human being or <u>unborn child</u> <del>viable fetus</del> by the operation of a motor vehicle in a reckless manner (vehicular homicide).
188	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
189	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.

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190	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
191	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
192	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
193	784.048(7)	3rd	Aggravated stalking; violation of court order.
194	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
195	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
196	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
197	784.081(1)	1st	Aggravated battery on specified official or employee.
	784.082(1)	1st	Aggravated battery by detained person on visitor or other

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			detainee.
198	784.083(1)	1st	Aggravated battery on code inspector.
199	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
200	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
201	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
202	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
203	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
204	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax

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			weapon of mass destruction while committing or attempting to commit a felony.
205	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
206	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.
207	796.03	2nd	Procuring any person under 16 years for prostitution.
208	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
209	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.
210			

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211	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
212	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
213	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
214	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
215	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
216	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.
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand

			theft in 2nd degree.
217	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
218	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
219	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
220	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
221	812.131(2)(a)	2nd	Robbery by sudden snatching.
222	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
223	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
224			



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225	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
226	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
227	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.
228	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
229	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.
	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability,

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			or disfigurement.
230	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
231	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
232	838.015	2nd	Bribery.
233	838.016	2nd	Unlawful compensation or reward for official behavior.
234	838.021(3)(a)	2nd	Unlawful harm to a public servant.
235	838.22	2nd	Bid tampering.
236	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
237	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
238			

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239	872.06	2nd	Abuse of a dead human body.
240	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
241	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.
242	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.

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243	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).
244	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
245	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
246	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
247	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
248	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than

249			28 grams.
	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
250			
	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
251			
	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
252			
	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
253			
	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
254			
	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
255			

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256	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
257	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
258	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
259	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
260	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure

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			to respond to address verification.
261	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
262	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
263	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
264	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
265	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
266	985.4815(12)	3rd	Failure to report or providing false information about a

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sexual offender; harbor or  
conceal a sexual offender.

267

985.4815(13)

3rd

Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification.

268

269

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 455 Criminal Offenders  
**SPONSOR(S):** Glorioso and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1800

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

### SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual offenses. Specifically, the bill:

- Amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add s. 826.04, F.S. (incest), where the victim is a minor and the defendant is 18 years of age or older as a qualifying offense.
- Requires sexual predators and offenders to provide the sheriff and the Florida Department of Law Enforcement any Internet identifier the offender uses and defines the term "Internet identifier."
- Requires sexual offenders and predators to provide their telephone numbers, passport, immigration status, and other specified information to the sheriff as part of the registration process.
- Expands the victim age criteria that must be met before a person can be removed from the sexual offender registry pursuant to s. 943.04354, F.S.
- Requires state agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.
- Requires courts to impose electronic monitoring on probationers, community controlees, and conditional releasees convicted of certain sexual offenses.
- Requires sexual offenders who are arrested for another offense (other than a misdemeanor offender under ch. 316, F.S.), to be held until first appearance in order to ensure the full participation of the prosecutor and the protection of the public.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a prison bed impact in that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide when registering. Failure to register is generally punishable as an unranked third degree felony. The bill may also have a fiscal impact on the Florida Department of Law Enforcement as well as a jail bed impact. See fiscal section.

The bill is effective April 30, 2013, except as otherwise provided.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Sexual Offender Qualifying Offenses (Sections 2, 6, and 7)**

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term "sexual offender," in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
  - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
  - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.
  - Section 794.05, F.S. (unlawful activity with certain minors)
  - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
  - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
  - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
  - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
  - Section 827.071, F.S. (sexual performance by a child)
  - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
  - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.
  - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
  - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
  - Section 847.0145, F.S. (selling or buying of minors)
  - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction<sup>1</sup> imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term "sexual offender" that include the list of qualifying offenses enumerated above.

##### *Effect of the Bill*

The bill amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add s. 826.04, F.S. (incest), where the victim is a minor and the defendant is 18 years of age or older as a qualifying offense.<sup>2</sup>

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<sup>1</sup> A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. Section 943.0435(1)(a), F.S.

<sup>2</sup> Section 826.04, F.S., provides that whoever knowingly marries or has sexual intercourse with a person to whom he or she is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece, commits incest, which is a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. "Sexual intercourse" is the penetration of the female sex organ by the male sex organ, however slight; emission of semen is not required.

## **Sexual Predator and Sexual Offender Registration (Sections 1, 2, 6, 7, 12 and 13)**

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>3</sup> A sexual predator or sexual offender must comply with a number of statutory registration requirements.<sup>4</sup> Failure to comply with these requirements is generally a third degree felony.<sup>5</sup>

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>6</sup> During initial registration, a sexual predator or sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department.<sup>7</sup> The sheriff's department then provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.<sup>8</sup>

A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.<sup>9</sup> For example, a predator or offender who changes his or her residence or name must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office.<sup>10</sup> In addition, predators or offenders who intend to establish a residence in another state or jurisdiction other than Florida are required to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state.<sup>11</sup>

### *Effect of the Bill*

The bill amends ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 F.S., to require sexual predators and offenders to provide the following registration information:

- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.

The bill amends ss. 775.21 and 943.0435, F.S., to:

- Require sexual predators and offenders who are unable to obtain or update a driver license or state identification card with DHSMV to report any change in the offender's residence or name within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to DHSMV.
- Require sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of 7 days or more is outside of the United States.
- Require sexual predators and offenders who intend to establish a residence in another country to provide the sheriff the address, municipality, county, state, and *country* of the offender's intended residence.

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<sup>3</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Sections 775.21(10) and 943.0435(14), F.S.

<sup>6</sup> See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

<sup>7</sup> See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

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

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

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

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

### **Sexual Predator / Offender Registration - Instant Message Name (Sections 1, 2, 5, 6, and 7)**

In addition to providing the above-described information during initial registration, sexual predators and offenders are required to provide the sheriff any instant message name the offender wants to use.<sup>12</sup> Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.<sup>13</sup>

Sections 775.21, 943.0435, 944.606, and 944.607, F.S., define the term "instant message name" as "an identifier that allows a person to communicate in real time with another person using the Internet."

#### *Effect of the Bill*

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to replace the term "instant message name" with "Internet identifier." The bill defines the term "Internet identifier" as "all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN)." An offender's voluntary disclosure of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption for such personal information. As a result, sexual predators and offenders will be required to register their Internet identifiers with the sheriff and with FDLE.

The bill also replaces the term "instant message name" with the term "Internet identifier" in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.<sup>14</sup>

### **Search of Registration Information (Section 3)**

Section 943.04351, F.S., requires state agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,<sup>15</sup> to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

#### *Effect of the Bill*

The bill amends s. 943.04351, F.S., to require state agencies and governmental subdivisions to also search the person's name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

### **Removal of the Requirement to Register as a Sexual Offender (Section 4)**

Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender's life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.<sup>16</sup> However, there are ways in which the registration requirement can be removed.

Currently, s. 943.04354(1), F.S., provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; and

<sup>12</sup> See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

<sup>13</sup> FDLE maintains an online system through which sexual predators and offenders can update their instant message name information. Sections 775.21 and 943.0435, F.S.

<sup>14</sup> Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.

<sup>15</sup> These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

<sup>16</sup> Sections 775.21(6) and 943.0435(11), F.S.

3. Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

*Effect of the Bill*

The bill amends s. 943.04354(1), F.S., to bring the statute in line with the federal Adam Walsh Act. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person meets the criteria in 1. and 2., described above, and:

3. Is not more than 4 years older than the victim of the violation who was 13 years of age or older but not more than 18 years of age at the time the person committed the violation.

This change will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed.

**Definition of Risk Assessment (Section 8)**

Section 947.1405(7), F.S., requires the Parole Commission (Commission) to impose specified special conditions of supervision on certain conditional releasees. One of these conditions prohibits contact with children under the age of 18, if the victim was under the age of 18, without review and approval by the Commission. The Commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment.

Section 947.005, F.S., currently defines the term "risk assessment" as "an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child."

In 2010, the definition of the term "risk assessment" in s. 948.001, F.S. (relating to probation), was amended to remove the requirement that the assessment be completed by *an independent* qualified practitioner.<sup>17</sup> However, this change was not made to the definition contained in s. 947.005, F.S.

*Effect of the Bill*

The bill amends the definition of the term "risk assessment" in s. 947.005, F.S., to remove the requirement that the assessment be completed by *an independent* qualified practitioner.

**Conditions of Supervision – Conditional Release (Section 9)**

Section 947.1405, F.S., requires certain repeat offenders convicted of specified offenses to be released under supervision subject to specified terms and conditions, which are set by the Florida Parole Commission (Commission). This type of supervision is called "conditional release." Currently, the statute requires the Commission to impose certain conditions of supervision on conditional releasees convicted of specified sexual offenses (e.g., a curfew, a prohibition on living within 1,000 feet of certain locations, etc.).

Section 947.1405(10), F.S., currently requires the Commission to impose electronic monitoring (EM) as a condition of supervision for a conditional releasee whose crime was committed on or after September 1, 2005, and who:

- Was convicted of a violation of ch. 794, F.S., or ss. 800.04(4), (5), or (6), 827.071, or 847.0145, F.S., and the unlawful activity involved a victim who was 15 years of age or younger and the offender was 18 years of age or older; or
- Is designated as a sexual predator pursuant to s. 775.21, F.S.

*Effect of the Bill*

The bill requires the Commission to impose EM as a condition of supervision for a conditional releasee whose crime was committed on or after July 1, 2012, and who has been convicted of a violation of s. 800.04(7)(b), F.S. (lewd or lascivious exhibition by an offender 18 or older), s. 847.0135, F.S. (computer pornography, traveling to meet a minor), or a similar offense in another jurisdiction.

**Conditions of Sexual Offender Probation (Section 10)**

Probation is a form of community supervision requiring specified contacts with parole and probation officers and compliance with court-ordered conditions of supervision.<sup>18</sup> When someone is sentenced to probation, the court determines the terms and conditions of their supervision.<sup>19</sup>

Section 948.30, F.S., sets forth standard conditions of supervision that a court must impose on offenders convicted of certain sexual offenses. Subsection (3) of the statute requires the court to impose EM on offenders whose crime was committed on or after September 1, 2005, and who:

- (a) Is placed on probation or community control for a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or 847.0145, F.S.;
- (b) Is designated a sexual predator pursuant to s. 775.21, F.S.; or
- (c) Has previously been convicted of a violation of ch. 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.<sup>20</sup>

*Effect of the Bill*

The bill amends s. 948.30(3)(b) and (c), F.S., to require courts to impose EM on offenders whose crime was committed on or after September 1, 2005, and who:

- (b) Is designated a sexual predator pursuant to s. 775.21, F.S., or a similar designation in another jurisdiction; or
- (c) Has previously been convicted of a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or s. 847.0145, F.S., or a similar offense in another jurisdiction and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

The bill also creates a new subsection (5) that requires courts to impose EM on offenders whose crime was committed on or after July 1, 2012, and who:

- Is placed on probation or community control for a violation for ss. 800.04(7)(b) or 847.0135, F.S.; or
- Has previously been convicted of a violation of ss. 800.04(7)(b) or 847.0135, F.S., or a similar offense in another jurisdiction.

The bill also requires the court to impose all of the conditions of supervision contained in s. 948.30(1) and (2), F.S., on offenders whose crime was committed on or after September 1, 2005, and who are placed on probation or community control for a violation of s. 847.0135(3) or (4), F.S.

**Conditions of Supervision – Sex Offender Treatment (Section 11)**

Section 948.03, F.S., sets forth the standard conditions of probation that offenders must comply with. Standard conditions of probation do not require oral pronouncement at sentencing. In contrast, special conditions of probation, those conditions that are not specifically authorized by statute, must be imposed by oral pronouncement at sentencing and be included in the written sentencing order. Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual

<sup>18</sup> Section 948.001(8), F.S.

<sup>19</sup> Section 948.03, F.S.

<sup>20</sup> Section 948.30(3), F.S.

predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.

#### *Effect of the Bill*

The bill specifies that conditions imposed pursuant to s. 948.31, F.S., are standard conditions of supervision and do not require oral pronouncement at the time of sentencing.

The bill provides that if the court determines that a need for treatment is established by the evaluation, the offender must actively participate in and successfully complete the treatment. Courts must require the offender to comply with program rules, which can include a safety plan and polygraph examination for treatment purposes. The bill also authorizes the court to, when recommended by a qualified practitioner or the offender's supervising officer, restrict the offender from having unsupervised contact with minors or from residing with a minor.

### **Bail Determinations (Section 14)**

#### Pretrial Release

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.<sup>21</sup> Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.<sup>22</sup>

Bail requires an accused person to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.<sup>23</sup>
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.<sup>24</sup>

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<sup>21</sup> Report No. 10-08, "*Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed*," Office of Program Policy Analysis & Government Accountability, January 2010.

<sup>22</sup> *Id.*

<sup>23</sup> Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

<sup>24</sup> Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.



- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,<sup>25</sup> or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.<sup>26</sup>

#### *Effect of the Bill*

The bill amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,<sup>27</sup> is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance<sup>28</sup> on the case in order to ensure the full participation of the prosecutor and the protection of the public.

#### **Split Sentences (Section 15)**

Section 948.012, F.S., authorizes a court to impose a split sentence whereby defendants are placed on probation or community control after completing any specified period of incarceration. The statute currently requires the period of probation or community control to commence immediately upon release from incarceration, whether by parole or gain-time allowance. The bill removes the "whether by parole or gain-time allowance" phrase.

#### **Special Terms and Conditions of Probation (Section 16)**

Section 948.039, F.S., authorizes a court to impose special terms and conditions of probation or community control (in addition to standard conditions). The bill adds language to this section specifying that probation or community control commences immediately upon the release of the offender from incarceration.

#### **Severability Clause**

The bill specifies that if any of its provisions or its application to persons or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application.

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

Section 1. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 2. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 3. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 4. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 5. Amends s. 943.0437, F.S., relating to commercial social networking websites.

<sup>25</sup> Chapter 874, F.S., relates to criminal gang enforcement and prevention.

<sup>26</sup> Section 903.046, F.S.

<sup>27</sup> Chapter 316, F.S., is the State Uniform Traffic Control chapter.

<sup>28</sup> See Rule 3.130, Fla. R. Crim. Proc.

Section 6. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 7. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 8. Amends s. 947.005, F.S., relating to definitions.

Section 9. Amends s. 947.1405, F.S., relating to conditional release program.

Section 10. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 11. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and sexual offenders on probation or community control.

Section 12. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 13. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 14. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 15. Amends s. 948.012, F.S., relating to split sentence of probation or community control and imprisonment.

Section 16. Amends s. 948.039, F.S., relating to special terms and conditions of probation or community control imposed by court order.

Section 17. Provides a severability clause.

Section 18. Provides an effective date of April 30, 2013, except as otherwise provided.

## **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. The bill may have a prison bed impact on the Department of Corrections in that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide when registering. However, failure to register is generally punishable as an unranked third degree felony, so the impact to state prison beds may be insignificant.

The bill requires the court to impose electronic monitoring on additional offenders. This may have a negative fiscal impact on the Department of Corrections.

The bill will likely require FDLE to spend funds to hire contract programming staff to complete programming and testing necessary to implement the qualifying offense and registration provisions of the bill.

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

1. Revenues:

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

2. Expenditures:

In January, 2012, there were 48,700 registered sexual offenders and 9,289 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill:

- Does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities; and
- Is a criminal law.

3. Other:

Ex Post Facto

In evaluating whether a law violates the ex post facto clause, a two-prong test must be applied: (1) whether the law is retrospective in its effect; and (2) whether the law alters the definition of criminal conduct or increases the penalty by which a crime is punishable.<sup>29</sup>

Section 948.30(3), F.S., requires the court to impose electronic monitoring on offenders whose crime was committed on or after September 1, 2005, who:

- (d) Are placed on probation or community control for a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or 847.0145, F.S.;
- (e) Are designated a sexual predator pursuant to s. 775.21, F.S.; or
- (f) Have previously been convicted of a violation of chapter 794, F.S.; or ss. 800.04(4), (5), or (6); 827.071; or s. 847.0145, F.S., and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

<sup>29</sup> *Gwong v. Singletary*, 683 So.2d 109 (Fla. 1996).

Section 10 of the bill expands the pool of offenders that the above statute applies to by adding that it applies to offenders whose crime was committed on or after September 1, 2005, and who have a similar designation or offense in another jurisdiction. This may violate the ex post facto clause.

**B. RULE-MAKING AUTHORITY:**

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

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

Section 11 of the bill mandates that the court require any person who is placed on community supervision and who is required to register as a sexual offender to be evaluated to determine the offender's need for sex offender treatment. This would require persons who are required to register as a sexual offender due to an offense committed 20+ years ago and who are now placed on probation for a non-sex related offense (e.g., check fraud) to undergo a sex offender treatment evaluation.

Section 16 of the bill amends s. 948.039, F.S., which authorizes a court to impose special terms and conditions of probation or community control (in addition to standard conditions). The bill adds language to this section specifying that probation or community control commences immediately upon the release of the offender from incarceration. It is unclear how this provision is relevant to this statute. Also, oftentimes offenders are placed on probation without being sentenced to incarceration.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



29 identification card within a specified period must  
 30 report specified information to the local sheriff's  
 31 office within a specified period of such change with  
 32 confirmation that he or she also reported such  
 33 information to the Department of Highway Safety and  
 34 Motor Vehicles; providing additional requirements for  
 35 sexual offenders intending to reside outside of the  
 36 United States; amending s. 943.04351, F.S.; requiring  
 37 a specified national search of registration  
 38 information regarding sexual predators and sexual  
 39 offenders prior to appointment or employment of  
 40 persons by state agencies and governmental  
 41 subdivisions; amending s. 943.04354, F.S.; revising  
 42 the age range applicable to provisions allowing  
 43 removal of the requirement to register as a sexual  
 44 offender or sexual predator in certain circumstances;  
 45 revising eligibility requirements for removal of the  
 46 requirement to register as a sexual offender or sexual  
 47 predator; amending s. 943.0437, F.S.; replacing the  
 48 definition of the term "instant message name" with the  
 49 definition of the term "Internet identifier";  
 50 conforming provisions; amending ss. 944.606 and  
 51 944.607, F.S.; replacing the definition of the term  
 52 "instant message name" with the definition of the term  
 53 "Internet identifier"; conforming provisions;  
 54 requiring disclosure of passport and immigration  
 55 status information; amending s. 947.005, F.S.;  
 56 revising the definition of the term "risk assessment";

57 amending s. 947.1405, F.S.; requiring that certain  
 58 conditional releasees be subject to electronic  
 59 monitoring; amending s. 948.30, F.S.; providing  
 60 restrictions for certain persons who receive a  
 61 designation equivalent to sexual predator in another  
 62 jurisdiction or who are convicted of certain offenses  
 63 in another jurisdiction; providing for electronic  
 64 monitoring of certain persons; subjecting persons  
 65 convicted of specified offenses to additional  
 66 restrictions; amending s. 948.31, F.S.; providing that  
 67 conditions imposed under that section do not require  
 68 oral pronouncement at the time of sentencing and shall  
 69 be considered standard conditions of probation or  
 70 community control for certain offenders; revising  
 71 provisions relating to evaluation of persons subject  
 72 to registration as sexual offenders or sexual  
 73 predators; authorizing a court to require treatment  
 74 from a qualified practitioner in certain  
 75 circumstances; authorizing a court to restrict the  
 76 probationer or community controllee from having  
 77 unsupervised contact with a minor or prohibit him or  
 78 her from residing with a minor in certain  
 79 circumstances; amending ss. 985.481 and 985.4815,  
 80 F.S.; requiring disclosure of passport and immigration  
 81 status information by certain sexual offenders  
 82 adjudicated delinquent and certain juvenile sexual  
 83 offenders; amending s. 903.046, F.S.; requiring a  
 84 court considering whether to release a defendant on

85 bail to determine whether the defendant is subject to  
 86 registration as a sexual offender or sexual predator  
 87 and, if so, to hold the defendant without bail until  
 88 the first appearance on the case; providing an  
 89 exception; amending s. 948.012, F.S.; revising  
 90 language concerning commencement of the period of  
 91 probation or community control; amending s. 948.039,  
 92 F.S.; providing that a probation or community control  
 93 period commences immediately upon the release of the  
 94 offender from incarceration; providing severability;  
 95 providing effective dates.

96

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

98

99 Section 1. Paragraph (i) of subsection (2), paragraphs  
 100 (a), (e), (g), (i), and (j) of subsection (6), paragraph (a) of  
 101 subsection (8), and paragraph (a) of subsection (10) of section  
 102 775.21, Florida Statutes, are amended to read:

103 775.21 The Florida Sexual Predators Act.—

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

105 (i) "Internet identifier ~~instant message name~~" means all  
 106 electronic mail, chat, instant messenger, social networking, or  
 107 similar name used for Internet communication, but does not  
 108 include a date of birth, social security number, or personal  
 109 identification number (PIN) ~~an identifier that allows a person~~  
 110 ~~to communicate in real time with another person using the~~  
 111 ~~Internet.~~ Voluntary disclosure by the sexual predator of his or  
 112 her date of birth, social security number, or personal



113 identification number (PIN) as an Internet identifier waives the  
 114 disclosure exemption in this paragraph for such personal  
 115 information.

116 (6) REGISTRATION.—

117 (a) A sexual predator must register with the department  
 118 through the sheriff's office by providing the following  
 119 information to the department:

120 1. Name; social security number; age; race; sex; date of  
 121 birth; height; weight; hair and eye color; photograph; address  
 122 of legal residence and address of any current temporary  
 123 residence, within the state or out of state, including a rural  
 124 route address and a post office box; if no permanent or  
 125 temporary address, any transient residence within the state;  
 126 address, location or description, and dates of any current or  
 127 known future temporary residence within the state or out of  
 128 state; all ~~any~~ electronic mail addresses ~~address~~ and all  
 129 Internet identifiers ~~any instant message name~~ required to be  
 130 provided pursuant to subparagraph (g)4.; all home telephone  
 131 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date  
 132 and place of any employment; date and place of each conviction;  
 133 fingerprints; and a brief description of the crime or crimes  
 134 committed by the offender. A post office box shall not be  
 135 provided in lieu of a physical residential address. The sexual  
 136 predator must also produce or provide information about his or  
 137 her passport, if he or she has a passport, and, if he or she is  
 138 an alien, must produce or provide information about documents  
 139 establishing his or her immigration status.

140 a. If the sexual predator's place of residence is a motor

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141 vehicle, trailer, mobile home, or manufactured home, as defined  
 142 in chapter 320, the sexual predator shall also provide to the  
 143 department written notice of the vehicle identification number;  
 144 the license tag number; the registration number; and a  
 145 description, including color scheme, of the motor vehicle,  
 146 trailer, mobile home, or manufactured home. If a sexual  
 147 predator's place of residence is a vessel, live-aboard vessel,  
 148 or houseboat, as defined in chapter 327, the sexual predator  
 149 shall also provide to the department written notice of the hull  
 150 identification number; the manufacturer's serial number; the  
 151 name of the vessel, live-aboard vessel, or houseboat; the  
 152 registration number; and a description, including color scheme,  
 153 of the vessel, live-aboard vessel, or houseboat.

154       b. If the sexual predator is enrolled, employed, or  
 155 carrying on a vocation at an institution of higher education in  
 156 this state, the sexual predator shall also provide to the  
 157 department the name, address, and county of each institution,  
 158 including each campus attended, and the sexual predator's  
 159 enrollment or employment status. Each change in enrollment or  
 160 employment status shall be reported in person at the sheriff's  
 161 office, or the Department of Corrections if the sexual predator  
 162 is in the custody or control of or under the supervision of the  
 163 Department of Corrections, within 48 hours after any change in  
 164 status. The sheriff or the Department of Corrections shall  
 165 promptly notify each institution of the sexual predator's  
 166 presence and any change in the sexual predator's enrollment or  
 167 employment status.

168       2. Any other information determined necessary by the

169 department, including criminal and corrections records;  
 170 nonprivileged personnel and treatment records; and evidentiary  
 171 genetic markers when available.

172 (e)1. If the sexual predator is not in the custody or  
 173 control of, or under the supervision of, the Department of  
 174 Corrections or is not in the custody of a private correctional  
 175 facility, the sexual predator shall register in person:

176 a. At the sheriff's office in the county where he or she  
 177 establishes or maintains a residence within 48 hours after  
 178 establishing or maintaining a residence in this state; and

179 b. At the sheriff's office in the county where he or she  
 180 was designated a sexual predator by the court within 48 hours  
 181 after such finding is made.

182 2. Any change in the sexual predator's permanent or  
 183 temporary residence, name, or all any electronic mail addresses  
 184 address and all Internet identifiers ~~any instant message name~~  
 185 required to be provided pursuant to subparagraph (g)4., after  
 186 the sexual predator registers in person at the sheriff's office  
 187 as provided in subparagraph 1., shall be accomplished in the  
 188 manner provided in paragraphs (g), (i), and (j). When a sexual  
 189 predator registers with the sheriff's office, the sheriff shall  
 190 take a photograph and a set of fingerprints of the predator and  
 191 forward the photographs and fingerprints to the department,  
 192 along with the information that the predator is required to  
 193 provide pursuant to this section.

194 (g)1. Each time a sexual predator's driver ~~driver's~~  
 195 license or identification card is subject to renewal, and,  
 196 without regard to the status of the predator's driver ~~driver's~~

197 | license or identification card, within 48 hours after any change  
 198 | of the predator's residence or change in the predator's name by  
 199 | reason of marriage or other legal process, the predator shall  
 200 | report in person to a driver ~~driver's~~ license office and shall  
 201 | be subject to the requirements specified in paragraph (f). The  
 202 | Department of Highway Safety and Motor Vehicles shall forward to  
 203 | the department and to the Department of Corrections all  
 204 | photographs and information provided by sexual predators.  
 205 | Notwithstanding the restrictions set forth in s. 322.142, the  
 206 | Department of Highway Safety and Motor Vehicles is authorized to  
 207 | release a reproduction of a color-photograph or digital-image  
 208 | license to the Department of Law Enforcement for purposes of  
 209 | public notification of sexual predators as provided in this  
 210 | section. A sexual predator who is unable to secure or update a  
 211 | driver license or identification card with the Department of  
 212 | Highway Safety and Motor Vehicles as provided in paragraph (f)  
 213 | and this paragraph must also report any change of the predator's  
 214 | residence or change in the predator's name by reason of marriage  
 215 | or other legal process within 48 hours after the change to the  
 216 | sheriff's office in the county where the predator resides or is  
 217 | located and provide confirmation that he or she reported such  
 218 | information to the Department of Highway Safety and Motor  
 219 | Vehicles.

220 |         2. A sexual predator who vacates a permanent, temporary,  
 221 | or transient residence and fails to establish or maintain  
 222 | another permanent, temporary, or transient residence shall,  
 223 | within 48 hours after vacating the permanent, temporary, or  
 224 | transient residence, report in person to the sheriff's office of

225 the county in which he or she is located. The sexual predator  
 226 shall specify the date upon which he or she intends to or did  
 227 vacate such residence. If the sexual predator is released from  
 228 custody in a homeless or transient status, he or she must report  
 229 in person to the sheriff's office in the county in which he or  
 230 she is located within 24 hours. The sexual predator must provide  
 231 or update all of the registration information required under  
 232 paragraph (a). The sexual predator must provide an address for  
 233 the residence or other place that he or she is or will be  
 234 located during the time in which he or she fails to establish or  
 235 maintain a permanent or temporary residence.

236 3. A sexual predator who remains at a permanent,  
 237 temporary, or transient residence after reporting his or her  
 238 intent to vacate such residence shall, within 48 hours after the  
 239 date upon which the predator indicated he or she would or did  
 240 vacate such residence, report in person to the sheriff's office  
 241 to which he or she reported pursuant to subparagraph 2. for the  
 242 purpose of reporting his or her address at such residence. When  
 243 the sheriff receives the report, the sheriff shall promptly  
 244 convey the information to the department. An offender who makes  
 245 a report as required under subparagraph 2. but fails to make a  
 246 report as required under this subparagraph commits a felony of  
 247 the second degree, punishable as provided in s. 775.082, s.  
 248 775.083, or s. 775.084.

249 4. A sexual predator must register all ~~any~~ electronic mail  
 250 addresses and Internet identifiers ~~address or instant message~~  
 251 ~~name~~ with the department prior to using such electronic mail  
 252 addresses and Internet identifiers ~~address or instant message~~

253 ~~name on or after October 1, 2007.~~ The department shall establish  
 254 an online system through which sexual predators may securely  
 255 access and update all electronic mail address and Internet  
 256 identifier ~~instant message name~~ information.

257 (i) A sexual predator who intends to establish a  
 258 permanent, temporary, or transient residence in another state or  
 259 jurisdiction other than the State of Florida shall report in  
 260 person to the sheriff of the county of current residence within  
 261 48 hours before the date he or she intends to leave this state  
 262 to establish residence in another state or jurisdiction or  
 263 within 21 days before his or her planned departure date if the  
 264 intended residence of 7 days or more is outside of the United  
 265 States. The sexual predator must provide to the sheriff the  
 266 address, municipality, county, ~~and~~ state, and country of  
 267 intended residence. The sheriff shall promptly provide to the  
 268 department the information received from the sexual predator.  
 269 The department shall notify the statewide law enforcement  
 270 agency, or a comparable agency, in the intended state, ~~or~~  
 271 jurisdiction, or country of residence of the sexual predator's  
 272 intended residence. The failure of a sexual predator to provide  
 273 his or her intended place of residence is punishable as provided  
 274 in subsection (10).

275 (j) A sexual predator who indicates his or her intent to  
 276 establish a permanent, temporary, or transient residence in  
 277 another state, a ~~or~~ jurisdiction other than the State of  
 278 Florida, or another country and later decides to remain in this  
 279 state shall, within 48 hours after the date upon which the  
 280 sexual predator indicated he or she would leave this state,

281 | report in person to the sheriff to which the sexual predator  
 282 | reported the intended change of residence, and report his or her  
 283 | intent to remain in this state. If the sheriff is notified by  
 284 | the sexual predator that he or she intends to remain in this  
 285 | state, the sheriff shall promptly report this information to the  
 286 | department. A sexual predator who reports his or her intent to  
 287 | establish a permanent, temporary, or transient residence in  
 288 | another state, a ~~ex~~ jurisdiction other than the State of  
 289 | Florida, or another country, but who remains in this state  
 290 | without reporting to the sheriff in the manner required by this  
 291 | paragraph, commits a felony of the second degree, punishable as  
 292 | provided in s. 775.082, s. 775.083, or s. 775.084.

293 |       (8) VERIFICATION.—The department and the Department of  
 294 | Corrections shall implement a system for verifying the addresses  
 295 | of sexual predators. The system must be consistent with the  
 296 | provisions of the federal Adam Walsh Child Protection and Safety  
 297 | Act of 2006 and any other federal standards applicable to such  
 298 | verification or required to be met as a condition for the  
 299 | receipt of federal funds by the state. The Department of  
 300 | Corrections shall verify the addresses of sexual predators who  
 301 | are not incarcerated but who reside in the community under the  
 302 | supervision of the Department of Corrections and shall report to  
 303 | the department any failure by a sexual predator to comply with  
 304 | registration requirements. County and local law enforcement  
 305 | agencies, in conjunction with the department, shall verify the  
 306 | addresses of sexual predators who are not under the care,  
 307 | custody, control, or supervision of the Department of  
 308 | Corrections. Local law enforcement agencies shall report to the

309 department any failure by a sexual predator to comply with  
 310 registration requirements.

311 (a) A sexual predator must report in person each year  
 312 during the month of the sexual predator's birthday and during  
 313 every third month thereafter to the sheriff's office in the  
 314 county in which he or she resides or is otherwise located to  
 315 reregister. The sheriff's office may determine the appropriate  
 316 times and days for reporting by the sexual predator, which shall  
 317 be consistent with the reporting requirements of this paragraph.  
 318 Reregistration shall include any changes to the following  
 319 information:

320 1. Name; social security number; age; race; sex; date of  
 321 birth; height; weight; hair and eye color; address of any  
 322 permanent residence and address of any current temporary  
 323 residence, within the state or out of state, including a rural  
 324 route address and a post office box; if no permanent or  
 325 temporary address, any transient residence within the state;  
 326 address, location or description, and dates of any current or  
 327 known future temporary residence within the state or out of  
 328 state; all ~~any~~ electronic mail addresses ~~address~~ and all  
 329 Internet identifiers ~~any instant message name~~ required to be  
 330 provided pursuant to subparagraph (6)(g)4.; all home telephone  
 331 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date  
 332 and place of any employment; vehicle make, model, color, and  
 333 license tag number; fingerprints; and photograph. A post office  
 334 box shall not be provided in lieu of a physical residential  
 335 address. The sexual predator must also produce or provide  
 336 information about his or her passport, if he or she has a



337 passport, and, if he or she is an alien, must produce or provide  
 338 information about documents establishing his or her immigration  
 339 status.

340 2. If the sexual predator is enrolled, employed, or  
 341 carrying on a vocation at an institution of higher education in  
 342 this state, the sexual predator shall also provide to the  
 343 department the name, address, and county of each institution,  
 344 including each campus attended, and the sexual predator's  
 345 enrollment or employment status.

346 3. If the sexual predator's place of residence is a motor  
 347 vehicle, trailer, mobile home, or manufactured home, as defined  
 348 in chapter 320, the sexual predator shall also provide the  
 349 vehicle identification number; the license tag number; the  
 350 registration number; and a description, including color scheme,  
 351 of the motor vehicle, trailer, mobile home, or manufactured  
 352 home. If the sexual predator's place of residence is a vessel,  
 353 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 354 sexual predator shall also provide the hull identification  
 355 number; the manufacturer's serial number; the name of the  
 356 vessel, live-aboard vessel, or houseboat; the registration  
 357 number; and a description, including color scheme, of the  
 358 vessel, live-aboard vessel, or houseboat.

359 (10) PENALTIES.—

360 (a) Except as otherwise specifically provided, a sexual  
 361 predator who fails to register; who fails, after registration,  
 362 to maintain, acquire, or renew a driver ~~driver's~~ license or  
 363 identification card; who fails to provide required location  
 364 information, electronic mail address information, Internet

365 identifier ~~instant message name~~ information, all home telephone  
 366 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~, or  
 367 change-of-name information; who fails to make a required report  
 368 in connection with vacating a permanent residence; who fails to  
 369 reregister as required; who fails to respond to any address  
 370 verification correspondence from the department within 3 weeks  
 371 of the date of the correspondence; or who otherwise fails, by  
 372 act or omission, to comply with the requirements of this  
 373 section, commits a felony of the third degree, punishable as  
 374 provided in s. 775.082, s. 775.083, or s. 775.084.

375 Section 2. Paragraphs (a) and (g) of subsection (1),  
 376 subsection (2), paragraphs (a) and (d) of subsection (4),  
 377 subsections (7) and (8), and paragraph (c) of subsection (14) of  
 378 section 943.0435, Florida Statutes, are amended to read:

379 943.0435 Sexual offenders required to register with the  
 380 department; penalty.—

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

382 (a)1. "Sexual offender" means a person who meets the  
 383 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
 384 subparagraph c., or sub-subparagraph d., as follows:

385 a.(I) Has been convicted of committing, or attempting,  
 386 soliciting, or conspiring to commit, any of the criminal  
 387 offenses proscribed in the following statutes in this state or  
 388 similar offenses in another jurisdiction: s. 787.01, s. 787.02,  
 389 or s. 787.025(2)(c), where the victim is a minor and the  
 390 defendant is not the victim's parent or guardian; s. 794.011,  
 391 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.  
 392 800.04; s. 825.1025; s. 826.04 where the victim is a minor and

393 | the defendant is 18 years of age or older; s. 827.071; s.  
 394 | 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.  
 395 | 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense  
 396 | committed in this state which has been redesignated from a  
 397 | former statute number to one of those listed in this sub-sub-  
 398 | subparagraph; and

399 |       (II) Has been released on or after October 1, 1997, from  
 400 | the sanction imposed for any conviction of an offense described  
 401 | in sub-sub-subparagraph (I). For purposes of sub-sub-  
 402 | subparagraph (I), a sanction imposed in this state or in any  
 403 | other jurisdiction includes, but is not limited to, a fine,  
 404 | probation, community control, parole, conditional release,  
 405 | control release, or incarceration in a state prison, federal  
 406 | prison, private correctional facility, or local detention  
 407 | facility;

408 |       b. Establishes or maintains a residence in this state and  
 409 | who has not been designated as a sexual predator by a court of  
 410 | this state but who has been designated as a sexual predator, as  
 411 | a sexually violent predator, or by another sexual offender  
 412 | designation in another state or jurisdiction and was, as a  
 413 | result of such designation, subjected to registration or  
 414 | community or public notification, or both, or would be if the  
 415 | person were a resident of that state or jurisdiction, without  
 416 | regard to whether the person otherwise meets the criteria for  
 417 | registration as a sexual offender;

418 |       c. Establishes or maintains a residence in this state who  
 419 | is in the custody or control of, or under the supervision of,  
 420 | any other state or jurisdiction as a result of a conviction for

421 committing, or attempting, soliciting, or conspiring to commit,  
 422 any of the criminal offenses proscribed in the following  
 423 statutes or similar offense in another jurisdiction: s. 787.01,  
 424 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and  
 425 the defendant is not the victim's parent or guardian; s.  
 426 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.  
 427 796.035; s. 800.04; s. 825.1025; s. 826.04 where the victim is a  
 428 minor and the defendant is 18 years of age or older; s. 827.071;  
 429 s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137;  
 430 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar  
 431 offense committed in this state which has been redesignated from  
 432 a former statute number to one of those listed in this sub-  
 433 subparagraph; or

434 d. On or after July 1, 2007, has been adjudicated  
 435 delinquent for committing, or attempting, soliciting, or  
 436 conspiring to commit, any of the criminal offenses proscribed in  
 437 the following statutes in this state or similar offenses in  
 438 another jurisdiction when the juvenile was 14 years of age or  
 439 older at the time of the offense:

- 440 (I) Section 794.011, excluding s. 794.011(10);
- 441 (II) Section 800.04(4)(b) where the victim is under 12  
 442 years of age or where the court finds sexual activity by the use  
 443 of force or coercion;
- 444 (III) Section 800.04(5)(c)1. where the court finds  
 445 molestation involving unclothed genitals; or
- 446 (IV) Section 800.04(5)(d) where the court finds the use of  
 447 force or coercion and unclothed genitals.

448 2. For all qualifying offenses listed in sub-subparagraph

449 (1)(a)1.d., the court shall make a written finding of the age of  
 450 the offender at the time of the offense.

451  
 452 For each violation of a qualifying offense listed in this  
 453 subsection, the court shall make a written finding of the age of  
 454 the victim at the time of the offense. For a violation of s.  
 455 800.04(4), the court shall additionally make a written finding  
 456 indicating that the offense did or did not involve sexual  
 457 activity and indicating that the offense did or did not involve  
 458 force or coercion. For a violation of s. 800.04(5), the court  
 459 shall additionally make a written finding that the offense did  
 460 or did not involve unclothed genitals or genital area and that  
 461 the offense did or did not involve the use of force or coercion.

462 (g) "Internet identifier ~~Instant message name~~" has the  
 463 same meaning as provided in s. 775.21 ~~means an identifier that~~  
 464 ~~allows a person to communicate in real time with another person~~  
 465 ~~using the Internet.~~

466 (2) A sexual offender shall:

467 (a) Report in person at the sheriff's office:

468 1. In the county in which the offender establishes or  
 469 maintains a permanent, temporary, or transient residence within  
 470 48 hours after:

471 a. Establishing permanent, temporary, or transient  
 472 residence in this state; or

473 b. Being released from the custody, control, or  
 474 supervision of the Department of Corrections or from the custody  
 475 of a private correctional facility; or

476 2. In the county where he or she was convicted within 48

477 | hours after being convicted for a qualifying offense for  
 478 | registration under this section if the offender is not in the  
 479 | custody or control of, or under the supervision of, the  
 480 | Department of Corrections, or is not in the custody of a private  
 481 | correctional facility.

482 |  
 483 | Any change in the information required to be provided pursuant  
 484 | to paragraph (b), including, but not limited to, any change in  
 485 | the sexual offender's permanent, temporary, or transient  
 486 | residence, name, all ~~any~~ electronic mail addresses ~~address~~ and  
 487 | all Internet identifiers ~~any instant message name~~ required to be  
 488 | provided pursuant to paragraph (4)(d), after the sexual offender  
 489 | reports in person at the sheriff's office, shall be accomplished  
 490 | in the manner provided in subsections (4), (7), and (8).

491 | (b) Provide his or her name; date of birth; social  
 492 | security number; race; sex; height; weight; hair and eye color;  
 493 | tattoos or other identifying marks; occupation and place of  
 494 | employment; address of permanent or legal residence or address  
 495 | of any current temporary residence, within the state or out of  
 496 | state, including a rural route address and a post office box; if  
 497 | no permanent or temporary address, any transient residence  
 498 | within the state, address, location or description, and dates of  
 499 | any current or known future temporary residence within the state  
 500 | or out of state; all home telephone numbers ~~number~~ and ~~any~~  
 501 | cellular telephone numbers ~~number~~; all ~~any~~ electronic mail  
 502 | addresses ~~address~~ and all Internet identifiers ~~any instant~~  
 503 | ~~message name~~ required to be provided pursuant to paragraph  
 504 | (4)(d); date and place of each conviction; and a brief

505 description of the crime or crimes committed by the offender. A  
 506 post office box shall not be provided in lieu of a physical  
 507 residential address. The sexual offender must also produce or  
 508 provide information about his or her passport, if he or she has  
 509 a passport, and, if he or she is an alien, must produce or  
 510 provide information about documents establishing his or her  
 511 immigration status.

512 1. If the sexual offender's place of residence is a motor  
 513 vehicle, trailer, mobile home, or manufactured home, as defined  
 514 in chapter 320, the sexual offender shall also provide to the  
 515 department through the sheriff's office written notice of the  
 516 vehicle identification number; the license tag number; the  
 517 registration number; and a description, including color scheme,  
 518 of the motor vehicle, trailer, mobile home, or manufactured  
 519 home. If the sexual offender's place of residence is a vessel,  
 520 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 521 sexual offender shall also provide to the department written  
 522 notice of the hull identification number; the manufacturer's  
 523 serial number; the name of the vessel, live-aboard vessel, or  
 524 houseboat; the registration number; and a description, including  
 525 color scheme, of the vessel, live-aboard vessel, or houseboat.

526 2. If the sexual offender is enrolled, employed, or  
 527 carrying on a vocation at an institution of higher education in  
 528 this state, the sexual offender shall also provide to the  
 529 department through the sheriff's office the name, address, and  
 530 county of each institution, including each campus attended, and  
 531 the sexual offender's enrollment or employment status. Each  
 532 change in enrollment or employment status shall be reported in

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533 | person at the sheriff's office, within 48 hours after any change  
 534 | in status. The sheriff shall promptly notify each institution of  
 535 | the sexual offender's presence and any change in the sexual  
 536 | offender's enrollment or employment status.

537 |  
 538 | When a sexual offender reports at the sheriff's office, the  
 539 | sheriff shall take a photograph and a set of fingerprints of the  
 540 | offender and forward the photographs and fingerprints to the  
 541 | department, along with the information provided by the sexual  
 542 | offender. The sheriff shall promptly provide to the department  
 543 | the information received from the sexual offender.

544 |         (4)(a) Each time a sexual offender's driver ~~driver's~~  
 545 | license or identification card is subject to renewal, and,  
 546 | without regard to the status of the offender's driver ~~driver's~~  
 547 | license or identification card, within 48 hours after any change  
 548 | in the offender's permanent, temporary, or transient residence  
 549 | or change in the offender's name by reason of marriage or other  
 550 | legal process, the offender shall report in person to a driver  
 551 | ~~driver's~~ license office, and shall be subject to the  
 552 | requirements specified in subsection (3). The Department of  
 553 | Highway Safety and Motor Vehicles shall forward to the  
 554 | department all photographs and information provided by sexual  
 555 | offenders. Notwithstanding the restrictions set forth in s.  
 556 | 322.142, the Department of Highway Safety and Motor Vehicles is  
 557 | authorized to release a reproduction of a color-photograph or  
 558 | digital-image license to the Department of Law Enforcement for  
 559 | purposes of public notification of sexual offenders as provided  
 560 | in this section and ss. 943.043 and 944.606. A sexual offender



561 who is unable to secure or update a driver license or  
 562 identification card with the Department of Highway Safety and  
 563 Motor Vehicles as provided in subsection (3) and this subsection  
 564 must also report any change in the sexual offender's permanent,  
 565 temporary, or transient residence or change in the offender's  
 566 name by reason of marriage or other legal process within 48  
 567 hours after the change to the sheriff's office in the county  
 568 where the offender resides or is located and provide  
 569 confirmation that he or she reported such information to  
 570 Department of Highway Safety and Motor Vehicles.

571 (d) A sexual offender must register all ~~any~~ electronic  
 572 mail addresses and Internet identifiers ~~address or instant~~  
 573 ~~message name~~ with the department prior to using such electronic  
 574 mail addresses and Internet identifiers ~~address or instant~~  
 575 ~~message name on or after October 1, 2007~~. The department shall  
 576 establish an online system through which sexual offenders may  
 577 securely access and update all electronic mail address and  
 578 Internet identifier ~~instant message name~~ information.

579 (7) A sexual offender who intends to establish a  
 580 permanent, temporary, or transient residence in another state or  
 581 jurisdiction other than the State of Florida shall report in  
 582 person to the sheriff of the county of current residence within  
 583 48 hours before the date he or she intends to leave this state  
 584 to establish residence in another state or jurisdiction or  
 585 within 21 days before his or her planned departure date if the  
 586 intended residence of 7 days or more is outside of the United  
 587 States. The notification must include the address, municipality,  
 588 county, ~~and~~ state, and country of intended residence. The

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589 | sheriff shall promptly provide to the department the information  
 590 | received from the sexual offender. The department shall notify  
 591 | the statewide law enforcement agency, or a comparable agency, in  
 592 | the intended state, or jurisdiction, or country of residence of  
 593 | the sexual offender's intended residence. The failure of a  
 594 | sexual offender to provide his or her intended place of  
 595 | residence is punishable as provided in subsection (9).

596 |         (8) A sexual offender who indicates his or her intent to  
 597 | establish a permanent, temporary, or transient residence in  
 598 | another state, a or jurisdiction other than the State of  
 599 | Florida, or another country and later decides to remain in this  
 600 | state shall, within 48 hours after the date upon which the  
 601 | sexual offender indicated he or she would leave this state,  
 602 | report in person to the sheriff to which the sexual offender  
 603 | reported the intended change of permanent, temporary, or  
 604 | transient residence, and report his or her intent to remain in  
 605 | this state. The sheriff shall promptly report this information  
 606 | to the department. A sexual offender who reports his or her  
 607 | intent to establish a permanent, temporary, or transient  
 608 | residence in another state, a or jurisdiction other than the  
 609 | State of Florida, or another country but who remains in this  
 610 | state without reporting to the sheriff in the manner required by  
 611 | this subsection commits a felony of the second degree,  
 612 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

613 |         (14)

614 |         (c) The sheriff's office may determine the appropriate  
 615 | times and days for reporting by the sexual offender, which shall  
 616 | be consistent with the reporting requirements of this

617 subsection. Reregistration shall include any changes to the  
 618 following information:

619 1. Name; social security number; age; race; sex; date of  
 620 birth; height; weight; hair and eye color; address of any  
 621 permanent residence and address of any current temporary  
 622 residence, within the state or out of state, including a rural  
 623 route address and a post office box; if no permanent or  
 624 temporary address, any transient residence within the state;  
 625 address, location or description, and dates of any current or  
 626 known future temporary residence within the state or out of  
 627 state; all any electronic mail addresses ~~address~~ and all  
 628 Internet identifiers ~~any instant message name~~ required to be  
 629 provided pursuant to paragraph (4)(d); all home telephone  
 630 numbers ~~number~~ and all any cellular telephone numbers ~~number~~;  
 631 date and place of any employment; vehicle make, model, color,  
 632 and license tag number; fingerprints; and photograph. A post  
 633 office box shall not be provided in lieu of a physical  
 634 residential address. The sexual offender must also produce or  
 635 provide information about his or her passport, if he or she has  
 636 a passport, and, if he or she is an alien, must produce or  
 637 provide information about documents establishing his or her  
 638 immigration status.

639 2. If the sexual offender is enrolled, employed, or  
 640 carrying on a vocation at an institution of higher education in  
 641 this state, the sexual offender shall also provide to the  
 642 department the name, address, and county of each institution,  
 643 including each campus attended, and the sexual offender's  
 644 enrollment or employment status.

645           3. If the sexual offender's place of residence is a motor  
 646 vehicle, trailer, mobile home, or manufactured home, as defined  
 647 in chapter 320, the sexual offender shall also provide the  
 648 vehicle identification number; the license tag number; the  
 649 registration number; and a description, including color scheme,  
 650 of the motor vehicle, trailer, mobile home, or manufactured  
 651 home. If the sexual offender's place of residence is a vessel,  
 652 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 653 sexual offender shall also provide the hull identification  
 654 number; the manufacturer's serial number; the name of the  
 655 vessel, live-aboard vessel, or houseboat; the registration  
 656 number; and a description, including color scheme, of the  
 657 vessel, live-aboard vessel or houseboat.

658           4. Any sexual offender who fails to report in person as  
 659 required at the sheriff's office, or who fails to respond to any  
 660 address verification correspondence from the department within 3  
 661 weeks of the date of the correspondence or who fails to report  
 662 all electronic mail addresses and all Internet identifiers ~~or~~  
 663 ~~instant message names~~, commits a felony of the third degree,  
 664 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

665           Section 3. Section 943.04351, Florida Statutes, is amended  
 666 to read:

667           943.04351 Search of registration information regarding  
 668 sexual predators and sexual offenders required prior to  
 669 appointment or employment.—A state agency or governmental  
 670 subdivision, prior to making any decision to appoint or employ a  
 671 person to work, whether for compensation or as a volunteer, at  
 672 any park, playground, day care center, or other place where

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673 | children regularly congregate, must conduct a search of that  
 674 | person's name or other identifying information against the  
 675 | registration information regarding sexual predators and sexual  
 676 | offenders maintained by the Department of Law Enforcement under  
 677 | s. 943.043. The agency or governmental subdivision may conduct  
 678 | the search using the Internet site maintained by the Department  
 679 | of Law Enforcement. Also, a national search must be conducted  
 680 | through the Dru Sjodin National Sex Offender Public Website  
 681 | maintained by the United States Department of Justice. This  
 682 | section does not apply to those positions or appointments within  
 683 | a state agency or governmental subdivision for which a state and  
 684 | national criminal history background check is conducted.

685 | Section 4. Section 943.04354, Florida Statutes, is amended  
 686 | to read:

687 | 943.04354 Removal of the requirement to register as a  
 688 | sexual offender or sexual predator in special circumstances.—

689 | (1) For purposes of this section, a person shall be  
 690 | considered for removal of the requirement to register as a  
 691 | sexual offender or sexual predator only if the person:

692 | (a) Was or will be convicted or adjudicated delinquent of  
 693 | a violation of s. 794.011, s. 800.04, s. 827.071, or s.  
 694 | 847.0135(5) or the person committed a violation of s. 794.011,  
 695 | s. 800.04, s. 827.071, or s. 847.0135(5) for which adjudication  
 696 | of guilt was or will be withheld, and the person does not have  
 697 | any other conviction, adjudication of delinquency, or withhold  
 698 | of adjudication of guilt for a violation of s. 794.011, s.  
 699 | 800.04, s. 827.071, or s. 847.0135(5);

700 (b) Is required to register as a sexual offender or sexual  
 701 predator solely on the basis of this violation; and

702 (c) Is not more than 4 years older than the victim of this  
 703 violation who was 13 ~~14~~ years of age or older but not more than  
 704 18 ~~17~~ years of age at the time the person committed this  
 705 violation.

706 (2) If a person meets the criteria in subsection (1) ~~and~~  
 707 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~  
 708 ~~847.0135(5) was committed on or after July 1, 2007,~~ the person  
 709 may move the court that will sentence or dispose of this  
 710 violation to remove the requirement that the person register as  
 711 a sexual offender or sexual predator. The person must allege in  
 712 the motion that he or she meets the criteria in subsection (1)  
 713 and that removal of the registration requirement will not  
 714 conflict with federal law. The state attorney must be given  
 715 notice of the motion at least 21 days before the date of  
 716 sentencing or disposition of this violation and may present  
 717 evidence in opposition to the requested relief or may otherwise  
 718 demonstrate why the motion should be denied. At sentencing or  
 719 disposition of this violation, the court shall rule on this  
 720 motion and, if the court determines the person meets the  
 721 criteria in subsection (1) and the removal of the registration  
 722 requirement will not conflict with federal law, it may grant the  
 723 motion and order the removal of the registration requirement. If  
 724 the court denies the motion, the person is not authorized under  
 725 this section to petition for removal of the registration  
 726 requirement.

727 (3) (a) This subsection applies to a person who:

728 ~~1. Is not a person described in subsection (2) because the~~  
 729 ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~  
 730 ~~committed on or after July 1, 2007;~~

731 1.2. Is subject to registration as a sexual offender or  
 732 sexual predator for a violation of s. 794.011, s. 800.04, or s.  
 733 827.071; and

734 2.3. Meets the criteria in subsection (1).

735 (b) A person may petition the court in which the sentence  
 736 or disposition for the violation of s. 794.011, s. 800.04, or s.  
 737 827.071 occurred for removal of the requirement to register as a  
 738 sexual offender or sexual predator. The person must allege in  
 739 the petition that he or she meets the criteria in subsection (1)  
 740 and removal of the registration requirement will not conflict  
 741 with federal law. The state attorney must be given notice of the  
 742 petition at least 21 days before the hearing on the petition and  
 743 may present evidence in opposition to the requested relief or  
 744 may otherwise demonstrate why the petition should be denied. The  
 745 court shall rule on the petition and, if the court determines  
 746 the person meets the criteria in subsection (1) and removal of  
 747 the registration requirement will not conflict with federal law,  
 748 it may grant the petition and order the removal of the  
 749 registration requirement. If the court denies the petition, the  
 750 person is not authorized under this section to file any further  
 751 petition for removal of the registration requirement.

752 (4) If a person provides to the Department of Law  
 753 Enforcement a certified copy of the court's order removing the  
 754 requirement that the person register as a sexual offender or  
 755 sexual predator for the violation of s. 794.011, s. 800.04, s.

756 | 827.071, or s. 847.0135(5), the registration requirement will  
 757 | not apply to the person and the department shall remove all  
 758 | information about the person from the public registry of sexual  
 759 | offenders and sexual predators maintained by the department.  
 760 | However, the removal of this information from the public  
 761 | registry does not mean that the public is denied access to  
 762 | information about the person's criminal history or record that  
 763 | is otherwise available as a public record.

764 | Section 5. Subsection (2) and paragraph (a) of subsection  
 765 | (3) of section 943.0437, Florida Statutes, are amended to read:

766 | 943.0437 Commercial social networking websites.-

767 | (2) The department may provide information relating to  
 768 | electronic mail addresses and Internet identifiers ~~instant~~  
 769 | ~~message names~~ maintained as part of the sexual offender registry  
 770 | to commercial social networking websites or third parties  
 771 | designated by commercial social networking websites. The  
 772 | commercial social networking website may use this information  
 773 | for the purpose of comparing registered users and screening  
 774 | potential users of the commercial social networking website  
 775 | against the list of electronic mail addresses and Internet  
 776 | identifiers ~~instant message names~~ provided by the department.

777 | (3) This section shall not be construed to impose any  
 778 | civil liability on a commercial social networking website for:

779 | (a) Any action voluntarily taken in good faith to remove  
 780 | or disable any profile of a registered user associated with an  
 781 | electronic mail address or Internet identifier ~~instant message~~  
 782 | ~~name~~ contained in the sexual offender registry.

783 | Section 6. Paragraphs (b) and (d) of subsection (1) and



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784 paragraph (a) of subsection (3) of section 944.606, Florida  
 785 Statutes, are amended to read:

786 944.606 Sexual offenders; notification upon release.—

787 (1) As used in this section:

788 (b) "Sexual offender" means a person who has been  
 789 convicted of committing, or attempting, soliciting, or  
 790 conspiring to commit, any of the criminal offenses proscribed in  
 791 the following statutes in this state or similar offenses in  
 792 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),  
 793 where the victim is a minor and the defendant is not the  
 794 victim's parent or guardian; s. 794.011, excluding s.  
 795 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.  
 796 825.1025; s. 826.04 where the victim is a minor and the  
 797 defendant is 18 years of age or older; s. 827.071; s. 847.0133;  
 798 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;  
 799 s. 847.0145; or s. 985.701(1); or any similar offense committed  
 800 in this state which has been redesignated from a former statute  
 801 number to one of those listed in this subsection, when the  
 802 department has received verified information regarding such  
 803 conviction; an offender's computerized criminal history record  
 804 is not, in and of itself, verified information.

805 (d) "Internet identifier ~~Instant message name~~" has the  
 806 same meaning as provided in s. 775.21 ~~means an identifier that~~  
 807 ~~allows a person to communicate in real time with another person~~  
 808 ~~using the Internet.~~

809 (3)(a) The department must provide information regarding  
 810 any sexual offender who is being released after serving a period  
 811 of incarceration for any offense, as follows:

812 | 1. The department must provide: the sexual offender's  
 813 | name, any change in the offender's name by reason of marriage or  
 814 | other legal process, and any alias, if known; the correctional  
 815 | facility from which the sexual offender is released; the sexual  
 816 | offender's social security number, race, sex, date of birth,  
 817 | height, weight, and hair and eye color; address of any planned  
 818 | permanent residence or temporary residence, within the state or  
 819 | out of state, including a rural route address and a post office  
 820 | box; if no permanent or temporary address, any transient  
 821 | residence within the state; address, location or description,  
 822 | and dates of any known future temporary residence within the  
 823 | state or out of state; date and county of sentence and each  
 824 | crime for which the offender was sentenced; a copy of the  
 825 | offender's fingerprints and a digitized photograph taken within  
 826 | 60 days before release; the date of release of the sexual  
 827 | offender; all ~~any~~ electronic mail addresses ~~address~~ and all  
 828 | Internet identifiers ~~any instant message name~~ required to be  
 829 | provided pursuant to s. 943.0435(4)(d); all ~~and~~ home telephone  
 830 | numbers ~~number~~ and ~~any~~ cellular telephone numbers; and passport  
 831 | information, if he or she has a passport, and, if he or she is  
 832 | an alien, information about documents establishing his or her  
 833 | immigration status ~~number~~. The department shall notify the  
 834 | Department of Law Enforcement if the sexual offender escapes,  
 835 | absconds, or dies. If the sexual offender is in the custody of a  
 836 | private correctional facility, the facility shall take the  
 837 | digitized photograph of the sexual offender within 60 days  
 838 | before the sexual offender's release and provide this photograph  
 839 | to the Department of Corrections and also place it in the sexual

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840 offender's file. If the sexual offender is in the custody of a  
 841 local jail, the custodian of the local jail shall register the  
 842 offender within 3 business days after intake of the offender for  
 843 any reason and upon release, and shall notify the Department of  
 844 Law Enforcement of the sexual offender's release and provide to  
 845 the Department of Law Enforcement the information specified in  
 846 this paragraph and any information specified in subparagraph 2.  
 847 that the Department of Law Enforcement requests.

848 2. The department may provide any other information deemed  
 849 necessary, including criminal and corrections records,  
 850 nonprivileged personnel and treatment records, when available.

851 Section 7. Paragraphs (a) and (f) of subsection (1),  
 852 paragraph (a) of subsection (4), paragraph (b) of subsection  
 853 (6), and paragraph (c) of subsection (13) of section 944.607,  
 854 Florida Statutes, are amended to read:

855 944.607 Notification to Department of Law Enforcement of  
 856 information on sexual offenders.—

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

858 (a) "Sexual offender" means a person who is in the custody  
 859 or control of, or under the supervision of, the department or is  
 860 in the custody of a private correctional facility:

861 1. On or after October 1, 1997, as a result of a  
 862 conviction for committing, or attempting, soliciting, or  
 863 conspiring to commit, any of the criminal offenses proscribed in  
 864 the following statutes in this state or similar offenses in  
 865 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),  
 866 where the victim is a minor and the defendant is not the  
 867 victim's parent or guardian; s. 794.011, excluding s.

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868 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.  
 869 825.1025; s. 826.04 where the victim is a minor and the  
 870 defendant is 18 years of age or older; s. 827.071; s. 847.0133;  
 871 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;  
 872 s. 847.0145; or s. 985.701(1); or any similar offense committed  
 873 in this state which has been redesignated from a former statute  
 874 number to one of those listed in this paragraph; or

875 2. Who establishes or maintains a residence in this state  
 876 and who has not been designated as a sexual predator by a court  
 877 of this state but who has been designated as a sexual predator,  
 878 as a sexually violent predator, or by another sexual offender  
 879 designation in another state or jurisdiction and was, as a  
 880 result of such designation, subjected to registration or  
 881 community or public notification, or both, or would be if the  
 882 person were a resident of that state or jurisdiction, without  
 883 regard as to whether the person otherwise meets the criteria for  
 884 registration as a sexual offender.

885 (f) "Internet identifier ~~Instant message name~~" has the  
 886 same meaning as provided in s. 775.21 ~~means an identifier that~~  
 887 ~~allows a person to communicate in real time with another person~~  
 888 ~~using the Internet.~~

889 (4) A sexual offender, as described in this section, who  
 890 is under the supervision of the Department of Corrections but is  
 891 not incarcerated must register with the Department of  
 892 Corrections within 3 business days after sentencing for a  
 893 registrable offense and otherwise provide information as  
 894 required by this subsection.

895 (a) The sexual offender shall provide his or her name;

896 date of birth; social security number; race; sex; height;  
 897 weight; hair and eye color; tattoos or other identifying marks;  
 898 all any electronic mail addresses ~~address~~ and all Internet  
 899 identifiers ~~any instant message name~~ required to be provided  
 900 pursuant to s. 943.0435(4)(d); permanent or legal residence and  
 901 address of temporary residence within the state or out of state  
 902 while the sexual offender is under supervision in this state,  
 903 including any rural route address or post office box; if no  
 904 permanent or temporary address, any transient residence within  
 905 the state; and address, location or description, and dates of  
 906 any current or known future temporary residence within the state  
 907 or out of state. The sexual offender must also produce or  
 908 provide information about his or her passport, if he or she has  
 909 a passport, and, if he or she is an alien, must produce or  
 910 provide information about documents establishing his or her  
 911 immigration status. The Department of Corrections shall verify  
 912 the address of each sexual offender in the manner described in  
 913 ss. 775.21 and 943.0435. The department shall report to the  
 914 Department of Law Enforcement any failure by a sexual predator  
 915 or sexual offender to comply with registration requirements.

916 (6) The information provided to the Department of Law  
 917 Enforcement must include:

918 (b) The sexual offender's most current address, place of  
 919 permanent, temporary, or transient residence within the state or  
 920 out of state, and address, location or description, and dates of  
 921 any current or known future temporary residence within the state  
 922 or out of state, while the sexual offender is under supervision  
 923 in this state, including the name of the county or municipality

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924 | in which the offender permanently or temporarily resides, or has  
 925 | a transient residence, and address, location or description, and  
 926 | dates of any current or known future temporary residence within  
 927 | the state or out of state, and, if known, the intended place of  
 928 | permanent, temporary, or transient residence, and address,  
 929 | location or description, and dates of any current or known  
 930 | future temporary residence within the state or out of state upon  
 931 | satisfaction of all sanctions. The sexual offender must also  
 932 | produce or provide information about his or her passport, if he  
 933 | or she has a passport, and, if he or she is an alien, must  
 934 | produce or provide information about documents establishing his  
 935 | or her immigration status;

936 |  
 937 | If any information provided by the department changes during the  
 938 | time the sexual offender is under the department's control,  
 939 | custody, or supervision, including any change in the offender's  
 940 | name by reason of marriage or other legal process, the  
 941 | department shall, in a timely manner, update the information and  
 942 | provide it to the Department of Law Enforcement in the manner  
 943 | prescribed in subsection (2).

944 | (13)

945 | (c) The sheriff's office may determine the appropriate  
 946 | times and days for reporting by the sexual offender, which shall  
 947 | be consistent with the reporting requirements of this  
 948 | subsection. Reregistration shall include any changes to the  
 949 | following information:

950 | 1. Name; social security number; age; race; sex; date of  
 951 | birth; height; weight; hair and eye color; address of any

952 permanent residence and address of any current temporary  
 953 residence, within the state or out of state, including a rural  
 954 route address and a post office box; if no permanent or  
 955 temporary address, any transient residence; address, location or  
 956 description, and dates of any current or known future temporary  
 957 residence within the state or out of state; all ~~any~~ electronic  
 958 mail addresses ~~address~~ and all Internet identifiers ~~any instant~~  
 959 ~~message name~~ required to be provided pursuant to s.  
 960 943.0435(4)(d); date and place of any employment; vehicle make,  
 961 model, color, and license tag number; fingerprints; and  
 962 photograph. A post office box shall not be provided in lieu of a  
 963 physical residential address. The sexual offender must also  
 964 produce or provide information about his or her passport, if he  
 965 or she has a passport, and, if he or she is an alien, must  
 966 produce or provide information about documents establishing his  
 967 or her immigration status.

968 2. If the sexual offender is enrolled, employed, or  
 969 carrying on a vocation at an institution of higher education in  
 970 this state, the sexual offender shall also provide to the  
 971 department the name, address, and county of each institution,  
 972 including each campus attended, and the sexual offender's  
 973 enrollment or employment status.

974 3. If the sexual offender's place of residence is a motor  
 975 vehicle, trailer, mobile home, or manufactured home, as defined  
 976 in chapter 320, the sexual offender shall also provide the  
 977 vehicle identification number; the license tag number; the  
 978 registration number; and a description, including color scheme,  
 979 of the motor vehicle, trailer, mobile home, or manufactured

980 home. If the sexual offender's place of residence is a vessel,  
 981 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 982 sexual offender shall also provide the hull identification  
 983 number; the manufacturer's serial number; the name of the  
 984 vessel, live-aboard vessel, or houseboat; the registration  
 985 number; and a description, including color scheme, of the  
 986 vessel, live-aboard vessel or houseboat.

987 4. Any sexual offender who fails to report in person as  
 988 required at the sheriff's office, or who fails to respond to any  
 989 address verification correspondence from the department within 3  
 990 weeks of the date of the correspondence, or who fails to report  
 991 all electronic mail addresses and all Internet identifiers ~~or~~  
 992 ~~instant message names~~, commits a felony of the third degree,  
 993 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

994 Section 8. Subsection (11) of section 947.005, Florida  
 995 Statutes, is amended to read:

996 947.005 Definitions.—As used in this chapter, unless the  
 997 context clearly indicates otherwise:

998 (11) "Risk assessment" means an assessment completed by a  
 999 ~~an independent~~ qualified practitioner to evaluate the level of  
 1000 risk associated when a sex offender has contact with a child.

1001 Section 9. Subsection (13) is added to section 947.1405,  
 1002 Florida Statutes, to read:

1003 947.1405 Conditional release program.—

1004 (13) In addition to all other conditions imposed, for a  
 1005 releasee who is subject to conditional release for a crime that  
 1006 was committed on or after July 1, 2012, and who has been  
 1007 convicted at any time of a violation of s. 800.04(7)(b) or s.



1008 | 847.0135, or a similar offense in another jurisdiction, the  
 1009 | commission must order electronic monitoring for the duration of  
 1010 | the releasee's supervision.

1011 | Section 10. Subsection (3) of section 948.30, Florida  
 1012 | Statutes, is amended, and subsection (5) is added to that  
 1013 | section, to read:

1014 | 948.30 Additional terms and conditions of probation or  
 1015 | community control for certain sex offenses.—Conditions imposed  
 1016 | pursuant to this section do not require oral pronouncement at  
 1017 | the time of sentencing and shall be considered standard  
 1018 | conditions of probation or community control for offenders  
 1019 | specified in this section.

1020 | (3) Effective for a probationer or community controllee  
 1021 | whose crime was committed on or after September 1, 2005, and  
 1022 | who:

1023 | (a) Is placed on probation or community control for a  
 1024 | violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071,  
 1025 | or s. 847.0145 and the unlawful sexual activity involved a  
 1026 | victim 15 years of age or younger and the offender is 18 years  
 1027 | of age or older;

1028 | (b) Is designated a sexual predator pursuant to s. 775.21  
 1029 | or a similar designation in another jurisdiction; or

1030 | (c) Has previously been convicted of a violation of  
 1031 | chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s.  
 1032 | 847.0145 or a similar offense in another jurisdiction and the  
 1033 | unlawful sexual activity involved a victim 15 years of age or  
 1034 | younger and the offender is 18 years of age or older,  
 1035 |

1036 the court must order, in addition to any other provision of this  
 1037 section, mandatory electronic monitoring as a condition of the  
 1038 probation or community control supervision.

1039 (5) Effective for a probationer or community controllee  
 1040 whose crime was committed on or after July 1, 2012, and who:

1041 (a)1. Is placed on probation or community control for a  
 1042 violation of s. 800.04(7)(b) or s. 847.0135; or

1043 2. Has previously been convicted of a violation of s.  
 1044 800.04(7)(b) or s. 847.0135, or a similar offense in another  
 1045 jurisdiction,

1046

1047 the court must order, in addition to any other requirements of  
 1048 this section, mandatory electronic monitoring as a condition of  
 1049 the probation or community control supervision.

1050 (b) Is placed on probation or community control for a  
 1051 violation of s. 847.0135(3) or (4), the court shall subject the  
 1052 probationer or community controllee to the requirements of  
 1053 subsections (1) and (2).

1054 Section 11. Section 948.31, Florida Statutes, is amended  
 1055 to read:

1056 948.31 Evaluation and treatment of sexual predators and  
 1057 offenders on probation or community control.—Conditions imposed  
 1058 pursuant to this section do not require oral pronouncement at  
 1059 the time of sentencing and shall be considered standard  
 1060 conditions of probation or community control for offenders  
 1061 specified in this section.

1062 (1) The court shall require an evaluation by a qualified  
 1063 practitioner ~~to determine the need of a probationer or community~~

1064 ~~controllee for treatment. If the court determines that a need~~  
 1065 ~~therefor is established by the evaluation process, the court~~  
 1066 ~~shall require sexual offender treatment as a term or condition~~  
 1067 ~~of probation or community control~~ for any person who is required  
 1068 to register as a sexual predator under s. 775.21 or sexual  
 1069 offender under s. 943.0435, s. 944.606, or s. 944.607 to  
 1070 determine the need of the probationer or community controllee  
 1071 for sex offender treatment while on probation or community  
 1072 control. The evaluation and recommendations for any treatment of  
 1073 the probationer or community controllee shall be provided to the  
 1074 court for review. Such treatment shall be required to be  
 1075 ~~obtained from a qualified practitioner as defined in s. 948.001.~~

1076 (2) If the court determines that a need for treatment is  
 1077 established by the evaluation process, the treatment must be  
 1078 obtained from a qualified practitioner. The community controllee  
 1079 or probationer must actively participate in and successfully  
 1080 complete any recommended treatment. The court shall also require  
 1081 the community controllee or probationer to comply with the  
 1082 treatment program rules, which can include, but are not limited  
 1083 to, a safety plan and polygraph examinations for treatment  
 1084 purposes.

1085 (3) The court may, when it is recommended by a qualified  
 1086 practitioner or the supervising probation officer, also restrict  
 1087 the probationer or community controllee from having unsupervised  
 1088 contact with a minor or prohibit him or her from residing with a  
 1089 minor.

1090 (4) Treatment may not be administered by a qualified  
 1091 practitioner who has been convicted or adjudicated delinquent of

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1092 committing, or attempting, soliciting, or conspiring to commit,  
 1093 any offense that is listed in s. 943.0435(1)(a)1.a.(I). ~~The~~  
 1094 ~~court shall impose a restriction against contact with minors if~~  
 1095 ~~sexual offender treatment is recommended. The evaluation and~~  
 1096 ~~recommendations for treatment of the probationer or community~~  
 1097 ~~controllee shall be provided to the court for review.~~

1098 Section 12. Paragraph (a) of subsection (3) of section  
 1099 985.481, Florida Statutes, is amended to read:

1100 985.481 Sexual offenders adjudicated delinquent;  
 1101 notification upon release.-

1102 (3)(a) The department must provide information regarding  
 1103 any sexual offender who is being released after serving a period  
 1104 of residential commitment under the department for any offense,  
 1105 as follows:

1106 1. The department must provide the sexual offender's name,  
 1107 any change in the offender's name by reason of marriage or other  
 1108 legal process, and any alias, if known; the correctional  
 1109 facility from which the sexual offender is released; the sexual  
 1110 offender's social security number, race, sex, date of birth,  
 1111 height, weight, and hair and eye color; address of any planned  
 1112 permanent residence or temporary residence, within the state or  
 1113 out of state, including a rural route address and a post office  
 1114 box; if no permanent or temporary address, any transient  
 1115 residence within the state; address, location or description,  
 1116 and dates of any known future temporary residence within the  
 1117 state or out of state; date and county of disposition and each  
 1118 crime for which there was a disposition; a copy of the  
 1119 offender's fingerprints and a digitized photograph taken within

1120 | 60 days before release; the date of release of the sexual  
 1121 | offender; all ~~and~~ home telephone numbers ~~number~~ and ~~any~~ cellular  
 1122 | telephone numbers; and passport information, if he or she has a  
 1123 | passport, and, if he or she is an alien, information about  
 1124 | documents establishing his or her immigration status ~~number~~. The  
 1125 | department shall notify the Department of Law Enforcement if the  
 1126 | sexual offender escapes, absconds, or dies. If the sexual  
 1127 | offender is in the custody of a private correctional facility,  
 1128 | the facility shall take the digitized photograph of the sexual  
 1129 | offender within 60 days before the sexual offender's release and  
 1130 | also place it in the sexual offender's file. If the sexual  
 1131 | offender is in the custody of a local jail, the custodian of the  
 1132 | local jail shall register the offender within 3 business days  
 1133 | after intake of the offender for any reason and upon release,  
 1134 | and shall notify the Department of Law Enforcement of the sexual  
 1135 | offender's release and provide to the Department of Law  
 1136 | Enforcement the information specified in this subparagraph and  
 1137 | any information specified in subparagraph 2. which the  
 1138 | Department of Law Enforcement requests.

1139 |         2. The department may provide any other information  
 1140 | considered necessary, including criminal and delinquency  
 1141 | records, when available.

1142 |         Section 13. Paragraph (a) of subsection (4), paragraph (a)  
 1143 | of subsection (6), and paragraph (b) of subsection (13) of  
 1144 | section 985.4815, Florida Statutes, are amended to read:

1145 |             985.4815 Notification to Department of Law Enforcement of  
 1146 | information on juvenile sexual offenders.-

1147 (4) A sexual offender, as described in this section, who  
 1148 is under the supervision of the department but who is not  
 1149 committed must register with the department within 3 business  
 1150 days after adjudication and disposition for a registrable  
 1151 offense and otherwise provide information as required by this  
 1152 subsection.

1153 (a) The sexual offender shall provide his or her name;  
 1154 date of birth; social security number; race; sex; height;  
 1155 weight; hair and eye color; tattoos or other identifying marks;  
 1156 permanent or legal residence and address of temporary residence  
 1157 within the state or out of state while the sexual offender is in  
 1158 the care or custody or under the jurisdiction or supervision of  
 1159 the department in this state, including any rural route address  
 1160 or post office box; if no permanent or temporary address, any  
 1161 transient residence; address, location or description, and dates  
 1162 of any current or known future temporary residence within the  
 1163 state or out of state; passport information, if he or she has a  
 1164 passport, and, if he or she is an alien, information about  
 1165 documents establishing his or her immigration status; and the  
 1166 name and address of each school attended. The department shall  
 1167 verify the address of each sexual offender and shall report to  
 1168 the Department of Law Enforcement any failure by a sexual  
 1169 offender to comply with registration requirements.

1170 (6)(a) The information provided to the Department of Law  
 1171 Enforcement must include the following:

1172 1. The information obtained from the sexual offender under  
 1173 subsection (4).

1174           2. The sexual offender's most current address and place of  
 1175 permanent, temporary, or transient residence within the state or  
 1176 out of state, and address, location or description, and dates of  
 1177 any current or known future temporary residence within the state  
 1178 or out of state, while the sexual offender is in the care or  
 1179 custody or under the jurisdiction or supervision of the  
 1180 department in this state, including the name of the county or  
 1181 municipality in which the offender permanently or temporarily  
 1182 resides, or has a transient residence, and address, location or  
 1183 description, and dates of any current or known future temporary  
 1184 residence within the state or out of state; and, if known, the  
 1185 intended place of permanent, temporary, or transient residence,  
 1186 and address, location or description, and dates of any current  
 1187 or known future temporary residence within the state or out of  
 1188 state upon satisfaction of all sanctions. The sexual offender  
 1189 must also produce or provide information about his or her  
 1190 passport, if he or she has a passport, and, if he or she is an  
 1191 alien, must produce or provide information about documents  
 1192 establishing his or her immigration status.

1193           3. The legal status of the sexual offender and the  
 1194 scheduled termination date of that legal status.

1195           4. The location of, and local telephone number for, any  
 1196 department office that is responsible for supervising the sexual  
 1197 offender.

1198           5. An indication of whether the victim of the offense that  
 1199 resulted in the offender's status as a sexual offender was a  
 1200 minor.

1201 6. The offense or offenses at adjudication and disposition  
 1202 that resulted in the determination of the offender's status as a  
 1203 sex offender.

1204 7. A digitized photograph of the sexual offender, which  
 1205 must have been taken within 60 days before the offender was  
 1206 released from the custody of the department or a private  
 1207 correctional facility by expiration of sentence under s.  
 1208 944.275, or within 60 days after the onset of the department's  
 1209 supervision of any sexual offender who is on probation,  
 1210 postcommitment probation, residential commitment, nonresidential  
 1211 commitment, licensed child-caring commitment, community control,  
 1212 conditional release, parole, provisional release, or control  
 1213 release or who is supervised by the department under the  
 1214 Interstate Compact Agreement for Probationers and Parolees. If  
 1215 the sexual offender is in the custody of a private correctional  
 1216 facility, the facility shall take a digitized photograph of the  
 1217 sexual offender within the time period provided in this  
 1218 subparagraph and shall provide the photograph to the department.

1219 (13)

1220 (b) The sheriff's office may determine the appropriate  
 1221 times and days for reporting by the sexual offender, which shall  
 1222 be consistent with the reporting requirements of this  
 1223 subsection. Reregistration shall include any changes to the  
 1224 following information:

1225 1. Name; social security number; age; race; sex; date of  
 1226 birth; height; weight; hair and eye color; address of any  
 1227 permanent residence and address of any current temporary  
 1228 residence, within the state or out of state, including a rural



1229 route address and a post office box; if no permanent or  
 1230 temporary address, any transient residence; address, location or  
 1231 description, and dates of any current or known future temporary  
 1232 residence within the state or out of state; passport  
 1233 information, if he or she has a passport, and, if he or she is  
 1234 an alien, information about documents establishing his or her  
 1235 immigration status; name and address of each school attended;  
 1236 date and place of any employment; vehicle make, model, color,  
 1237 and license tag number; fingerprints; and photograph. A post  
 1238 office box shall not be provided in lieu of a physical  
 1239 residential address.

1240         2. If the sexual offender is enrolled, employed, or  
 1241 carrying on a vocation at an institution of higher education in  
 1242 this state, the sexual offender shall also provide to the  
 1243 department the name, address, and county of each institution,  
 1244 including each campus attended, and the sexual offender's  
 1245 enrollment or employment status.

1246         3. If the sexual offender's place of residence is a motor  
 1247 vehicle, trailer, mobile home, or manufactured home, as defined  
 1248 in chapter 320, the sexual offender shall also provide the  
 1249 vehicle identification number; the license tag number; the  
 1250 registration number; and a description, including color scheme,  
 1251 of the motor vehicle, trailer, mobile home, or manufactured  
 1252 home. If the sexual offender's place of residence is a vessel,  
 1253 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 1254 sexual offender shall also provide the hull identification  
 1255 number; the manufacturer's serial number; the name of the  
 1256 vessel, live-aboard vessel, or houseboat; the registration

1257 | number; and a description, including color scheme, of the  
 1258 | vessel, live-aboard vessel, or houseboat.

1259 |         4. Any sexual offender who fails to report in person as  
 1260 | required at the sheriff's office, or who fails to respond to any  
 1261 | address verification correspondence from the department within 3  
 1262 | weeks after the date of the correspondence, commits a felony of  
 1263 | the third degree, punishable as provided in ss. 775.082,  
 1264 | 775.083, and 775.084.

1265 |         Section 14. Effective July 1, 2012, paragraphs (m) and (n)  
 1266 | are added to subsection (2) of section 903.046, Florida  
 1267 | Statutes, to read:

1268 |         903.046 Purpose of and criteria for bail determination.—

1269 |         (2) When determining whether to release a defendant on  
 1270 | bail or other conditions, and what that bail or those conditions  
 1271 | may be, the court shall consider:

1272 |         (m) Whether the defendant, other than a defendant whose  
 1273 | only criminal charge is a misdemeanor offense under chapter 316,  
 1274 | is required to register as a sexual offender under s. 943.0435;  
 1275 | and, if so, he or she is not eligible for release on bail or  
 1276 | surety bond until the first appearance on the case in order to  
 1277 | ensure the full participation of the prosecutor and the  
 1278 | protection of the public.

1279 |         (n) Whether the defendant, other than a defendant whose  
 1280 | only criminal charge is a misdemeanor offense under chapter 316,  
 1281 | is required to register as a sexual predator under s. 775.21;  
 1282 | and, if so, he or she is not eligible for release on bail or  
 1283 | surety bond until the first appearance on the case in order to

1284 ensure the full participation of the prosecutor and the  
 1285 protection of the public.

1286 Section 15. Subsection (1) of section 948.012, Florida  
 1287 Statutes, is amended to read:

1288 948.012 Split sentence of probation or community control  
 1289 and imprisonment.—

1290 (1) Whenever punishment by imprisonment for a misdemeanor  
 1291 or a felony, except for a capital felony, is prescribed, the  
 1292 court, in its discretion, may, at the time of sentencing, impose  
 1293 a split sentence whereby the defendant is to be placed on  
 1294 probation or, with respect to any such felony, into community  
 1295 control upon completion of any specified period of such sentence  
 1296 which may include a term of years or less. In such case, the  
 1297 court shall stay and withhold the imposition of the remainder of  
 1298 sentence imposed upon the defendant and direct that the  
 1299 defendant be placed upon probation or into community control  
 1300 after serving such period as may be imposed by the court. The  
 1301 period of probation or community control shall commence  
 1302 immediately upon the release of the defendant from  
 1303 ~~incarceration, whether by parole or gain-time allowances.~~

1304 Section 16. Section 948.039, Florida Statutes, is amended  
 1305 to read:

1306 948.039 Special terms and conditions of probation or  
 1307 community control imposed by court order.—The court may  
 1308 determine any special terms and conditions of probation or  
 1309 community control. The terms and conditions should be reasonably  
 1310 related to the circumstances of the offense committed and  
 1311 appropriate for the offender. The court shall impose the special

1312 terms and conditions by oral pronouncement at sentencing and  
 1313 include the terms and conditions in the written sentencing  
 1314 order. The probation or community control period shall commence  
 1315 immediately upon the release of the offender from incarceration.

1316 Special terms and conditions may include, but are not limited  
 1317 to, requirements that the offender:

1318 (1) Attend an HIV/AIDS awareness program consisting of a  
 1319 class of not less than 2 hours or more than 4 hours in length,  
 1320 if such a program is available in the county of the offender's  
 1321 residence. The offender shall pay the cost of attending the  
 1322 program.

1323 (2) Pay not more than \$1 per month during the term of  
 1324 probation or community control to a nonprofit organization  
 1325 established for the sole purpose of supplementing the  
 1326 rehabilitative efforts of the Department of Corrections.

1327 Section 17. If any provision of this act or its  
 1328 application to any person or circumstance is held invalid, the  
 1329 invalidity does not affect other provisions or applications of  
 1330 this act which can be given effect without the invalid provision  
 1331 or application, and to this end the provisions of this act are  
 1332 declared severable.

1333 Section 18. Except as otherwise expressly provided in this  
 1334 act and except for this section, which shall take effect upon  
 1335 this act becoming a law, this act shall take effect April 30,  
 1336 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 497 Juvenile Expunction  
**SPONSOR(S):** Porth and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 940

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

### SUMMARY ANALYSIS

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days.

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as defined in s. 741.28, F.S.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.
- Submits a \$75 processing fee and necessary paperwork to FDLE within 6 months after completing the program.

Currently a juvenile with a felony arrest is not eligible for a juvenile diversion expunction under s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies specified by the bill. The bill provides a list of felony offenses that are ineligible for a juvenile diversion expunction.

The bill also allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

It appears the bill may have both a positive and negative fiscal impact on state government. See "fiscal section."

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Juvenile Prearrest or Postarrest Diversion Programs**

Juvenile diversion programs are nonjudicial alternatives used to keep less serious juvenile offenders from being handled through the traditional juvenile justice system.<sup>1</sup> These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.<sup>2</sup>

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days. If the juvenile fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period that may not exceed 90 days.<sup>3</sup>

The diversion program may, upon agreement of the establishing agencies, provide for the expunction of the nonjudicial arrest record of a juvenile who successfully completes such a program pursuant to s. 943.0582, F.S.<sup>4</sup>

#### **Juvenile Diversion Expunction**

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge<sup>5</sup> a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Submits an application for a juvenile diversion expunction, on a form prescribed by FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying.
- Submits the application for a juvenile diversion expunction no later than 6 months after completion of the diversion program.
- Submits to FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, and that participation in the program is strictly limited to juveniles arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28, F.S.<sup>6</sup>

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<sup>1</sup> "Probation 2010 Florida Comprehensive Accountability Report. Department of Juvenile Justice.

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

<sup>3</sup> Section 985.125(2), F.S.

<sup>4</sup> Section 985.125(3), F.S.

<sup>5</sup> Section 943.0582(2), F.S., defines "Expunction" as the same meaning and effect as s. 943.0585, F.S., except that: The provisions of s. 943.0585(4)(a), F.S., do not apply, except that the criminal history record of a juvenile whose record is expunged pursuant to this section is made available only to criminal justice agencies: for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section are sealed as the term is used in s. 943.059, F.S.

- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

Section 943.0582(2), F.S., defines “nonviolent misdemeanor” as simple assault or battery when a juvenile diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

Expunction or sealing granted under this section does not prevent the juvenile who receives such relief from petitioning for the expunction or sealing of a later criminal history record as an adult as provided in ss. 943.0585 and 943.059, F.S., if the juvenile is otherwise eligible under those sections.<sup>7</sup>

### **Effect of the Bill**

As noted above, juveniles with felony arrests are not currently eligible for a juvenile diversion expunction.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies directly related to a violation of:

- Section 393.135, F.S., relating to sexual misconduct with an individual with a developmental disability who is in the Department of Children and Families (DCF) custody, who resides in a residential facility, or who is eligible to receive services from a family care program;
- Section 394.4593, F.S., relating to sexual misconduct with a mental health patient who is in DCF custody or who resides in a receiving or treatment facility;
- Section 787.025, F.S., relating to luring or enticing a child;
- Chapter 794, F.S., relating to sexual battery;
- Section 796.03, F.S., relating to procuring person under age of 18 for prostitution;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 810.14, F.S., relating to voyeurism;
- Section 817.034, F.S., relating to the Florida Communications Fraud Act;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Chapter 839, F.S., relating to offenses by public officers and employees;
- Section 847.0133, F.S., relating to prohibition of certain acts in connection with obscenity;
- Section 847.0135, F.S., relating to computer pornography, traveling to meet minor;
- Section 847.0145, F.S., relating to selling or buying of minors;
- Section 893.135, F.S., relating to drug trafficking, conspiracy to engage in drug trafficking;
- Section 916.1075, F.S., relating to sexual misconduct with a client who resides in a civil or forensic facility;
- A violation enumerated in s. 907.041, F.S.;<sup>8</sup> or
- Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S.,<sup>9</sup> without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.<sup>10</sup>

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<sup>6</sup> Section 741.28(2), F.S., defines “domestic violence” as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

<sup>7</sup> Section 943.0582(6), F.S.

<sup>8</sup> Section 907.041(4)(a), F.S., provides the following list of offenses: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime.



The bill allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

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

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

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

**1. Revenues:**

FDLE is authorized to charge a \$75 processing fee for each request received for a juvenile diversion expunction.<sup>11</sup> FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in revenue.<sup>12</sup>

**2. Expenditures:**

FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in costs associated with workload.<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>9</sup> Section 775.21, F.S., specifies the following offenses: (1) A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction: ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 847.0145, F.S. (selling or buying of minors). (2) Any felony violation, or attempt thereof, of: ss. 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.; s. 794.05, F.S. (unlawful activity with certain minors); s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); s.796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person; s. 827.071, F.S. (sexual performance by a child);s. 847.0135(5), F.S. (computer pornography); s. 847.0145, F.S. (selling or buying of minors); s. 985.701(1), F.S. (sexual misconduct with a juvenile offender); and s. 847.0133, F.S. (protection of minors / obscenity).

<sup>10</sup> Section 943.0435, F.S., provides many of the same offenses listed in s. 775.21, F.S., and specifies these additional offenses: s. 847.0137, F.S. (transmission of pornography by electronic device or equipment), and s. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment).

<sup>11</sup> Section 943.0585(4), F.S. This fee may be waived by the executive director.

<sup>12</sup> Florida Department of Law Enforcement. 2012 Analysis of HB 497.

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A juvenile applying for an expunction under s. 943.0582, F.S., will be required to pay a \$75 processing fee to FDLE.<sup>14</sup>

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:

Section 943.0582, F.S., provides FDLE rulemaking authority pursuant to ch. 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 4-7 of the bill cite the Department of Corrections as having the authority to expunge nonjudicial arrest records of juveniles. However, FDLE is the only agency statutorily authorized to expunge or seal criminal history records.

Clarification may be needed on whether expunction eligibility is limited to a juvenile arrested for a single qualifying misdemeanor or a single qualifying felony, or whether multiple charges could be expunged if none "relate to a violation of" the specified offenses. As worded, it appears that eligibility would be limited to an arrest for a single charge.

FDLE reports that the addition of the felony criteria to lines 24-33 of the bill could prove problematic as diversion programs would only be able to accept participants with arrest records for some felonies but not others, under a literal reading of the law.<sup>15</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>14</sup> *Supra* note 11.

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

1                                   A bill to be entitled  
 2           An act relating to juvenile expunction; amending s.  
 3           943.0582, F.S.; allowing minors who have certain  
 4           felony arrests to have the Department of Corrections  
 5           expunge their nonjudicial arrest record upon  
 6           successful completion of a prearrest or postarrest  
 7           diversion program; providing an effective date.

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

10  
 11           Section 1. Paragraphs (c), (e), and (f) of subsection (3)  
 12           of section 943.0582, Florida Statutes, are amended to read:

13           943.0582   Prearrest, postarrest, or teen court diversion  
 14           program expunction.—

15           (3) The department shall expunge the nonjudicial arrest  
 16           record of a minor who has successfully completed a prearrest or  
 17           postarrest diversion program if that minor:

18           (c) Submits to the department, with the application, an  
 19           official written statement from the state attorney for the  
 20           county in which the arrest occurred certifying that he or she  
 21           has successfully completed that county's prearrest or postarrest  
 22           diversion program and that participation in the program is  
 23           strictly limited to minors arrested for a nonviolent  
 24           misdemeanor, or for a felony that does not relate to a violation  
 25           of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,  
 26           s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,  
 27           chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
 28           s. 916.1075, a violation enumerated in s. 907.041, or any

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29 violation specified as a predicate offense for registration as a  
 30 sexual predator pursuant to s. 775.21, without regard to whether  
 31 that offense alone is sufficient to require such registration,  
 32 or for registration as a sexual offender pursuant to s.  
 33 943.0435, who have not otherwise been charged with or found to  
 34 have committed any criminal offense or comparable ordinance  
 35 violation.

36 ~~(e) Participated in a prearrest or postarrest diversion~~  
 37 ~~program based on an arrest for a nonviolent misdemeanor that~~  
 38 ~~would not qualify as an act of domestic violence as that term is~~  
 39 ~~defined in s. 741.28.~~


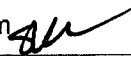
40 (e)-(f) Has never, prior to filing the application for  
 41 expunction, been charged with or been found to have committed  
 42 any criminal offense or comparable ordinance violation.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 947 Possession of a Firearm or Destructive Device During Commission of an Offense  
**SPONSOR(S):** Boyd  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1272

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

### SUMMARY ANALYSIS

Section 775.087(2)(a)1., F.S., part of Florida's "10-20-Life Law," requires a 10-year minimum mandatory sentence be imposed on persons convicted of the following felony offenses, regardless of whether the use of a firearm is an element of the felony, if during the course of committing the felony the person possessed a firearm or destructive device:

- Murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in certain controlled substances; and possession of a firearm by a felon.

That same section of statute exempts persons convicted of the following offenses from the above-described 10-year minimum mandatory sentence and instead requires a 3-year minimum mandatory sentence:

- Burglary of a conveyance;
- Aggravated assault; and
- Possession of a firearm by a felon.

The bill amends s. 775.087(2)(a)1., F.S., to specify that a person may not be sentenced to the above-described 3-year minimum mandatory sentence, and must instead be sentenced to the 10-year minimum mandatory sentence if:

- The person was convicted of "possession of a firearm by a felon" and during the course of committing the offense the person possessed a firearm or destructive device; and
- The person has a previous conviction for a felony listed in s. 775.084(1)(b)1., F.S. (or an attempt thereof) and actually possessed a firearm or destructive device during the commission of such offense.

The bill may have a negative prison bed impact on the Department of Corrections and is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 775.087(2)(a)1., F.S., part of Florida's "10-20-Life Law," requires a 10-year minimum mandatory sentence be imposed on persons convicted of the following felony offenses, regardless of whether the use of a firearm is an element of the felony, if during the course of committing the felony the person possessed a firearm or destructive device:<sup>1</sup>

- Murder;
- Sexual battery;
- Robbery;
- Burglary;
- Arson;
- Aggravated assault;
- Aggravated battery;
- Kidnapping;
- Escape;
- Aircraft piracy;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.; and
- Possession of a firearm by a felon.

That same section of statute exempts persons convicted of the following offenses from the above-described 10-year minimum mandatory sentence and instead requires a 3-year minimum mandatory sentence:

- Burglary of a conveyance;
- Aggravated assault; and
- Possession of a firearm by a felon.<sup>2</sup>

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

The bill amends s. 775.087(2)(a)1., F.S., to specify that a person may not be sentenced to the above-described 3-year minimum mandatory sentence and must instead be sentenced to the 10-year minimum mandatory sentence if:

- The person was convicted of "possession of a firearm by a felon" and during the course of committing the offense the person possessed a firearm or destructive device; and
- The person has a previous conviction for a felony listed in s. 775.084(1)(b)1., F.S. (or an attempt thereof)<sup>3</sup> and actually possessed a firearm or destructive device during the commission of such offense.

<sup>1</sup> Section 790.001(6) and (4), F.S., defines the terms "firearm" and "destructive device."

<sup>2</sup> Section 775.087(2)(a)1., F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.087, F.S., relating to possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.

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

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

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

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, because the bill expands the pool of persons subject to a 10-year minimum mandatory sentence, it may have a negative 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 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 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.

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<sup>3</sup> Section 775.084(1)(b)1., F.S., provides the following list of felony offenses: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; and aggravated stalking.



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

The bill provides an effective date of July 1, 2012. Generally, bills that impose or increase criminal penalties are effective on October 1 in order to give adequate notice to the public, state attorneys, public defenders, etc., of the new law's provisions.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 947

2012

1                   A bill to be entitled  
 2           An act relating to possession of a firearm or  
 3           destructive device during the commission of an  
 4           offense; amending s. 775.087, F.S.; providing that an  
 5           exception to the 10-year minimum term for persons  
 6           convicted of certain offenses during which the person  
 7           actually possessed a firearm or destructive device  
 8           does not to apply to offenders convicted for  
 9           possession of a firearm by a felon who have certain  
 10          prior convictions; providing an effective date.

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

13  
 14           Section 1. Paragraph (a) of subsection (2) of section  
 15           775.087, Florida Statutes, is amended to read:

16           775.087 Possession or use of weapon; aggravated battery;  
 17           felony reclassification; minimum sentence.—

18           (2)(a)1. Any person who is convicted of a felony or an  
 19           attempt to commit a felony, regardless of whether the use of a  
 20           weapon is an element of the felony, and the conviction was for:

- 21           a. Murder;
- 22           b. Sexual battery;
- 23           c. Robbery;
- 24           d. Burglary;
- 25           e. Arson;
- 26           f. Aggravated assault;
- 27           g. Aggravated battery;
- 28           h. Kidnapping;

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2012

- 29 i. Escape;
- 30 j. Aircraft piracy;
- 31 k. Aggravated child abuse;
- 32 l. Aggravated abuse of an elderly person or disabled  
33 adult;
- 34 m. Unlawful throwing, placing, or discharging of a  
35 destructive device or bomb;
- 36 n. Carjacking;
- 37 o. Home-invasion robbery;
- 38 p. Aggravated stalking;
- 39 q. Trafficking in cannabis, trafficking in cocaine,  
40 capital importation of cocaine, trafficking in illegal drugs,  
41 capital importation of illegal drugs, trafficking in  
42 phencyclidine, capital importation of phencyclidine, trafficking  
43 in methaqualone, capital importation of methaqualone,  
44 trafficking in amphetamine, capital importation of amphetamine,  
45 trafficking in flunitrazepam, trafficking in gamma-  
46 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
47 trafficking in Phenethylamines, or other violation of s.  
48 893.135(1); or
- 49 r. Possession of a firearm by a felon
- 50
- 51 and during the commission of the offense, such person actually  
52 possessed a "firearm" or "destructive device" as those terms are  
53 defined in s. 790.001, shall be sentenced to a minimum term of  
54 imprisonment of 10 years, except that a person who is convicted  
55 for aggravated assault, possession of a firearm by a felon, or  
56 burglary of a conveyance shall be sentenced to a minimum term of

HB 947

2012

57 | imprisonment of 3 years if such person possessed a "firearm" or  
 58 | "destructive device" during the commission of the offense unless  
 59 | such a person convicted for possession of a firearm by a felon  
 60 | has a previous conviction of a felony or an attempt to commit a  
 61 | felony listed in s. 775.084(1)(b)1. and actually possessed a  
 62 | "firearm" or "destructive device" during the commission of that  
 63 | offense.

64 |         2. Any person who is convicted of a felony or an attempt  
 65 | to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 66 | regardless of whether the use of a weapon is an element of the  
 67 | felony, and during the course of the commission of the felony  
 68 | such person discharged a "firearm" or "destructive device" as  
 69 | defined in s. 790.001 shall be sentenced to a minimum term of  
 70 | imprisonment of 20 years.


71 |         3. Any person who is convicted of a felony or an attempt  
 72 | to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 73 | regardless of whether the use of a weapon is an element of the  
 74 | felony, and during the course of the commission of the felony  
 75 | such person discharged a "firearm" or "destructive device" as  
 76 | defined in s. 790.001 and, as the result of the discharge, death  
 77 | or great bodily harm was inflicted upon any person, the  
 78 | convicted person shall be sentenced to a minimum term of  
 79 | imprisonment of not less than 25 years and not more than a term  
 80 | of imprisonment of life in prison.

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1045 Mental Health  
SPONSOR(S): Schwartz  
TIED BILLS: None IDEN./SIM. BILLS: SB 1712

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

SUMMARY ANALYSIS

House Bill 1045 makes changes to ch. 916, F.S., Mentally Deficient and Mentally Ill Defendants, and Section 985.19, F.S., Incompetency in Juvenile Delinquency Cases as follows:

- An admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- Court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings, must complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.
- The bill establishes a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- The timeframe for dismissal of charges for people determined to be non-restorable is reduced from five to two years, except for capital felonies.
- The bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.

The bill does not appear to have a fiscal impact.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Department of Children and Families (DCF) serves individuals who have been committed to DCF, pursuant to ch. 916, F.S. because they have been adjudicated incompetent to proceed at trial due to mental illness or because they have been found not guilty by reason of insanity. DCF currently provides competency restoration training and mental health services in four state forensic facilities, with a total of 1,098 beds.<sup>1</sup> In FY 2010-11, DCF reported serving 2,581 adults as a result of a chapter 916, F.S., commitment.<sup>2</sup>

Chapter 985, F.S., relating to juvenile justice, provides DCF, the Agency for Persons with Disabilities (APD), and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency issues for juveniles. If the court has reason to believe that a child named in a petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.<sup>3</sup> The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.<sup>4</sup> DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.<sup>5</sup> In FY 2010-11, DCF reported that it served 412 children who were adjudicated incompetent to proceed.<sup>6</sup>

##### Competency Evaluation

Currently, courts are required to appoint to more than three experts to provide adult competency evaluations.<sup>7</sup> Each expert must be a psychiatrist, licensed psychologist, or physician and must, to the extent possible, have completed DCF-approved forensic evaluator training.<sup>8</sup> DCF is required to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.<sup>9</sup> However, current law does not *require* attendance at a DCF approved training or training renewal in order for a person to be appointed as an expert.<sup>10</sup> In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.<sup>11</sup> For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.<sup>12</sup>

##### Competency Hearing

Currently, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.<sup>13</sup>

##### Dismissal of Charges following Competency Training

Currently, charges against an adult who has been adjudicated incompetent to proceed due to mental illness may be dismissed after five years of incompetency.<sup>14</sup> This occurs unless the court makes

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<sup>1</sup> DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

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

<sup>3</sup> S. 985.19(1), F.S.

<sup>4</sup> S. 985.19(1)(b), F.S.

<sup>5</sup> S. 985.19(4), F.S.

<sup>6</sup> DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

<sup>7</sup> S. 916.115(1), F.S.

<sup>8</sup> S. 916.115(1)(a), F.S.

<sup>9</sup> S. 916.115, (1)(b), F.S.

<sup>10</sup> S. 916.115, (1)(a), F.S.

<sup>11</sup> S. 985.19(1)(b), F.S.

<sup>12</sup> S. 985.19(1)(d), F.S.

<sup>13</sup> Rules 33.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

<sup>14</sup> S. 916.145, F.S.

findings that the person will become competent in the future.<sup>15</sup> Charges are dismissed without prejudice, which allows the state to re-file charges if the person become competent in the future.<sup>16</sup>

### Psychotherapeutic Medication Treatment

Current law requires that forensic clients must give express and informed consent to treatment. If they refuse and the situation is deemed an emergency that puts the client's safety at risk, then treatment may be given for 48 hours. If the person still refuses to give consent, then a court order must be sought for continuation of the treatment. In non-emergency situations, the treatment may not be given (without consent) and a court order must be sought for continued treatment.<sup>17</sup> DCF reports that in the non-emergency situations, the abrupt halt of medications to the individual can place them at risk for significant harm to their health and safety.<sup>18</sup>

### **Effect of Proposed changes**

#### Continuation of Psychotherapeutic Medication

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations<sup>19</sup> and is limited to the time period required to obtain a court order for the medication. This provision would apply to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the APD.

The bill does not specify a timeframe for the pursuit of a court order or place any limits on the continuation of the medication while awaiting the order. Court ordered medication of an individual has been the subject of judicial review.<sup>20</sup>

#### Competency Hearings

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

#### Forensic Evaluator Training

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course that will be provided at least annually. The bill renames the DCF list of mental health experts as a forensic evaluator registry, and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Beginning July 1, 2013, the training must be completed every five years, and failure to do so will

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

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

<sup>17</sup> S. 916.107(3), F.S.

<sup>18</sup> DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

<sup>19</sup> Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

<sup>20</sup> See *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006) (Noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available.) Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S. The nonconsensual administration of medication by judicial order was challenged in Florida, in *Moreland v. State*, 706 So.2d 71, (Fla. 1st DCA), where the court struck down a judicial order for failure to comply with the statutory requirement of a multidisciplinary treatment team.



result in removal from the list. The court can only appoint forensic evaluators from the registry. The bill creates the same process for evaluators in the juvenile system.

### Dismissal of Charges

The bill reduces the timeframe in which a person adjudicated as incompetent to proceed due to mental illness may have their charges dismissed from five to two years. The bill provides an exception for capital felonies, which will remain at five years.<sup>21</sup> DCF reports that data from the past 12 years shows that 98.7 percent of individuals were restored to competency in two years or less.<sup>22</sup>

### Determinations of Incompetency for Juvenile Delinquency Cases

The bill establishes criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. The bill provides that a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.

If the child is determined to be incompetent, the bill requires the evaluator to provide a mental disorder that forms the basis of the incompetency. The bill requires that the basis for the determination of a child's mental condition be specifically stated in the expert's competency evaluation report and must include written findings that:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition; and
- Address the child's capacity to:
  - Appreciate the charges or allegations against the child.
  - Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
  - Understand the adversarial nature of the legal process.
  - Disclose to counsel facts pertinent to the proceedings at issue.
  - Display appropriate courtroom behavior.
  - Testify relevantly.

The bill also requires the evaluator to include in his or her competency evaluation report a "summary of findings" section that includes:

- The date and length of time of the face to face diagnostic clinical interview;
- A statement that identifies the mental health disorder;
- A statement of how the child would benefit from competency restoration in the community or in a residential setting;
- An assessment of treatment length, and whether the juvenile will attain competence in the future; and
- A description of appropriate mental health treatment and education.

## B. SECTION DIRECTORY:

- Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.
- Section 2:** Amends s. 916.111, F.S., relating to training of mental health experts.
- Section 3:** Amends s. 916.115, F.S., relating to appointment of experts.
- Section 4:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.
- Section 5:** Amends s. 916.145, F.S., relating to dismissal of charges.

<sup>21</sup> A capital felony must be designated as such by statute. S. 775.081, F.S.

<sup>22</sup> DCF data shows that from FY 1998-99 to FY 2009-10, of a total of 12,016 individuals adjudicated not competent to proceed, 98.7% of them were restored in less than two years. DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

- Section 6:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.
- Section 7:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.
- Section 8:** Provides for an effective date.

## 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:

Mental health experts who wish to participate in forensic evaluations will be required to pay for the department authorized training every 5 years to be on the registry. The cost for this training is currently \$445, or \$395 for state or non-profit employees.<sup>23</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

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<sup>23</sup> DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

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

Line 71 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situation under s. 916.107(3)(a)1., F.S.

Lines 275 and 282 incorrectly refer to the most current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association as the DSM-IV,<sup>24</sup> and could be amended to not specifically name the edition.

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Section 916.115(1)(a), F.S., may also need to be amended to remove the language specifying that each expert must, *to the extent possible*, have completed DCF-approved forensic evaluator training.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>24</sup> <http://www.psych.org/MainMenu/Research/DSMIV/FAQs/WhatisthemostrecentversionoftheDSM.aspx>, site last visited January 27, 2012.

1                                   A bill to be entitled  
 2           An act relating to mental health; amending s. 916.107,  
 3           F.S.; authorizing, in certain circumstances,  
 4           continuation of psychotherapeutic medication for  
 5           individuals receiving such medication in a jail before  
 6           admission to a psychiatric or forensic facility;  
 7           amending s. 916.111, F.S.; requiring forensic  
 8           evaluator training for mental health experts appointed  
 9           to evaluate defendants for competency to proceed or  
 10          for sanity at the time of the commission of the  
 11          offense; amending s. 916.115, F.S.; requiring the  
 12          Department of Children and Family Services to maintain  
 13          and annually provide the courts with a forensic  
 14          evaluator registry; amending s. 916.13, F.S.;  
 15          providing timeframes for competency hearings to be  
 16          held; amending s. 916.145, F.S.; reducing the time for  
 17          dismissal of charges for defendants found  
 18          nonrestorable from 5 years to 2 years, except in the  
 19          case of capital offenses which shall remain at 5  
 20          years; amending s. 916.15, F.S.; providing timeframes  
 21          for commitment hearings to be held; amending s.  
 22          985.19, F.S.; standardizing the protocols, procedures,  
 23          and criteria used in reporting expert findings in  
 24          determining competency in juvenile cases; revising  
 25          requirements related to the forensic evaluator  
 26          training program that appointed experts must complete;  
 27          requiring experts after a specified date to have  
 28          completed such training; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency

57 | situation continues to present a danger to the safety of the  
 58 | client or others.

59 |         2. In a situation other than an emergency situation, the  
 60 | administrator or designee of the facility shall petition the  
 61 | court for an order authorizing necessary and essential treatment  
 62 | for the client.

63 |             a. If the client has been receiving psychotherapeutic  
 64 | medication at the jail at the time of transfer to the forensic  
 65 | or civil facility and lacks the capacity to make an informed  
 66 | decision regarding mental health treatment at the time of  
 67 | admission, the admitting physician may order continued  
 68 | administration of the psychotherapeutic medication if, in the  
 69 | clinical judgment of the physician, abrupt cessation of the  
 70 | psychotherapeutic medication could cause a risk to the health  
 71 | and safety of the client during the time a court order to  
 72 | medicate is pursued. The jail physician shall provide a current  
 73 | psychotherapeutic medication order at the time of transfer to  
 74 | the forensic or civil facility.

75 |             b. The court order shall allow such treatment for up to a  
 76 | period not to exceed 90 days after following the date of the  
 77 | entry of the order. Unless the court is notified in writing that  
 78 | the client has provided express and informed consent in writing  
 79 | or that the client has been discharged by the committing court,  
 80 | the administrator or designee shall, before ~~prior to~~ the  
 81 | expiration of the initial 90-day order, petition the court for  
 82 | an order authorizing the continuation of treatment for another  
 83 | 90 days ~~90-day period~~. This procedure shall be repeated until  
 84 | the client provides consent or is discharged by the committing

85 court.

86 3. At the hearing on the issue of whether the court should  
 87 enter an order authorizing treatment for which a client was  
 88 unable to or refused to give express and informed consent, the  
 89 court shall determine by clear and convincing evidence that the  
 90 client has mental illness, retardation, or autism, that the  
 91 treatment not consented to is essential to the care of the  
 92 client, and that the treatment not consented to is not  
 93 experimental and does not present an unreasonable risk of  
 94 serious, hazardous, or irreversible side effects. In arriving at  
 95 the substitute judgment decision, the court must consider at  
 96 least the following factors:

- 97 a. The client's expressed preference regarding treatment;
- 98 b. The probability of adverse side effects;
- 99 c. The prognosis without treatment; and
- 100 d. The prognosis with treatment.

101

102 The hearing shall be as convenient to the client as may be  
 103 consistent with orderly procedure and shall be conducted in  
 104 physical settings not likely to be injurious to the client's  
 105 condition. The court may appoint a general or special magistrate  
 106 to preside at the hearing. The client or the client's guardian,  
 107 and the representative, shall be provided with a copy of the  
 108 petition and the date, time, and location of the hearing. The  
 109 client has the right to have an attorney represent him or her at  
 110 the hearing, and, if the client is indigent, the court shall  
 111 appoint the office of the public defender to represent the  
 112 client at the hearing. The client may testify or not, as he or

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113 she chooses, and has the right to cross-examine witnesses and  
 114 may present his or her own witnesses.

115 Section 2. Section 916.111, Florida Statutes, is amended  
 116 to read:

117 916.111 Training of mental health experts.—

118 (1) The evaluation of defendants for competency to proceed  
 119 or for sanity at the time of the commission of the offense shall  
 120 be conducted in such a way as to ensure uniform application of  
 121 the criteria enumerated in Rules 3.210 and 3.216, Florida Rules  
 122 of Criminal Procedure.

123 (2) Appointed experts shall have completed forensic  
 124 evaluator training as specified in this section.

125 (3) A forensic evaluator training course approved by the  
 126 department must be provided at least annually to ensure that  
 127 mental health professionals have the opportunity to be placed on  
 128 the department's forensic evaluator registry.

129 (a) Beginning July 1, 2013, if an expert chooses to remain  
 130 on the registry, he or she must have completed or retaken the  
 131 required training course within the previous 5 years. Those who  
 132 have not completed the training course must be removed from the  
 133 registry and may not conduct evaluations for the courts.

134 (b) A mental health professional who has completed the  
 135 training course within the previous 5 years must maintain  
 136 documentation of completion of the required training course and  
 137 provide current contact information to the department.

138 (4) The department shall develop, and may contract with  
 139 accredited institutions:

140 (a) ~~(1)~~ To provide:



141           ~~1.(a)~~ A plan for training mental health professionals to  
 142 perform forensic evaluations and to standardize the criteria and  
 143 procedures to be used in these evaluations;

144           ~~2.(b)~~ Clinical protocols and procedures based upon the  
 145 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
 146 Procedure; and

147           ~~3.(e)~~ Training for mental health professionals in the  
 148 application of these protocols and procedures in performing  
 149 forensic evaluations and providing reports to the courts; and

150           ~~(b)-2~~ To compile and maintain the necessary information  
 151 for evaluating the success of this program, including the number  
 152 of persons trained, the cost of operating the program, and the  
 153 effect on the quality of forensic evaluations as measured by  
 154 appropriateness of admissions to state forensic facilities and  
 155 to community-based care programs.

156           Section 3. Paragraph (b) of subsection (1) of section  
 157 916.115, Florida Statutes, is amended to read:

158           916.115 Appointment of experts.—

159           (1) The court shall appoint no more than three experts to  
 160 determine the mental condition of a defendant in a criminal  
 161 case, including competency to proceed, insanity, involuntary  
 162 placement, and treatment. The experts may evaluate the defendant  
 163 in jail or in another appropriate local facility or in a  
 164 facility of the Department of Corrections.

165           (b) The department shall maintain and annually provide the  
 166 courts with a forensic evaluator registry ~~list~~ of available  
 167 mental health professionals who have completed the approved  
 168 training as experts.

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169 Section 4. Subsection (2) of section 916.13, Florida  
 170 Statutes, is amended to read:

171 916.13 Involuntary commitment of defendant adjudicated  
 172 incompetent.—

173 (2) A defendant who has been charged with a felony and who  
 174 has been adjudicated incompetent to proceed due to mental  
 175 illness, and who meets the criteria for involuntary commitment  
 176 ~~to the department under the provisions of this chapter,~~ may be  
 177 committed to the department, and the department shall retain and  
 178 treat the defendant.

179 (a) Within ~~No later than~~ 6 months after the date of  
 180 admission and at the end of any period of extended commitment,  
 181 or at any time the administrator or designee has ~~shall have~~  
 182 determined that the defendant has regained competency to proceed  
 183 or no longer meets the criteria for continued commitment, the  
 184 administrator or designee shall file a report with the court  
 185 pursuant to the applicable Florida Rules of Criminal Procedure.

186 (b) A competency hearing must be held within 30 days after  
 187 a court receives notification that the defendant is competent to  
 188 proceed or no longer meets the criteria for continued  
 189 commitment.

190 Section 5. Section 916.145, Florida Statutes, is amended  
 191 to read:

192 916.145 Dismissal of charges.—The charges against any  
 193 defendant adjudicated incompetent to proceed due to the  
 194 defendant's mental illness shall be dismissed without prejudice  
 195 to the state if the defendant remains incompetent to proceed 2 ~~5~~  
 196 years after such determination or 5 years after such

197 determination if the charge is a capital offense, unless the  
 198 court in its order specifies its reasons for believing that the  
 199 defendant will become competent to proceed within the  
 200 foreseeable future and specifies the time within which the  
 201 defendant is expected to become competent to proceed. The  
 202 charges against the defendant shall be ~~are~~ dismissed without  
 203 prejudice to the state to refile the charges if ~~should~~ the  
 204 defendant is ~~be~~ declared competent to proceed in the future.

205 Section 6. Subsection (5) is added to section 916.15,  
 206 Florida Statutes, to read:

207 916.15 Involuntary commitment of defendant adjudicated not  
 208 guilty by reason of insanity.—

209 (5) The commitment hearing must be held within 30 days  
 210 after the court receives notification that the defendant no  
 211 longer meets the criteria for continued commitment.

212 Section 7. Subsection (1) of section 985.19, Florida  
 213 Statutes, is amended, subsection (7) is renumbered as subsection  
 214 (8), and a new subsection (7) is added to that section, to read:

215 985.19 Incompetency in juvenile delinquency cases.—

216 (1) If, at any time prior to or during a delinquency case,  
 217 the court has reason to believe that the child named in the  
 218 petition may be incompetent to proceed with the hearing, the  
 219 court on its own motion may, or on the motion of the child's  
 220 attorney or state attorney must, stay all proceedings and order  
 221 an evaluation of the child's mental condition.

222 (a) Any motion questioning the child's competency to  
 223 proceed must be served upon the child's attorney, the state  
 224 attorney, the attorneys representing the Department of Juvenile

225 Justice, and the attorneys representing the Department of  
 226 Children and Family Services. Thereafter, any motion, notice of  
 227 hearing, order, or other legal pleading relating to the child's  
 228 competency to proceed with the hearing must be served upon the  
 229 child's attorney, the state attorney, the attorneys representing  
 230 the Department of Juvenile Justice, and the attorneys  
 231 representing the Department of Children and Family Services.

232 (b) All determinations of competency must ~~shall~~ be made at  
 233 a hearing, with findings of fact based on an evaluation of the  
 234 child's mental condition made by at least ~~not less than~~ two ~~but~~  
 235 not ~~nor~~ more than three experts appointed by the court. ~~The~~  
 236 ~~basis for the determination of incompetency must be specifically~~  
 237 ~~stated in the evaluation. In addition, a recommendation as to~~  
 238 ~~whether residential or nonresidential treatment or training is~~  
 239 ~~required must be included in the evaluation.~~ Experts appointed  
 240 by the court to determine the mental condition of a child shall  
 241 be allowed reasonable fees for services rendered. State  
 242 employees may be paid expenses pursuant to s. 112.061. The fees  
 243 shall be taxed as costs in the case.

244 (c) A child is competent to proceed if the child has  
 245 sufficient present ability to consult with counsel with a  
 246 reasonable degree of rational understanding and the child has a  
 247 rational and factual understanding of the present proceedings.

248 (d) The basis for the determination of a child's mental  
 249 condition must be specifically stated in the expert's competency  
 250 evaluation report and must include written findings that:

- 251 1. Identify the specific matters referred for evaluation.
- 252 2. Identify the sources of information used by the expert.

253 3. Describe the procedures, techniques, and diagnostic  
 254 tests used in the examination to determine the basis of the  
 255 child's mental condition.

256 4. Address the child's capacity to:

257 a. Appreciate the charges or allegations against the  
 258 child.

259 b. Appreciate the range and nature of possible penalties  
 260 that may be imposed in the proceedings against the child, if  
 261 applicable.

262 c. Understand the adversarial nature of the legal process.

263 d. Disclose to counsel facts pertinent to the proceedings  
 264 at issue.

265 e. Display appropriate courtroom behavior.

266 f. Testify relevantly.

267 5. Present the factual basis for the expert's clinical  
 268 findings and opinions of the child's mental condition.

269 (e) If the evaluator determines the child to be  
 270 incompetent to proceed to trial, the evaluator must report on  
 271 the mental disorder that forms the basis of the incompetency.

272 (f) The expert's factual basis of his or her clinical  
 273 findings and opinions must be supported by the diagnostic  
 274 criteria found in the most recent edition of the Diagnostic and  
 275 Statistical Manual of the American Psychiatric Association (DSM-  
 276 IV) and must be presented in a section of his or her competency  
 277 evaluation report that shall be identified as a summary of  
 278 findings. This section must include:

279 1. The day, month, year, and length of time of the face-  
 280 to-face diagnostic clinical interview to determine the child's

281 mental condition.

282 2. A statement that identifies the DSM-IV clinical name  
 283 and associated diagnostic code for the specific mental disorder  
 284 that forms the basis of the child's incompetency.

285 3. A statement of how the child would benefit from  
 286 competency restoration services in the community or in a secure  
 287 residential treatment facility.

288 4. An assessment of the probable duration of the treatment  
 289 to restore competence, and the probability that the child will  
 290 attain competence to proceed in the foreseeable future.

291 5. A description of recommended treatment or education  
 292 appropriate for the mental disorder.

293 (g)(e) All court orders determining incompetency must  
 294 include specific written findings by the court as to the nature  
 295 of the incompetency and whether the child requires a secure or  
 296 nonsecure treatment or training environment environments.

297 (h)(d) For competency incompetency evaluations related to  
 298 mental illness, the Department of Children and Family Services  
 299 shall maintain and annually provide the courts with a forensic  
 300 evaluator registry list of available mental health professionals  
 301 who have completed the approved a training as experts pursuant  
 302 to this section program approved by the Department of Children  
 303 and Family Services to perform the evaluations.

304 (i)(e) For competency incompetency evaluations related to  
 305 mental retardation or autism, the court shall order the Agency  
 306 for Persons with Disabilities to examine the child to determine  
 307 if the child meets the definition of "retardation" or "autism"  
 308 in s. 393.063 and provide a clinical opinion as to, if so,

309 whether the child is competent to proceed with delinquency  
 310 proceedings.

311 ~~(f) A child is competent to proceed if the child has~~  
 312 ~~sufficient present ability to consult with counsel with a~~  
 313 ~~reasonable degree of rational understanding and the child has a~~  
 314 ~~rational and factual understanding of the present proceedings.~~  
 315 ~~The report must address the child's capacity to:~~

- 316 ~~1. Appreciate the charges or allegations against the~~  
 317 ~~child.~~
- 318 ~~2. Appreciate the range and nature of possible penalties~~  
 319 ~~that may be imposed in the proceedings against the child, if~~  
 320 ~~applicable.~~
- 321 ~~3. Understand the adversarial nature of the legal process.~~
- 322 ~~4. Disclose to counsel facts pertinent to the proceedings~~  
 323 ~~at issue.~~
- 324 ~~5. Display appropriate courtroom behavior.~~
- 325 ~~6. Testify relevantly.~~

326 (j)~~(g)~~ Immediately upon the filing of the court order  
 327 finding a child incompetent to proceed, the clerk of the court  
 328 shall notify the Department of Children and Family Services and  
 329 the Agency for Persons with Disabilities and fax or hand deliver  
 330 to the department and to the agency a referral packet that  
 331 includes, at a minimum, the court order, the charging documents,  
 332 the petition, and the court-appointed evaluator's reports.

333 (k)~~(h)~~ After placement of the child in the appropriate  
 334 setting, the Department of Children and Family Services in  
 335 consultation with the Agency for Persons with Disabilities, as  
 336 appropriate, must, within 30 days after placement of the child,

337 | prepare and submit to the court a treatment or training plan for  
 338 | the child's restoration of competency. A copy of the plan must  
 339 | be served upon the child's attorney, the state attorney, and the  
 340 | attorneys representing the Department of Juvenile Justice.

341 | (7) Effective July 1, 2013, court-appointed experts must  
 342 | have completed forensic evaluator training approved by the  
 343 | Department of Children and Family Services and comply with these  
 344 | additional requirements:

345 | (a) If an expert chooses to remain on the registry, the  
 346 | expert must have completed or retaken the required training  
 347 | course within the previous 5 years. An expert who has not  
 348 | completed the required training within the previous 5 years must  
 349 | be removed from the registry and may not conduct competency  
 350 | evaluations for the courts.

351 | (b) A mental health professional who has completed the  
 352 | training course within the previous 5 years must maintain  
 353 | documentation of having completed the required training and  
 354 | provide current contact information to the Department of  
 355 | Children and Family Services.

356 | Section 8. This act shall take effect July 1, 2012.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1097 Sexually Violent Predators  
**SPONSOR(S):** Kreegel  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 2052; SB 7162

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	13 Y, 0 N	Mathieson	Schoolfield
2) Criminal Justice Subcommittee		Cunningham	Cunningham
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

Sexually violent predators are persons who have been convicted of a sexually violent offense and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment. To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act (Act), which creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).

The bill amends the Involuntary Civil Commitment of Sexually Violent Predators Act. Specifically, the bill:

- Amends the definition of "sexually violent offense" to include only *felony* criminal acts that have been determined beyond a reasonable doubt to have been sexually motivated. The term will no longer include sexually-motivated criminal acts that are misdemeanors.
- Requires the Department of Children and Families (DCF) to prioritize the assessments of persons convicted of a sexually violent offense who are at least 365 from release from confinement and who have not had an assessment or recommendation. The prioritization must be based upon the person's release date.
- Clarifies the timeframe for completing assessments and recommendations by the multidisciplinary team and the filing of civil commitment petitions by the state attorney.
- Amends s. 394.917, F.S., to allow sexually violent predators with deportation detainers who are released from confinement to be taken into custody by the federal government rather than be immediately committed to the custody of DCF.
- Makes it a third degree felony for a person to knowingly and intentionally bring, send, take, or attempt to take specified items into any facility providing confinement and treatment under the Act.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill creates a new third degree felony relating to contraband in civil commitment facilities, it may have a negative prison bed impact on the Department of Corrections. The bill does not appear to have a fiscal impact on local governments.

The bill provides for an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Jimmy Ryce Act - Background**

Sexually violent predators are persons who have been convicted of a sexually violent offense<sup>1</sup> and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.<sup>2</sup>

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,<sup>3</sup> also known as the Ryce Act.<sup>4</sup> The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).<sup>5</sup> Under the Ryce Act, offenders with specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team as to whether they meet the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.<sup>6</sup>

Following receipt of the recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the person is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center, the case proceeds through the commitment process, and in many instances a civil trial is held.<sup>7</sup>

Those civilly committed as a sexually violent predator pursuant to the Ryce Act are housed for treatment at the Florida Civil Commitment Center.<sup>8</sup> The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete.<sup>9</sup> Section 394.918, F.S., provides that persons committed to the state under the Ryce Act be confined until the court determines that they are no longer a threat to public safety.

A person committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for him or her to be released. If the court believes there is probable cause, a trial is held at which the state attorney bears the burden of proving that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.<sup>10</sup>

Since the program's inception, over 42,777 offenders have been referred to DCF for screening and assessment.<sup>11</sup> As of September 2011, there were 677 detained and committed individuals at the Florida Civil Commitment Center.<sup>12</sup>

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<sup>1</sup> The term "sexually violent offense" is defined in s. 394.912, F.S.

<sup>2</sup> Section 394.912, F.S.

<sup>3</sup> Sections 934.910-932, F.S.

<sup>4</sup> *Conditional Release of Sexually Violent Predators Through Stipulated Agreements*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, October 21, 2011. On file with Criminal Justice Subcommittee staff.

<sup>5</sup> *Id.*

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

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

<sup>8</sup> The Florida Civil Commitment Center is a 720-bed, physically secure facility located in Arcadia, FL, and operated by The GEO Group. *Id.*

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

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

<sup>11</sup> See, Sexually Violent Predator Program Reports. <http://edr.state.fl.us/Content/resource-demand/criminal-justice/reports/sexually-violent-predators/index.cfm> (last visited January 26, 2012).

<sup>12</sup> *Supra*, note 4.

### **Sexually Violent Predator - Definition**

As noted above, sexually violent predators are defined as persons who have been convicted of a sexually violent offense and suffer from a mental abnormality or personality disorder that makes them likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. Section 934.912(9), F.S., defines a "sexually violent offense" to include offenses such as murder while engaged in sexual battery; sexual battery; and lewd, lascivious, or indecent assault or act upon or in the presence of a child. The definition also includes:

- (h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings, has been determined beyond a reasonable doubt to have been sexually motivated.

#### *Effect of the Bill*

The bill amends paragraph (9)(h) of the definition of "sexually violent offense" to include only *felony* criminal acts that have been determined beyond a reasonable doubt to have been sexually motivated. The term will no longer include misdemeanor sexually motivated criminal acts.

### **Notice of Release**

Section 394.913, F.S., requires agencies with jurisdiction over a person who has been convicted of a sexually violent offense to give written notice to the multidisciplinary team and to the state attorney of the person's upcoming release from confinement. The statute requires this notice to be given within a certain time period prior to the person's release. For example, written notice must be given:

- At least 545 days prior to the anticipated release of a person serving a sentence in the custody of the Department of Corrections.
- At least 180 days prior to the anticipated release from residential commitment of a person committed to the custody of the Department of Juvenile Justice.
- At least 180 days prior to the anticipated hearing regarding possible release of a person committed to the custody of DCF who has been found not guilty by reason of insanity or mental incapacity.<sup>13</sup>

After receiving notification, the multidisciplinary team assesses the offender to determine whether he or she meets the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.

#### *Effect of the Bill*

The bill amends s. 394.913(1), F.S., to require DCF to prioritize the assessments of persons who are at least 365 from release from confinement and who have not had an assessment or recommendation. The prioritization must be based upon the person's release date.

### **Immediate Release – Assessment and Petition Timeframes**

On occasion, a person convicted of a sexually violent offense may unexpectedly be ordered to be released from confinement. In such instances, the agency with jurisdiction over the person must immediately transfer such person to the custody of DCF upon release. Within 72 hours of this transfer, the multidisciplinary team must assess the person to determine whether he or she meets the definition of a sexually violent predator and if so, make a recommendation to the state attorney. However, if the 72-hour period ends on a weekend or holiday, the assessment and recommendation must be provided within the next working day thereafter.

Within 48 hours after receiving the assessment and recommendation, the state attorney may petition the court alleging that the person is a sexually violent predator. If the petition is not filed within 48 hours, the person must be released.

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<sup>13</sup> Section 394.913(1), F.S.

Currently, the law does not address what happens if the statutory timeframes described above end after 5 PM. This could be problematic, because failure to abide by the statutory timeframes could result in an unintended release of a person under consideration for civil commitment.

*Effect of the Bill*

The bill amends s. 394.9135, F.S., to clarify the timeframe for completing assessments and recommendations by the multidisciplinary team and the filing of civil commitment petitions by the state attorney. The bill specifies that if the timeframes for completing assessments, recommendations or petitions falls after 5 PM on a work day, then the document may be filed on the next working day.

**Commitment**

Section 394.917, F.S., provides that if a court or jury determines that a person is a sexually violent predator, the person must be committed to DCF's custody. This occurs upon the expiration of the incarcerative portion of the person's criminal sentence and disposition of any detainers, *other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services*. This exception for deportation detainers requires that a person be committed to DCF's custody, even where a person has a deportation detainer.

*Effect of the Bill*

The bill amends s. 394.917, F.S., to remove the deportation detainer exception. As a result, sexually violent predators with deportation detainers will not be required to be committed to the custody of DCF upon release from confinement but could instead be taken into custody by the federal government.

**Contraband**

The bill creates s. 394.9265, F.S., which makes it a third degree felony for a person to knowingly and intentionally bring, send, take, or attempt to take the following into any facility providing confinement and treatment under the Ryce Act:

- Any intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- Any controlled substance defined in chapter 893, F.S.,<sup>14</sup> or
- Any firearm or weapon.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 394.912, F.S., relating to definitions.

Section 2. Amends s. 394.913, F.S., relating to notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.

Section 3. Amends s. 394.9135, F.S., relating to immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold custody; filing petition after release.

Section 4. Amends s. 394.917, F.S., relating to determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellant cases.

Section 5. Creates s. 394.9265, F.S., relating to introduction or removal of certain articles unlawful; penalty.

Section 6: Provides an effective date of July 1, 2012.

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<sup>14</sup>Chapter 893, F.S., is the Drug Abuse and Control Act.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill creates a new third degree felony relating to contraband in civil commitment facilities, it may have a negative prison bed impact on the Department of Corrections. DCF reports that this bill will not have a fiscal impact on the agency.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 84 would be more clear if "pursuant to 394.9135(2)" was inserted after the word recommendation.

The bill makes it a third degree felony for a person to knowingly and intentionally bring, send, etc., certain items into any facility providing confinement and treatment under the Ryce Act. As drafted, no exception is provided for persons who introduce such items into a facility with legitimate reasons for doing so (e.g., those delivering medications to the facility for use by physicians, etc.).

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to sexually violent predators;  
 3           amending s. 394.912, F.S.; limiting the definition of  
 4           the term "sexually violent offense," for purposes of  
 5           sexually violent predator provisions, to felony  
 6           offenses; amending s. 394.913, F.S.; providing for  
 7           prioritization of written assessment and  
 8           recommendation for a person scheduled or up for review  
 9           for release when the assessment and recommendation  
 10          have not been completed within a specified period;  
 11          amending s. 394.9135, F.S.; revising provisions  
 12          relating to petitions to hold a person in custody  
 13          following release and transfer to the Department of  
 14          Children and Family Services to provide for extension  
 15          of certain time periods that expire after normal  
 16          business hours; amending s. 394.917, F.S.; deleting an  
 17          exception for detainers for deportation by the United  
 18          States Bureau of Citizenship and Immigration Services  
 19          to provisions requiring sexually violent predators to  
 20          be committed to the custody of the Department of  
 21          Children and Family Services upon the expiration of  
 22          the incarcerative portion of all criminal sentences  
 23          and disposition of any detainers; creating s.  
 24          394.9265, F.S.; prohibiting the knowing and  
 25          intentional bringing of contraband into or its removal  
 26          from the grounds of any facility for commitment or  
 27          detention of sexually violent predators; specifying

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28 items that constitute contraband; providing criminal  
 29 penalties for violations; providing an effective date.  
 30

31 Be It Enacted by the Legislature of the State of Florida:  
 32

33 Section 1. Paragraph (h) of subsection (9) of section  
 34 394.912, Florida Statutes, is amended to read:

35 394.912 Definitions.—As used in this part, the term:

36 (9) "Sexually violent offense" means:

37 (h) Any felony criminal act that, either at the time of  
 38 sentencing for the offense or subsequently during civil  
 39 commitment proceedings under this part, has been determined  
 40 beyond a reasonable doubt to have been sexually motivated.

41 Section 2. Subsection (1) of section 394.913, Florida  
 42 Statutes, is amended to read:

43 394.913 Notice to state attorney and multidisciplinary  
 44 team of release of sexually violent predator; establishing  
 45 multidisciplinary teams; information to be provided to  
 46 multidisciplinary teams.—

47 (1) The agency with jurisdiction over a person who has  
 48 been convicted of a sexually violent offense shall give written  
 49 notice to the multidisciplinary team, and a copy to the state  
 50 attorney of the circuit where that person was last convicted of  
 51 a sexually violent offense. If the person has never been  
 52 convicted of a sexually violent offense in this state but has  
 53 been convicted of a sexually violent offense in another state or  
 54 in federal court, the agency with jurisdiction shall give  
 55 written notice to the multidisciplinary team and a copy to the



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56 | state attorney of the circuit where the person was last  
57 | convicted of any offense in this state. If the person is being  
58 | confined in this state pursuant to interstate compact and has a  
59 | prior or current conviction for a sexually violent offense, the  
60 | agency with jurisdiction shall give written notice to the  
61 | multidisciplinary team and a copy to the state attorney of the  
62 | circuit where the person plans to reside upon release or, if no  
63 | residence in this state is planned, the state attorney in the  
64 | circuit where the facility from which the person to be released  
65 | is located.

66 |       (a) Except as provided in s. 394.9135, the written notice  
67 | must be given:

68 |       1. (a) At least 545 days prior to the anticipated release  
69 | from total confinement of a person serving a sentence in the  
70 | custody of the Department of Corrections, except that in the  
71 | case of persons who are totally confined for a period of less  
72 | than 545 days, written notice must be given as soon as  
73 | practicable;

74 |       2. (b) At least 180 days prior to the anticipated release  
75 | from residential commitment of a person committed to the custody  
76 | of the Department of Juvenile Justice, except that in the case  
77 | of persons who are committed to low or moderate risk, written  
78 | notice must be given as soon as practicable; or

79 |       3. (c) At least 180 days prior to the anticipated hearing  
80 | regarding possible release of a person committed to the custody  
81 | of the department who has been found not guilty by reason of  
82 | insanity or mental incapacity of a sexually violent offense.

83        (b) Notwithstanding paragraph (a), in the case of a person  
84        for whom the written assessment and recommendation has not been  
85        completed at least 365 days prior to his or her release from  
86        total confinement, the department shall prioritize the  
87        assessment of that person based upon the person's release date.

88        Section 3. Subsections (2) and (3) of section 394.9135,  
89        Florida Statutes, are amended to read:

90        394.9135 Immediate releases from total confinement;  
91        transfer of person to department; time limitations on  
92        assessment, notification, and filing petition to hold in  
93        custody; filing petition after release.-

94        (2) Within 72 hours after transfer, the multidisciplinary  
95        team shall assess whether the person meets the definition of a  
96        sexually violent predator. If the multidisciplinary team  
97        determines that the person does not meet the definition of a  
98        sexually violent predator, that person shall be immediately  
99        released. If the multidisciplinary team determines that the  
100       person meets the definition of a sexually violent predator, the  
101       team shall provide the state attorney, as designated by s.  
102       394.913, with its written assessment and recommendation within  
103       the 72-hour period or, if the 72-hour period ends after 5 p.m.  
104       on a working day or on a weekend or holiday, within the next  
105       working day thereafter.

106       (3) Within 48 hours after receipt of the written  
107       assessment and recommendation from the multidisciplinary team,  
108       the state attorney, as designated in s. 394.913, may file a  
109       petition with the circuit court alleging that the person is a  
110       sexually violent predator and stating facts sufficient to

111 support such allegation. If a petition is not filed within 48  
 112 hours after receipt of the written assessment and recommendation  
 113 by the state attorney, the person shall be immediately released,  
 114 except that, if the 48-hour period ends after 5 p.m. on a  
 115 working day or on a weekend or holiday, the petition may be  
 116 filed on the next working day without resulting in the person's  
 117 release. If a petition is filed pursuant to this section and the  
 118 judge determines that there is probable cause to believe that  
 119 the person is a sexually violent predator, the judge shall order  
 120 the person be maintained in custody and held in an appropriate  
 121 secure facility for further proceedings in accordance with this  
 122 part.

123 Section 4. Subsection (2) of section 394.917, Florida  
 124 Statutes, is amended to read:

125 394.917 Determination; commitment procedure; mistrials;  
 126 housing; counsel and costs in indigent appellate cases.—

127 (2) If the court or jury determines that the person is a  
 128 sexually violent predator, upon the expiration of the  
 129 incarcerative portion of all criminal sentences and disposition  
 130 of any detainers ~~other than detainers for deportation by the~~  
 131 ~~United States Bureau of Citizenship and Immigration Services,~~  
 132 the person shall be committed to the custody of the Department  
 133 of Children and Family Services for control, care, and treatment  
 134 until such time as the person's mental abnormality or  
 135 personality disorder has so changed that it is safe for the  
 136 person to be at large. At all times, persons who are detained or  
 137 committed under this part shall be kept in a secure facility  
 138 segregated from patients of the department who are not detained

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139 or committed under this part.

140 Section 5. Section 394.9265, Florida Statutes, is created  
 141 to read:

142 394.9265 Introduction or removal of certain articles  
 143 unlawful; penalty.-

144 (1) Except as authorized by law, it is unlawful to  
 145 knowingly and intentionally bring into any facility providing  
 146 secure confinement and treatment under this part, or to take or  
 147 attempt to take or send therefrom, any of the following  
 148 articles:

149 (a) Any intoxicating beverage or beverage that causes or  
 150 may cause an intoxicating effect;

151 (b) Any controlled substance as defined in chapter 893; or

152 (c) Any firearm or weapon.

153 (2) A person who violates this section commits a felony of  
 154 the third degree, punishable as provided in s. 775.082, s.  
 155 775.083, or s. 775.084.

156 Section 6. This act shall take effect July 1, 2012.




## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1099 Stalking and Aggravated Stalking

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

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 950

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

The bill makes a variety of changes to s. 784.048, F.S., the stalking statute. Specifically, the bill:

- Revises stalking-related definitions, primarily the definition of "credible threat."
- Increases the penalties for three of the four aggravated stalking offenses from third degree felonies to either second or first degree felonies.
- Requires the court to order a defendant found guilty of stalking or aggravated stalking to attend a batterers' intervention program pursuant to s. 741.281, F.S.
- Requires the court, for any sentence, to consider issuing an injunction restraining a defendant from victim contact for up to ten years.
- Establishes a cause of action for an injunction for protection against stalking and aggravated stalking, similar to injunctions for protection against domestic violence.

The bill amends the offense severity ranking chart of the Criminal Punishment Code to conform to the penalty revisions made by the bill.

The Criminal Justice Estimating Conference met on January 17, 2012, and determined that the bill would have a significant prison bed impact on the Department of Corrections. See fiscal section.

The bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Stalking**

Section 784.048, F.S., criminalizes the offenses of stalking and aggravated stalking. Stalking is a first degree misdemeanor<sup>1</sup> and is committed when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.<sup>2</sup>

Section 784.048, F.S., establishes four aggravated stalking offenses, each of which is a third degree felony:<sup>3</sup>

- Subsection (3) provides that aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person while making a credible threat with the intent to place that person in reasonable fear of death or bodily injury for himself, his child, sibling, spouse, parent, or dependent. This offense is ranked in Level 6 of the offense severity ranking chart (36 sentencing points).
- Subsection (4) provides that aggravated stalking occurs when a person, after an injunction for protection against repeat violence, sexual violence, dating violence, domestic violence, or any other court imposed prohibition of conduct toward the subject person or his property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks that person. This offense is ranked in Level 7 of the offense severity ranking chart (56 sentencing points).
- Subsection (5) provides that aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age. This offense is ranked in Level 6 of the offense severity ranking chart (36 sentencing points).
- Subsection (7) provides that aggravated stalking occurs when a person, after being sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and after having been issued a no contact order under s. 921.244, F.S., willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim. This offense is ranked in Level 7 of the offense severity ranking chart (56 sentencing points).

Section 748.048, F.S., provides the following definitions:

- "Harass" means "engaging in a course of conduct directed at a specific person that causes substantial emotional distress and serves no legitimate purpose."<sup>4</sup>
- "Course of conduct" means "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose."<sup>5</sup>
- "Credible threat" means "a threat made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause bodily injury to, a person."<sup>6</sup>
- "Cyberstalk" means "engaging in a course of conduct to communicate through words or images by electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose."<sup>7</sup>

In 1995, the constitutionality of Florida's stalking statute was upheld by the Florida Supreme Court against an overbreadth and vagueness challenge.<sup>8</sup>

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

<sup>2</sup> Section 784.048(2), F.S.

<sup>3</sup> Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 784.048(1), F.S.

<sup>5</sup> Section 784.048(1)(b), F.S.

<sup>6</sup> Section 784.048(1)(c), F.S.

<sup>7</sup> Section 784.048(1)(d), F.S.

<sup>8</sup> *Bouters v. State*, 659 So.2d 235 (1995), *cert.denied*, 116 S.Ct. 245, 516 U.S. 894, 133 L.Ed.2d 171.

## **The Criminal Punishment Code - Offense Severity Ranking Chart**

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.<sup>9</sup> Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the legislature.<sup>10</sup> As the offense level increases, the number of points rises. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>11</sup>

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; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors.<sup>12</sup> The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence 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. In each instance, the sentencing range is the lowest permissible sentence up to the maximum penalty provided in s. 775.082, F.S., which is based on the degree of the felony.<sup>13</sup>

### *Effect of the Bill*

The bill substantively changes the definition of the term "credible threat" to "a verbal or nonverbal threat, including a threat delivered by electronic communication, a threat implied by a pattern of conduct, or a combination of the two, made with the intent to place the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her immediate family, and made with the apparent ability to carry out the threat to cause such harm." The bill provides that it is not necessary to prove that the person making the threat had the intent to actually carry out the threat and that the present incarceration of the person making the threat is not a bar to prosecution.

The bill also deletes the current language requiring that the threat be against the life of, or a threat to cause bodily injury to, a person.

The bill modifies the definition of "course of conduct" to specify that "a pattern of conduct" *includes two or more* acts over a period of time which indicate a continuity of purpose.

The bill adds the definition of "immediate family" as "a person's spouse, parent, child, grandparent, or sibling."

The bill removes "intent to cause the person who is the target of the threat to reasonably fear for his or her safety" as an element of aggravated stalking as defined in s. 784.048(3), F.S. Consequently, under subsection (3), aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat to that person.

The bill increases the criminal penalties for three of the four aggravated stalking offenses.

- The penalty for violating of s. 784.048(4), F.S. (knowingly, willfully, maliciously, and repeatedly following, harassing, or cyberstalking a person, after an injunction for protection against repeat violence, sexual violence, etc.), is increased from a third degree felony to a second degree felony.<sup>14</sup> This offense remains ranked in Level 7 of the offense severity ranking chart.
- The penalty for violating s. 784.048(5), F.S. (willfully, maliciously, and repeatedly following, harassing, or cyberstalking a minor under 16 years of age), is increased from third degree

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<sup>9</sup> Section 921.002, F.S.

<sup>10</sup> Section 921.0022, F.S.

<sup>11</sup> Section 921.0023, F.S.

<sup>12</sup> Section 921.0024, F.S.

<sup>13</sup> The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. Section 775.082, F.S.

<sup>14</sup> Punishable by up to 15 years imprisonment and a fine of up to \$10,000. Section 775.082 and 775.083, F.S.



felony to a first degree felony.<sup>15</sup> This offense remains ranked in Level 6 of the offense severity ranking chart.

- The penalty for violating s. 784.048(7), F.S. (willfully, maliciously, and repeatedly following, harassing, or cyberstalking a victim where the offender has been sentenced for sexual battery, a lewd or lascivious offense, or lewd or lascivious exhibition via computer transmission and has been issued a no contact order), is increased from a third degree felony to a first degree felony. This offense remains ranked in Level 7 of the offense severity ranking chart.

The bill amends s. 921.0022, F.S., to correctly reflect the three penalty increases in the offense severity ranking chart.

### **Injunctions for Protection against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence**

A victim of domestic violence<sup>16</sup> or a person who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence<sup>17</sup> may seek protective injunctive relief.<sup>17</sup> In seeking protective injunctive relief, a person must file a sworn petition with the court that alleges the existence of domestic violence and includes specific facts and circumstances upon which relief is sought.<sup>18</sup> The court must set a hearing at the earliest possible time after a petition is filed.<sup>19</sup> The respondent must be personally served with a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit (if any), notice of hearing, and any temporary injunction that has been issued.<sup>20</sup>

The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor<sup>21</sup> under s. 741.31, F.S.<sup>22</sup> Either party may move the court to modify or dissolve an injunction at any time.<sup>23</sup>

Section 784.046, F.S., governs the issuance of injunctions for protection against repeat violence,<sup>24</sup> dating violence,<sup>25</sup> and sexual violence.<sup>26</sup> This statute basically parallels the provisions discussed above in the domestic violence law.

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<sup>15</sup> Punishable by up to 30 years imprisonment and a fine of up to \$10,000. Section 775.082 and 775.083, F.S.

<sup>16</sup> Section 741.28(2), F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

<sup>17</sup> Section 741.30(1), F.S.

<sup>18</sup> Section 741.30(3), F.S.

<sup>19</sup> Section 741.30(4), F.S.

<sup>20</sup> *Id.* When an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte, pending a full hearing. Section 741.30(5), F.S.

<sup>21</sup> Punishable by up to 1 year imprisonment or a fine of up to \$1,000.

<sup>22</sup> Section 741.30(9), F.S.

<sup>23</sup> Section 741.30(10), F.S.

<sup>24</sup> Section 784.046(1)(b), F.S., defines "repeat violence" as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member." Section 784.046(1)(a), F.S., defines "violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person."

<sup>25</sup> Section 784.046(1)(d), F.S., defines "dating violence" as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature." The following factors come into play when determining the existence of such a relationship: (1) a dating relationship must have existed within the past six months; (2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and (3) the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization.

<sup>26</sup> Section 784.046(1)(c), F.S., defines "sexual violence" as "any one incident of: 1. Sexual battery, as defined in ch. 794, F.S.; 2. A lewd or lascivious act, as defined in ch. 800, F.S., committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in ch. 787, F.S.; 4. Sexual performance by a child, as described in ch. 827, F.S.; or 5. Any other forcible felony wherein a sexual act is committed or attempted." For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Currently, a statutory cause of action does not exist *specifically* for an injunction for protection against stalking or aggravated stalking. As such, persons desiring an injunction based on stalking behavior must pursue injunctive relief through the domestic violence or the repeat violence injunction statutes outlined above, which each include stalking and/or aggravated stalking as a basis for petitioning for an injunction.

- Domestic violence injunctions require "...stalking or aggravated stalking resulting in physical injury or death of one family or household member by another member."<sup>27</sup>
- Dating violence injunctions require "...stalking or aggravated stalking resulting in physical injury or death between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature."<sup>28</sup>
- Repeat violence injunctions require "...two incidents of stalking or aggravated stalking, one being within six months of the petition's filing, which are directed against the petitioner or an immediate family member."<sup>29</sup>

As such, a person desiring an injunction based on stalking behavior must pursue injunctive relief through the domestic violence injunction statute or the repeat violence injunction statute outlined above.

#### *Effect of the Bill*

The bill amends s. 784.048, F.S., to require the sentencing court, as part of any sentence, to consider issuing an injunction restraining the defendant from any victim contact for up to ten years. The bill expresses legislative intent that the length of the restraining order be based upon the seriousness of the case facts, the probability of future violations, and the victim's safety. The court may issue the injunction regardless of whether the defendant is in prison, county jail, or has his or her sentence suspended and is placed on probation.

The bill also creates a statutory cause of action for an injunction for protection against stalking and aggravated stalking, similar to the current causes of action for injunctions against domestic violence, repeat violence, sexual violence, and dating violence. The bill allows a stalking victim or the parent of a child under 16 on behalf of the child to file a sworn petition for an injunction for protection against stalking or aggravated stalking in circuit court.

The bill requires the petition for protection to allege the incidents of stalking or aggravated stalking and include specific facts and circumstances that form the basis upon which relief is sought. The court may not require the petitioner to file a bond upon the issuance of the injunction. The bill requires the clerk of the court to provide the petitioner with a certified copy of any protective injunction against stalking entered by the court.

#### **Batterer's Intervention Program**

Section 741.32, F.S., establishes a batterer's intervention program to protect the victims of domestic violence and their children and to hold the perpetrators of domestic violence responsible for their acts. The Department of Children and Family Services is responsible for certifying and monitoring the batterer's intervention programs in Florida.<sup>30</sup> The goals of the programs are to increase victim safety, eliminate violence in intimate relationships, and stop other forms of abusive behavior. A judge can order a person to attend the batterers' intervention program if:

- A person is found guilty of an act of, has had adjudication withheld on, or has plead nolo contendere to domestic violence;<sup>31</sup>
- An injunction for protection against domestic violence has been entered against him or her;<sup>32</sup>
- A person has willfully violated an injunction for protection against domestic violence;<sup>33</sup>

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<sup>27</sup> *Supra* note 14.

<sup>28</sup> Section 784.046(1)(d), F.S.

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

<sup>30</sup> Section 741.32, F.S.

<sup>31</sup> Section 741.281, F.S.

<sup>32</sup> Section 741.30(6)(e), F.S.

<sup>33</sup> *Id.*

- A person, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence and an injunction for protection against domestic violence has been entered against him or her,<sup>34</sup> or
- A person, in this state or any other state, has had at any time a prior injunction for protection entered against him or her after a hearing with notice and an injunction for protection against domestic violence has been entered against him or her.<sup>35</sup>

*Effect of the Bill*

The bill requires the court to order a defendant found guilty of stalking or aggravated stalking to attend a batterers' intervention program pursuant to s. 741.281, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 784.048, F.S., stalking; definitions; penalties.

Section 2. Amends s. 921.0022, F.S., Criminal Punishment Code; offense severity ranking chart.

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

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

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

1. Revenues:

The bill may result in a slightly positive fiscal impact on the Department of Children and Family Services through the collection of fees by persons court-ordered to attend batterer's intervention programs.<sup>36</sup>

2. Expenditures:

The Criminal Justice Estimating Conference met on January 17, 2012, and determined that the bill would have a significant prison bed impact on the Department of Corrections.

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2012-2013	3	3	\$30,387	\$580,920	<b>\$611,307</b>	<b>\$611,307</b>
2013-2014	10	7	\$134,180	\$180,201	<b>\$314,381</b>	<b>\$925,688</b>
2014-2015	13	3	\$242,627	\$250,120	<b>\$492,747</b>	<b>\$1,418,435</b>
2015-2016	17	4	\$322,800	\$456,533	<b>\$779,333</b>	<b>\$2,197,768</b>
2016-2017	24	7	\$449,524	\$405,006	<b>\$854,530</b>	<b>\$3,052,298</b>
<b>Total</b>	<b>24</b>	<b>24</b>	<b>\$1,179,518</b>	<b>\$1,872,780</b>	<b>\$3,052,298</b>	<b>\$3,052,298</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, January 13, 2012

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Section 731.327, F.S.

FY 2010-11 operating costs per inmate were obtained from DOC. The \$53.35 per diem is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.40 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insights, Inc.

**Note: This impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a stand-alone estimate of the prison bed need of this bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.**

#### 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:

Persons convicted of aggravated stalking will potentially be subject to increased fines not exceeding \$10,000, and those convicted of stalking or aggravated stalking will be subject to paying the \$30 fee for each 29-week batterers' intervention program he or she is ordered to attend under the bill.<sup>37</sup>

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

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

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

<sup>37</sup> Section 741.327(2), F.S.

1                                   A bill to be entitled  
2           An act relating to stalking and aggravated stalking;  
3           amending s. 784.048, F.S.; redefining the terms  
4           "course of conduct" and "credible threat" and defining  
5           the term "immediate family"; providing that a person  
6           who makes a threat with the intent to place another  
7           person in reasonable fear for his or her safety or the  
8           safety of his or her immediate family commits the  
9           offense of aggravated stalking under certain  
10          circumstances; increasing the criminal penalties for  
11          certain offenses of aggravated stalking; requiring  
12          that the sentencing court consider issuing an  
13          injunction that restrains a defendant from any contact  
14          with the victim for up to 10 years; providing  
15          legislative intent regarding the length of any such  
16          restraining order; requiring that the court order the  
17          defendant to attend a batterers' intervention program  
18          if the court finds the defendant guilty of stalking or  
19          aggravated stalking; creating a cause of action for an  
20          injunction for protection from stalking and aggravated  
21          stalking; providing that a person who is the victim of  
22          stalking or aggravated stalking, or who is the parent  
23          or legal guardian of a child younger than 16 years of  
24          age and who seeks an injunction for protection, has  
25          standing to file a petition for an injunction for  
26          protection from stalking or aggravated stalking;  
27          providing that an injunction for protection from  
28          stalking or aggravated stalking may be sought

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29 | regardless of whether another cause of action is  
 30 | available or pending between the parties; requiring  
 31 | that the petition for an injunction for protection  
 32 | allege the incidents of stalking or aggravated  
 33 | stalking and include the specific facts and  
 34 | circumstances that form the basis upon which relief is  
 35 | sought; prohibiting the court from requiring the  
 36 | petitioner to file a bond upon the issuance of an  
 37 | injunction for protection from stalking or aggravated  
 38 | stalking; requiring that the clerk of the court  
 39 | provide the petitioner with a certified copy of any  
 40 | injunction for protection from stalking or aggravated  
 41 | stalking which is entered by the court; amending s.  
 42 | 921.0022, F.S., relating to the offense severity  
 43 | ranking chart of the Criminal Punishment Code;  
 44 | revising provisions to conform to changes made by the  
 45 | act; providing an effective date.

46 |  
 47 | Be It Enacted by the Legislature of the State of Florida:

48 |  
 49 | Section 1. Section 784.048, Florida Statutes, is amended  
 50 | to read:

51 | 784.048 Stalking; definitions; penalties.—

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

53 | (a) "Harass" means to engage in a course of conduct  
 54 | directed at a specific person which ~~that~~ causes substantial  
 55 | emotional distress to that ~~in such~~ person and serves no  
 56 | legitimate purpose.

57 (b) "Course of conduct" means a pattern of conduct,  
 58 including two or more ~~composed of a series of~~ acts over a period  
 59 of time, however short, which indicate evidencing a continuity  
 60 of purpose. The term does not include constitutionally protected  
 61 activity such as is not included within the meaning of "course  
 62 of conduct." ~~Such constitutionally protected activity includes~~  
 63 picketing or other organized protests.

64 (c) "Credible threat" means a verbal or nonverbal threat,  
 65 including a threat delivered by electronic communication, a  
 66 threat implied by a pattern of conduct, or a combination of the  
 67 two, made with the intent to place the person who is the target  
 68 of the threat in reasonable fear for his or her safety or the  
 69 safety of his or her immediate family, and made with the  
 70 apparent ability to carry out the threat to cause such harm. It  
 71 is not necessary to prove that the person making the threat had  
 72 the intent to actually carry out the threat. The present  
 73 incarceration of the person making the threat is not a bar to  
 74 prosecution under this section ~~made with the intent to cause the~~  
 75 ~~person who is the target of the threat to reasonably fear for~~  
 76 ~~his or her safety. The threat must be against the life of, or a~~  
 77 ~~threat to cause bodily injury to, a person.~~

78 (d) "Cyberstalk" means to engage in a course of conduct to  
 79 communicate, or to cause to be communicated, words, images, or  
 80 language by or through the use of electronic mail or electronic  
 81 communication, directed at a specific person, causing  
 82 substantial emotional distress to that person and serving no  
 83 legitimate purpose.

84 (e) "Immediate family" means a person's spouse, parent,

85 child, grandparent, or sibling.

86 (2) A ~~Any~~ person who willfully, maliciously, and  
 87 repeatedly follows, harasses, or cyberstalks another person  
 88 commits the offense of stalking, a misdemeanor of the first  
 89 degree, punishable as provided in s. 775.082 or s. 775.083.

90 (3) A ~~Any~~ person who willfully, maliciously, and  
 91 repeatedly follows, harasses, or cyberstalks another person, and  
 92 makes a credible threat to that person ~~with the intent to place~~  
 93 ~~that person in reasonable fear of death or bodily injury of the~~  
 94 ~~person, or the person's child, sibling, spouse, parent, or~~  
 95 ~~dependent,~~ commits the offense of aggravated stalking, a felony  
 96 of the third degree, punishable as provided in s. 775.082, s.  
 97 775.083, or s. 775.084.

98 (4) A ~~Any~~ person who, after an injunction for protection  
 99 against repeat violence, sexual violence, or dating violence  
 100 pursuant to s. 784.046, or an injunction for protection against  
 101 domestic violence pursuant to s. 741.30, or after any other  
 102 court-imposed prohibition of conduct toward the subject person  
 103 or that person's property, knowingly, willfully, maliciously,  
 104 and repeatedly follows, harasses, or cyberstalks another person  
 105 commits the offense of aggravated stalking, a felony of the  
 106 second ~~third~~ degree, punishable as provided in s. 775.082, s.  
 107 775.083, or s. 775.084.

108 (5) A ~~Any~~ person who willfully, maliciously, and  
 109 repeatedly follows, harasses, or cyberstalks a child ~~minor~~ under  
 110 16 years of age commits the offense of aggravated stalking, a  
 111 felony of the first ~~third~~ degree, punishable as provided in s.  
 112 775.082, s. 775.083, or s. 775.084.



113 (6) A ~~Any~~ law enforcement officer may arrest, without a  
 114 warrant, any person that he or she has probable cause to believe  
 115 has violated ~~the provisions of~~ this section.

116 (7) A ~~Any~~ person who, after having been sentenced for a  
 117 violation of s. 794.011, s. 800.04, or s. 847.0135(5) and  
 118 prohibited from contacting the victim of the offense under s.  
 119 921.244, willfully, maliciously, and repeatedly follows,  
 120 harasses, or cyberstalks the victim commits the offense of  
 121 aggravated stalking, a felony of the first ~~third~~ degree,  
 122 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

123 (8) The punishment imposed under this section shall run  
 124 consecutive to any former sentence imposed for a conviction for  
 125 any offense under s. 794.011, s. 800.04, or s. 847.0135(5).

126 (9) (a) The sentencing court shall consider, as a part of  
 127 any sentence, issuing an injunction restraining the defendant  
 128 from any contact with the victim, which may be valid for up to  
 129 10 years, as determined by the court. It is the intent of the  
 130 Legislature that the length of any such restraining order be  
 131 based upon the seriousness of the facts before the court, the  
 132 probability of future violations by the perpetrator, and the  
 133 safety of the victim and his or her immediate family.

134 (b) The injunction may be issued by the court even if the  
 135 defendant is sentenced to a state prison or a county jail or  
 136 even if the imposition of the sentence is suspended and the  
 137 defendant is placed on probation.

138 (10) If the court finds the defendant guilty of stalking  
 139 or aggravated stalking under this section, the court shall order  
 140 the defendant to attend a batterers' intervention program

141 | pursuant to s. 741.281.

142 | (11) There is created a cause of action for an injunction  
 143 | for protection from stalking and aggravated stalking.

144 | (a) A person who is the victim of stalking or aggravated  
 145 | stalking, or who is the parent or legal guardian of a child  
 146 | younger than 16 years of age living at home and who seeks an  
 147 | injunction for protection from stalking or aggravated stalking  
 148 | on behalf of the child, has standing in the circuit court to  
 149 | file a sworn petition for an injunction for protection from  
 150 | stalking or aggravated stalking.

151 | (b) A cause of action for an injunction for protection  
 152 | from stalking or aggravated stalking may be sought regardless of  
 153 | whether another cause of action is available or pending between  
 154 | the parties.

155 | (c) The sworn petition must allege the incidents of  
 156 | stalking or aggravated stalking and include the specific facts  
 157 | and circumstances that form the basis upon which relief is  
 158 | sought.

159 | (d) The court may not require the petitioner to file a  
 160 | bond upon the issuance of an injunction for protection from  
 161 | stalking or aggravated stalking.

162 | (e) The clerk of the court shall provide the petitioner  
 163 | with a certified copy of any injunction for protection from  
 164 | stalking or aggravated stalking entered by the court.

165 | Section 2. Paragraphs (f) and (g) of subsection (3) of  
 166 | section 921.0022, Florida Statutes, are amended to read:

167 | 921.0022 Criminal Punishment Code; offense severity  
 168 | ranking chart.—

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169	(3)	OFFENSE SEVERITY RANKING CHART		
170	(f)	LEVEL 6		
171				
	Florida	Felony		
	Statute	Degree		Description
172	316.193(2)(b)	3rd		Felony DUI, 4th or subsequent conviction.
173	499.0051(3)	2nd		Knowing forgery of pedigree papers.
174	499.0051(4)	2nd		Knowing purchase or receipt of prescription drug from unauthorized person.
175	499.0051(5)	2nd		Knowing sale or transfer of prescription drug to unauthorized person.
176	775.0875(1)	3rd		Taking firearm from law enforcement officer.
177	784.021(1)(a)	3rd		Aggravated assault; deadly weapon without intent to kill.
178	784.021(1)(b)	3rd		Aggravated assault; intent to commit felony.
179				

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180	784.041	3rd	Felony battery; domestic battery by strangulation.
181	784.048 (3)	3rd	Aggravated stalking; credible threat.
182	784.048 (5)	<u>1st</u> <del>3rd</del>	Aggravated stalking of person under 16.
183	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
184	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
185	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
186	784.081 (2)	2nd	Aggravated assault on specified official or employee.
187	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
188	784.083 (2)	2nd	Aggravated assault on code inspector.
189	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.

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190	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
191	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
192	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
193	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
194	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
195	794.05(1)	2nd	Unlawful sexual activity with specified minor.
196	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.
197	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.

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198	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
199	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
200	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
201	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
202	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
203	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
204	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
205	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular

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			telephones.
206	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
207	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
208	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
209	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
210	827.03(1)	3rd	Abuse of a child.
211	827.03(3)(c)	3rd	Neglect of a child.
212	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
213	836.05	2nd	Threats; extortion.
214	836.10	2nd	Written threats to kill or do bodily injury.
215			

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216	843.12	3rd	Aids or assists person to escape.
217	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
218	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
219	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
220	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
221	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.
222	944.40	2nd	Escapes.
223	944.46	3rd	Harboring, concealing, aiding escaped prisoners.



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224	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
225	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
226	(g) LEVEL 7		
227			
228	Florida Statute	Felony Degree	Description
229	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
230	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
231	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.
232	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.

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233	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
234	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
235	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
236	456.065(2)	3rd	Practicing a health care profession without a license.
237	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
238	458.327(1)	3rd	Practicing medicine without a license.
239	459.013(1)	3rd	Practicing osteopathic medicine without a license.
240	460.411(1)	3rd	Practicing chiropractic medicine without a license.
	461.012(1)	3rd	Practicing podiatric medicine without a

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			license.
241	462.17	3rd	Practicing naturopathy without a license.
242	463.015(1)	3rd	Practicing optometry without a license.
243	464.016(1)	3rd	Practicing nursing without a license.
244	465.015(2)	3rd	Practicing pharmacy without a license.
245	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
246	467.201	3rd	Practicing midwifery without a license.
247	468.366	3rd	Delivering respiratory care services without a license.
248	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
249	483.901(9)	3rd	Practicing medical physics without a license.
250	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
251			

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252	484.053	3rd	Dispensing hearing aids without a license.
253	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.
254	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.
255	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
256	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
257	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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258	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
259	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
260	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
261	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
262	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
263	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
264	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.

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265	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
266	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
267	784.048(4)	<u>2nd</u> <del>3rd</del>	Aggravated stalking; violation of injunction or court order.
268	784.048(7)	<u>1st</u> <del>3rd</del>	Aggravated stalking; violation of court order.
269	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
270	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
271	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
272	784.081(1)	1st	Aggravated battery on specified official or employee.
273	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

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274	784.083(1)	1st	Aggravated battery on code inspector.
275	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
276	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
277	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
278	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
279	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
280	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

281			provided for in s. 874.04.
282	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.
283	796.03	2nd	Procuring any person under 16 years for prostitution.
284	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
285	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.
286	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
287	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
288	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.



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289	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
290	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
291	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.
292	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
293	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
294	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
295	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,

			plans, etc., the theft of property and traffics in stolen property.
296			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
297			
	812.133(2)(b)	1st	Carjacking; no firearm, <u>deadly</u> weapon, or other weapon.
298			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
299			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
300			
	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
301			
	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.
302			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
303			

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304	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.
305	827.03(3)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
306	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
307	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
308	838.015	2nd	Bribery.
309	838.016	2nd	Unlawful compensation or reward for official behavior.
310	838.021(3)(a)	2nd	Unlawful harm to a public servant.
311	838.22	2nd	Bid tampering.
312	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

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313	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
314	872.06	2nd	Abuse of a dead human body.
315	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
316	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.
317	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).

318

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25  
lbs., less than 2,000 lbs.

319

893.135 1st Trafficking in cocaine, more than 28  
(1)(b)1.a. grams, less than 200 grams.

320

893.135 1st Trafficking in illegal drugs, more than  
(1)(c)1.a. 4 grams, less than 14 grams.

321

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than  
28 grams, less than 200 grams.

322

893.135(1)(e)1. 1st Trafficking in methaqualone, more than  
200 grams, less than 5 kilograms.

323

893.135(1)(f)1. 1st Trafficking in amphetamine, more than  
14 grams, less than 28 grams.

324

893.135 1st Trafficking in flunitrazepam, 4 grams  
(1)(g)1.a. or more, less than 14 grams.

325

893.135 1st Trafficking in gamma-hydroxybutyric  
(1)(h)1.a. acid (GHB), 1 kilogram or more, less  
than 5 kilograms.

326

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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327	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
328	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
329	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
330	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
331	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
332	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
333	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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334	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
335	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
336	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
337	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
338	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
339	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
340	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
341	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

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342 985.4815(12) 3rd Failure to report or providing false  
information about a sexual offender;  
harbor or conceal a sexual offender.

343 985.4815(13) 3rd Sexual offender; failure to report and  
reregister; failure to respond to  
address verification.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1143 Licensing of Health Care Practitioners  
**SPONSOR(S):** Health & Human Services Quality Subcommittee; Costello and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	11 Y, 2 N, As CS	Mathieson	Calamas
2) Criminal Justice Subcommittee		Krol TK	Cunningham <i>all</i>
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

House Bill 1143 amends s. 456.074, F.S., providing authority for the Department of Health to enter an emergency order that removes the ability to prescribe controlled substances for a Medical Doctor, Osteopathic Physician, Podiatrist or Dentist who has:

- Committed, is arrested for, or is under criminal investigation or prosecution for, a violation of ch. 782, F.S., relating to homicide;
- Been arrested for, or is under criminal investigation or prosecution for, any act that relates to the importation, manufacture, distribution possession, transfer, sale, improper use, or prescribing of controlled substances, as defined by ch. 893, F.S., relating to substance abuse and prevention;
- Violated any federal law relating to possession, transfer, sale, or prescribing of controlled substances as defined in ch. 893, F.S., or 21 U.S.C. ss. 801-970, relating to controlled substances.

The bill amends s. 903.046, F.S., requiring a judge to consider, at a bail determination, whether suspension or restriction of a licensed health care practitioner's license is necessary to protect the community against unreasonable danger.

The bill does not appear to have a fiscal impact.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Boards

The Department of Health (DOH), Division of Medical Quality Assurance (MQA), regulates health care practitioners to ensure the health, safety, and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>1</sup> Boards are responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act. Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public. The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.

##### License Disciplinary Actions

Sections 456.072, 456.073 and 456.074 F.S., provide authority for a board to take disciplinary action against a licensee. These actions include:

- Refusal to certify, or to certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restriction of a practice or a license;
- Administration of a fine not to exceed \$10,000 per occurrence;
- Issuance of a reprimand or letter of concern;
- Imposition of probationary conditions on the licensee;
- Corrective action;
- Imposition of an administrative fines for violations of patient rights;
- Refund of fees billed and collect from the patient or a third party on behalf of the patient; and
- Remedial education.<sup>2</sup>

The board can take action for any legally sufficient, written and signed complaint that is filed before it. S.456.073(1), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of ch. 456, F.S., the relevant practice act or any rule adopted by DOH or the relevant board. DOH has the authority to investigate a complaint, even if the original complainant withdraws or the complainant is anonymous.<sup>3</sup> Further, DOH may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida statute, or a rule of either the board or DOH.

The subject of an investigation has 20 days to respond in writing to the complaint or document after service.<sup>4</sup> Whatever is submitted is considered by the probable cause panel of the respective board.<sup>5</sup> The right to respond does not preclude the State Surgeon General from issuing a summary emergency order, if it is necessary to protect the public.<sup>6</sup>

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<sup>1</sup> S. 456.001, F.S.

<sup>2</sup> S. 456.072(2)

<sup>3</sup> S. 456.073(1), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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

DOH has 6 months to complete an investigation and submit it to the appropriate probable cause panel.<sup>7</sup> A determination as to probable cause is made by a majority vote of the panel.<sup>8</sup> The panel may request additional investigative information from DOH, and this must be done within 15 days of receiving the investigative report from the department or agency.<sup>9</sup> The panel has 30 days from receiving the final investigative report to make a determination of probable cause.<sup>10</sup> The Surgeon General may grant extensions of these time limits.<sup>11</sup> If the panel does not make a determination within the statutory timeframe, DOH is directed to do so within 10 days of the expiration of the time limit.<sup>12</sup>

DOH is directed to follow the determination of the probable cause panel, and if probable cause exists is directed to file a formal complaint against the subject, and prosecute pursuant to ch. 120, F.S.<sup>13</sup> DOH may decide not to prosecute if probable cause has been found improvidently, and refer the issue back to the appropriate board, which may then choose to file a formal complaint and prosecute pursuant to ch. 120, F.S.<sup>14</sup> Referrals to the Division of Administrative Hearings, must occur within 1 year of filing the complaint.<sup>15</sup> Chapter 120, F.S., provides the practitioner with the right to appeal the action.

DOH is further directed to notify the person who filed the complaint, and if probable cause is not found, provide them with an opportunity 60 days from the determination, to bring additional information to the department.<sup>16</sup>

### Emergency Orders

Section 120.60(6), F.S. provides DOH with broad authority to take disciplinary action in the case of immediate serious danger to the public health, safety or welfare. A license may be suspended, restricted, or limited on an emergency basis if:

- The procedure provides at least the same procedural protection as is given by other statutes, the state Constitution or the U.S. Constitution;
- The action is necessary to protect the public interest under the emergency procedure;
- There are specific facts that outline the finding of an immediate danger to public health, safety, or welfare and reasons for concluding the process was fair under the circumstances.

Section 456.074, F.S., provides DOH with separate authority from s. 120.60(6), F.S., to issue an emergency order suspending the license of certain health care practitioners under very specific circumstances. This **must** occur when:

- A medical doctor, doctor of osteopathy, chiropractor, podiatrist, naturopath, optometrist, nurse, pharmacist, dentist or hypnotist pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to:
  - A felony under:
    - Ch. 409, F.S., social and economic assistance;
    - Ch. 817, F.S., fraudulent practices;
    - Ch. 893, F.S., drug abuse prevention or control;
    - 21 U.S.C. ss 801-970, controlled substances; or
    - 42 U.S.C. ss1395-1396, Medicaid and Medicare.
  - A misdemeanor or felony under:
    - 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, crimes; or
    - 42 U.S.C. ss. 1320a-7b, Medicaid.

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<sup>7</sup> S. 456.073(2), F.S.

<sup>8</sup> S. 456.073(4), F.S.

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

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

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

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

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

<sup>14</sup> *Id.*

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

<sup>16</sup> S. 456.073(9)(c), F.S.

DOH has discretionary authority pursuant s. 456.074, F.S., to issue an emergency order suspending or restricting the license of certain health care practitioners when:

- The board has found a physician or osteopathic physician in violation of s. 458.331(1)(t), F.S., or s. 459.015(1)(x), F.S., relating to medical malpractice, in regard to three or more patients and there is probable cause to find additional violations of these sections.
- A healthcare practitioner, as defined in s. 456.001(4), F.S., tests positive for a pre-employment or employer ordered drug test, when the practitioner does not have a lawful prescription and legitimate medical reason for using such a drug.
- A healthcare practitioner has defaulted on state or federally guaranteed student loans.<sup>17</sup>

While Florida law does not specify the interaction between these two sections, courts have interpreted s. 456.074, F.S., to operate independently of s. 120.60(6), F.S. Courts appear to interpret s. 456.074(1), F.S., in a way that is analogous to strict liability, such that the due process requirements of 120.60(6), F.S., including proof of immediate danger to public safety, do not apply. Courts that have interpreted s. 456.074, F.S., have applied subsection (1), which mandates the emergency suspension, as leaving DOH with no discretion.<sup>18</sup> Subsection (3) of s. 456.074, F.S., for example, provides DOH with discretion as to an emergency suspension, and judicial interpretation of discretionary authority in this context is unclear.

Following the issuance of an emergency suspension, the person has an immediate right of appeal.<sup>19</sup> An emergency suspension order is effective until it is overturned by an appellate court, vacated by the Surgeon General or superseded by a final order. DOH is required to initiate non-emergency administrative proceedings within 20 days of the emergency suspension.<sup>20</sup> DOH issued 326 emergency suspensions in FY 2010-11.<sup>21</sup>

To ensure compliance with such orders, each board has promulgated rules based on authority delegated by the Legislature.<sup>22</sup> If a practitioner does not comply with the order, a petition can be made to the circuit court to enforce the order.<sup>23</sup>

### Bail

Pretrial release is an alternative to incarceration that allows an accused to be released from detention whilst they await disposition of the criminal charges. Article I, s. 24 of the Florida Constitution provides that unless a person is charged with a capital offense or one punishable by life and “the proof of guilt is evident or the presumption great,” every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. Further, there is a presumption in favor of release on nonmonetary conditions for any accused who is granted pre-trial release unless they are charged with a dangerous crime.<sup>24</sup>

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<sup>17</sup> S. 456.074, F.S.

<sup>18</sup> See *Mendelsohn v. Department of Health*, 68 So.3d 965 (Fla 1st DCA, 2011) (DOH could not issue emergency suspension because petitioner did not commit enumerated violation of s. 456.074(1), F.S.); *Bethencourt-Miranda v. Department of Health*, 910 So.2d 927, (Fla 1st DCA, 2005) (No findings were necessary for an emergency suspension for violation of 21 U.S.C. s. 846);

<sup>19</sup> S. 120.569(n)(2), F.S.

<sup>20</sup> Rule 28-106.501, F.A.C. This rule implements the authority delegated to DOH in s. 120.60(6)(a), F.S., which directs the agency must provide for at least the same procedural protection as is given by other state statutes, the state constitution, and the federal constitution.

<sup>21</sup> DOH analysis for HB 1143 (2012). On file with Health and Human Services Quality Subcommittee staff.

<sup>22</sup> For Medical Doctors, the Board of Medicine has promulgated rules 64B8-8, F.A.C., pursuant to s. 458.331, F.S. For Osteopathic Physicians, the Board of Osteopathic Medicine has promulgated rules 64B15-19, F.A.C., pursuant to s. 456.072, F.S. For Podiatrists, the Board of Podiatric Medicine has promulgated rules 64B18-14, F.A.C., pursuant to s. 461.013, F.S. For Dentists, the Board of Dentistry has promulgated rules 64B5-13, F.A.C., pursuant to s. 466.028, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Dangerous crimes are described in s. 907.041(4)(a), F.S., and include offenses such as arson, aggravated assault, aggravated battery, child abuse, elder abuse, abuse of a disabled adult, kidnapping, homicide, manslaughter, sexual battery or other sex offenses, robbery, carjacking, stalking, terrorism and domestic violence.

Pretrial release is granted by a court in one of three ways; release on own recognizance, supervised pretrial release, or a bond.<sup>25</sup> Bail is a form pretrial release that requires an accused to pay a set sum of money to the court. If the accused released on bail fails to appear before the court at the appointed place and time, the bail is forfeited.

Section 903.046, F.S., provides that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the person. In the determination of whether to release a criminal defendant on bail or other conditions, the judge must consider:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- Family ties, length of residence in the community, employment history, financial resources and mental condition;
- The defendant's past and present conduct;
- The nature and probability of danger that the defendant poses to the community, including intimidation and danger to victims;
- The course of funds used for bail, or to secure the bond;
- Whether the defendant is on release for another pending matter;
- The street value of the drug or controlled substance, if applicable to the case;
- Whether there is probable cause to believe the defendant committed a new crime whilst on pretrial release;
- Whether the crime charged is a violation of ch. 874, F.S., (relating to sexual battery); and
- Any other relevant factor.<sup>26</sup>

### **Effect of Proposed Changes**

House Bill 1143 amends s. 456.074, F.S., providing discretionary authority for the Department of Health, to enter an emergency order that removes the ability to prescribe controlled substances for a healthcare practitioner licensed under ch. 458, F.S., ch. 459, F.S., ch 461, F.S., or ch. 466. F.S., who has:

- Committed, been arrested for, or is under criminal investigation or prosecution for, an act which is a violation of ch. 782. F.S. (homicide);
- Been arrested or is under criminal investigation or prosecution for any act that relates to the importation,<sup>27</sup> manufacture,<sup>28</sup> distribution,<sup>29</sup> possession,<sup>30</sup> transfer, sale,<sup>31</sup> improper use, or prescribing of controlled substances,<sup>32</sup> as defined by ch. 893, F.S.; or
- Violated any federal law relating to possession, transfer, sale, or prescribing of a controlled substance as defined in ch. 893, F.S., or 21. U.S.C. ss. 801-970.

Once the emergency order has been issued, the practitioner has the right to appeal the decision, pursuant to s. 120.569(n)(2), F.S. The bill provides DOH with discretionary authority to issue an emergency suspension order based on the enumerated criteria. It is not clear how this discretionary authority will be interpreted by the courts.

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<sup>25</sup> Bail is the security, such as a bond posted by a defendant to a trial court to secure their release from detention to appear in court at a future date. Black's Law Dictionary (9<sup>th</sup> Ed. 2009). S. 903.011(1), F.S., provides that bail and bond include any and all forms of pretrial release as used in ch. 903, F.S.

<sup>26</sup> S. 903.046, F.S.

<sup>27</sup> Chapter 893, F.S., makes a distinction between importation and trafficking, based on volume for controlled substances that are brought into the state. *See* s. 893.135, F.S.

<sup>28</sup> S. 893.13(1)(a), F.S. provides that except as authorized by this chapter and ch. 499, F.S., it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

<sup>29</sup> Means to deliver, other than by administering or dispensing, a controlled substance. S. 893.02(8), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Means any substance named or described in Schedules I-V of s. 893.03, F.S. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws. S. 893.02(4), F.S.

The bill provides that a judge, when determining criteria for bail, shall determine whether the suspension of a license or a restriction on the ability to practice a licensed profession is necessary to protect the community against unreasonable danger. This provision applies to every profession regulated by the MQA, pursuant to the definition of "profession" s. 456.001, F.S. This provision does not give the judge the ability to suspend or restrict the license, only determine whether such an action is necessary to protect the community.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 456.074, F.S., relating to certain healthcare practitioners; immediate suspension or restriction of license.  
**Section 2:** Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.  
**Section 3:** Provides an effective date.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

DOH has sufficient rulemaking authority in s. 456.074, F.S., to implement the provisions of the bill.

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

Lines 31-34 direct a judge to determine whether the suspension or restriction of a license during bail hearing is necessary to protect the community against unreasonable danger. However, the language does not expressly authorize the judge to suspend or restrict, merely determine this as a component of bail.

The bill provides discretionary authority for DOH to enter an emergency order that removes the ability to prescribe controlled substances for a healthcare practitioner who has violated any federal law relating to possession, transfer, sale, or prescribing of a controlled substance. It is unclear whether the term "violated" is intended to refer to an arrest or a conviction.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 17, 2012, the Health & Human Services Quality subcommittee adopted a strike-all amendment to HB 1143. The amendment:

- Deleted the bill's provision authorizing DOH to issue an emergency order suspending a health care practitioner's license, replacing it with a provision authorizing DOH to issue an emergency order restricting certain health care practitioners from prescribing controlled substances under certain circumstances.
- If the health care practitioner has:
  - Committed, is arrested for, or is under investigation or prosecution for a violation of ch. 782, F.S., (homicide);
  - Been arrested for, or is under investigation or prosecution for any act that relates to the importation, manufacture, distribution possession, transfer, sale, improper use or prescribing controlled substances, as defined by ch. 893, F.S., relating to substance abuse and prevention;
  - Violated any federal law relating to possession, transfer, sale or prescribing of controlled substances as defined in ch. 893, F.S., or 21 U.S.C. ss. 801-970 relating to controlled substances.

This bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.



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A bill to be entitled  
 An act relating to licensing of health care practitioners; amending s. 456.074, F.S.; authorizing the Department of Health to issue an emergency order to restrict the license of a health care practitioner under specified conditions; amending s. 903.046, F.S.; providing additional criteria that a court may consider when determining whether to release a defendant on bail; providing an effective date.

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

Section 1. Subsection (5) is added to section 456.074, Florida Statutes, to read:

456.074 Certain health care practitioners; immediate suspension or restriction of license.—

(5) The department may issue an emergency order restricting the license of any health care practitioner as defined in chapter 458, chapter 459, chapter 461, or chapter 466 from prescribing any controlled substance as defined in chapter 893 if the licensee has committed any act, is arrested for any act, or is under criminal investigation or criminal prosecution for any act that is a violation of chapter 782; or is arrested for any act or is under criminal investigation or criminal prosecution for any act that relates to the importation, manufacture, distribution, possession, transfer, sale, improper use, or prescribing of a controlled substance as defined in chapter 893, or is in violation of any federal law relating to

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29 | the possession, transfer, sale, or prescribing of a controlled  
30 | substance as defined in chapter 893 or 21 U.S.C. ss. 801-970.

31 |       Section 2. Paragraph (m) is added to subsection (2) of  
32 | section 903.046, Florida Statutes, to read:

33 |       903.046 Purpose of and criteria for bail determination.—

34 |       (2) When determining whether to release a defendant on  
35 | bail or other conditions, and what that bail or those conditions  
36 | may be, the court shall consider:

37 |       (m) Whether the suspension of a license or the restriction  
38 | on the ability to practice a licensed profession as defined in  
39 | s. 456.001 is necessary to protect the community against  
40 | unreasonable danger from the criminal defendant.

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1187 Sentencing Alternatives  
**SPONSOR(S):** Perry  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1278

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

**SUMMARY ANALYSIS**

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation.

The bill allows a judge to impose the following alternative sentence on an offender who violates any criminal provision of ch. 827, F.S. (relating to the abuse of children), and who does not receive a state prison sentence:

- Payment of an additional assessment in the amount of \$250 to the child protection team in the judicial circuit in which the alternative sentence is imposed.

The bill may result in increased funding for local child protection teams. See "fiscal comments."

The bill is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Abuse of Children**

Chapter 827, F.S., provides various criminal offenses relating to the abuse of children.<sup>1</sup> For example:

Child abuse is defined as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- 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.<sup>2</sup>

Child abuse is a third degree felony<sup>3</sup> and occurs when a person knowingly and willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child. Specifically,

Aggravated child abuse is a first degree felony<sup>4</sup> and occurs when a person:

- Commits aggravated battery on a child;
- Willfully tortures, maliciously<sup>5</sup> punishes, or willfully and unlawfully cages a child; or
- Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.<sup>6</sup>

Neglect of a child occurs when:

- A caregiver's<sup>7</sup> failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
- A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.<sup>8</sup>

Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.<sup>9</sup> Neglect of a child is a third degree felony when a person willfully or by culpable negligence neglects a child. However, it is a second degree felony<sup>10</sup> when a person willfully or by culpable negligence neglects a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to the child.

##### **Child Protection Teams**

The Department of Health Children's Medical Services Child Protection Team (CPT) Program is a medically directed, multidisciplinary statewide program designed to supplement the child protective

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<sup>1</sup> Section 827.01(2), F.S., defines "child" as "any person under the age of 18 years."

<sup>2</sup> Section 827.03(1), F.S.

<sup>3</sup> Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>5</sup> For purposes of this section, "maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury. Section 827.03(4), F.S.

<sup>6</sup> Section 827.03(2), F.S.

<sup>7</sup> Section 827.01(1), F.S., defines "caregiver" as "a parent, adult household member, or other person responsible for a child's welfare."

<sup>8</sup> Section 827.03(3)(a), F.S.

<sup>9</sup> Section 827.03(3)(a), F.S.

<sup>10</sup> Punishable by up to 15 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

investigation activities of local Sheriff's offices and the Department of Children and Family Services (DCFS) in complex cases of child abuse and neglect.<sup>11</sup> Section 39.303, F.S., authorizes the Children's Medical Services (CMS) Program within the Department of Health (DOH) to develop, maintain, and coordinate CPT services through contracts with local community-based programs. Twenty-two CPTs, some with satellite offices, provide these services to all children in the state meeting criteria for referral.

A CPT provides consultation to DCFS programs and other persons regarding child abuse, abandonment, and neglect cases.<sup>12</sup> All child abuse and neglect cases transmitted to child protection investigation by the child abuse hotline must be simultaneously transmitted to a CPT for review.<sup>13</sup> The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a CPT is capable of providing include, but are not limited to, the following:

- Medical diagnosis and evaluation services, including provision or interpretation of X-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.
- Telephone consultation services in emergencies and in other situations.
- Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of DOH.
- Psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.
- Expert medical, psychological, and related professional testimony in court cases.
- Case staffings to develop treatment plans for children whose cases have been referred to the team.
- Case service coordination and assistance, including the location of services available from other public and private agencies in the community.
- Training services for program and other employees of DCFS, employees of DOH, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.
- Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens to prevent, identify, and treat child abuse, abandonment, and neglect in the community.
- CPT assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.<sup>14</sup>

### **Sentencing Alternatives**

Section 921.187, F.S., gives judges sentencing alternatives when disposing criminal cases where an offender does not receive a state prison sentence. These alternatives must be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation,<sup>15</sup> and include:

- Requiring an offender who violates ch. 893, F.S.,<sup>16</sup> or violates any law while under the influence of a controlled substance or alcohol to participate in a substance abuse program.<sup>17</sup>
- Requiring an offender who violates any criminal provision of ch. 893, F.S., to pay an additional assessment in an amount up to the amount of any fine imposed, pursuant to ss. 938.21<sup>18</sup> and 938.23.<sup>19,20</sup>

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<sup>11</sup> "Children's Medical Services: Child Protection Team" Department of Health. <http://www.doh.state.fl.us/cms/HProviderPICPT.html> (last visited January 27, 2012).

<sup>12</sup> Section 39.01(13), F.S.

<sup>13</sup> Section 39.303(3), F.S.

<sup>14</sup> Section 39.303(1), F.S.

<sup>15</sup> Section 921.187(1), F.S.

<sup>16</sup> Chapter 893, F.S., relates to drug abuse prevention and control.

<sup>17</sup> Section 921.187(k), F.S.

<sup>18</sup> Section 938.21, F.S., relates to alcohol and drug abuse programs.

<sup>19</sup> Section 938.23, F.S., relates to assistance grants for alcohol and other drug abuse programs.

<sup>20</sup> Section 921.187(l)1., F.S.

- Requiring an offender who violates any provision of s. 893.13, F.S.,<sup>21</sup> to pay an additional assessment in an amount of \$100, pursuant to ss. 938.25<sup>22</sup> and 943.361, F.S.<sup>23,24</sup>
- Requiring residence in a state probation and restitution center or private drug treatment program for offenders on community control or offenders who have violated conditions of probation.<sup>25</sup>

### **Effect of the Bill**

The bill allows a judge to impose the following alternative sentence on an offender who violates any criminal provision of ch. 827, F.S. (relating to child abuse), and does not receive a state prison sentence:

- Payment of an additional assessment in the amount of \$250 to the child protection team in the judicial circuit in which the alternative sentence is imposed.

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

Section 1. Amends s. 921.187, F.S., disposition and sentencing; alternatives; restitution.

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

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

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

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

See "fiscal comments."

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

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

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

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

See "fiscal comments."

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

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

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

See "fiscal comments."

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

The Child Protection Team (CPT) Program is funded by the Legislature through the Department of Health's (DOH) Children's Medical Services program office, which contracts with local providers for team services.<sup>26</sup> Providers currently under contract with DOH include non-profit agencies, hospitals, universities, and county governments.<sup>27</sup>

<sup>21</sup> Section 893.13, relates to various controlled substance penalties.

<sup>22</sup> Section 938.25, F.S., relates to operating Trust Fund of the Department of Law Enforcement.

<sup>23</sup> Section 943.361, F.S., relates to statewide criminal analysis laboratory system; funding through fine surcharges.

<sup>24</sup> Section 921.187(1)2., F.S.

<sup>25</sup> Section 921.187(o), F.S.

<sup>26</sup> Child Protection Team Program Policy and Procedure Handbook. June 2009. [http://www.cms-kids.com/providers/prevention/documents/handbook\\_cpt.pdf](http://www.cms-kids.com/providers/prevention/documents/handbook_cpt.pdf) (last visited January 27, 2012).

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

The bill requires offenders who violate any criminal provision of ch. 827, F.S., to pay an additional assessment of \$250 to the CPT in the judicial circuit in which the alternative sentence is imposed. The bill may have a positive fiscal impact on any of the above named entities to the extent that they are contracted as a CPT.

Persons who violate any criminal provision of ch. 827, F.S., and who are sentenced to the alternative proposed by the bill will be required to pay an additional \$250 fee.

### **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 requires the \$250 assessment to be paid to the child protection team in the judicial circuit in which the alternative sentence is imposed. The Department of Health reports that there may be instances where there are more than one child protection team in a judicial circuit.<sup>28</sup> The bill does not specify how the assessment will be paid in these instances.

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

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<sup>28</sup> E-mail from Brenda Ferrell, Department of Health, January 27, 2012. (On file with Criminal Justice Subcommittee staff).  
**STORAGE NAME:** h1187.CRJS.DOCX  
**DATE:** 1/26/2012



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A bill to be entitled  
 An act relating to sentencing alternatives; amending  
 s. 921.187, F.S.; authorizing the court to order an  
 offender convicted of an offense of child abuse to pay  
 an assessment of a specified amount if the offender  
 does not receive a state prison sentence; requiring  
 that the assessment be allocated to the child  
 protection team in the judicial circuit in which the  
 alternative sentence is imposed; providing an  
 effective date.

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

Section 1. Paragraph (r) is added to subsection (1) of  
 section 921.187, Florida Statutes, to read:

921.187 Disposition and sentencing; alternatives;  
 restitution.—

(1) The alternatives provided in this section for the  
 disposition of criminal cases shall be used in a manner that  
 will best serve the needs of society, punish criminal offenders,  
 and provide the opportunity for rehabilitation. If the offender  
 does not receive a state prison sentence, the court may:

(r) Require the offender who violates any criminal  
 provision of chapter 827 to pay an additional assessment in the  
 amount of \$250 to the child protection team in the judicial  
 circuit in which the alternative sentence is imposed.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1331 Property Fraud  
**SPONSOR(S):** Wood  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 996

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

### SUMMARY ANALYSIS

The bill creates s. 817.535, F.S., entitled "fraudulent creation of interest in real or personal property." The bill makes it a third degree felony for a person, with the intent to defraud another, to knowingly file or cause to be filed with the clerk of a circuit court any document that contains a material misstatement, misrepresentation, or omission of fact. Such documents include, but are not limited to:

- Deeds, leases, bills of sale, agreements, mortgages, notices of claim of lien, notices of levy, or any other instrument that relates to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

The bill may have a minimal fiscal impact on the Office of the State Courts Administrator because a few more cases may be filed as a result of the specific provisions of the bill.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill creates a new third degree felony, it may have a negative prison impact on the Department of Corrections.

The bill is effective on October 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### *Florida's Recording Act*

Section 695.01, F.S., requires that any conveyance, transfer, mortgage, or other interest in real property be recorded in the public records of the county where the property is located. Every state in the United States has an analogous statutory recording system making information about interests in property available to the public.<sup>1</sup> The purpose of a public recording system for land titles is to allow access to any person such as a creditor, tax collector, or prospective purchaser to ascertain who owns the property and what encumbrances might exist to the title.<sup>2</sup> Because these records are open for the public to rely on and have the potential to call into question the owner's clear title to the property, having accurate property records is vital.<sup>3</sup>

Section 28.222(1), F.S., requires the clerk of the circuit court to record all of the instruments, such as deeds, liens, mortgages, etc., in the county where he or she is clerk. The clerk must record instruments presented to him or her for recording upon payment of the service charges prescribed by law.<sup>4</sup> Florida law does not require the clerk to investigate the accuracy of any such instruments he or she records.

##### *Fraud*

Chapter 817, F.S., covers a variety of fraudulent practices. Section 817.54, F.S., makes it a third degree felony<sup>5</sup> for a person to obtain a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Other chapters contain similar penalties specific to liens. For example, s. 713.31(3), F.S., makes it is a third degree felony for a person to fraudulently file a construction lien. A construction lien is considered fraudulent if the lienor purposely exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.<sup>6</sup>

##### *Fraudulent Recording of Deeds*

Florida law offers redress for a property owner where a fraudulent deed is recorded with respect to his or her property. A property owner who has a fraudulent deed recorded on his or her property may pursue a suit to quiet title, which is "an equitable action that involves clearing a title of an invalid charge against the title."<sup>7</sup> The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney's fees.<sup>8</sup> A property owner may also choose to sue for slander of title, a tort action for which damages may be recovered.<sup>9</sup> A tort claim is not actionable as slander of title if the defendant acted without malice and with the belief that he or she had a valid claim against the property and was entitled to record that claim.<sup>10</sup>

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

The bill creates s. 817.535, F.S., entitled "fraudulent creation of an interest in real or personal property." The bill makes it a third degree felony for a person, with the intent to defraud another, to knowingly file or cause to be filed with the clerk of a circuit court any document that contains a material misstatement, misrepresentation, or omission of fact.

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<sup>1</sup> Jesse Dukeminier and James E. Krier, *PROPERTY*, 662 (5th ed. 2002).

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

<sup>3</sup> *Id.*

<sup>4</sup> Section 28.222(3), F.S.

<sup>5</sup> 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> Section 713.31(2)(a), F.S.

<sup>7</sup> 65 AM. JUR. 2d, *Quieting Title and Determination of Adverse Claims* s. 2 (2011).

<sup>8</sup> Section 86.081, F.S.; see also *Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984) (citing *State ex rel. Royal Ins. Co. v. Barrs*, 99 So. 668 (Fla. 1924)).

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

<sup>10</sup> *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566, 575 (Fla. 4th DCA 2008).

The bill describes the term "document" as including, but not limited to:

- Deeds, leases, bills of sale, agreements, mortgages, notices of claim of lien, notices of levy, or any other instrument that relates to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 817.535, F.S., relating to fraudulent creation of interest in real or personal property.

Section 2. 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 met to determine the prison bed impact of the bill. However, because the bill creates a new third degree felony, it may have a negative prison impact on the Department of Corrections.

According to the Office of the State Courts Administrator (OSCA), the bill may have a minimal fiscal impact because a few more cases may be filed as a result of the specific provisions of the bill. OSCA does not anticipate a large impact on judicial workload because existing law essentially covers the behavior the bill prohibits.<sup>11</sup>

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

1. Revenues:

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

2. Expenditures:

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

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

None.

**D. FISCAL COMMENTS:**

None.

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<sup>11</sup> Office of the State Courts Administrator, 2012 Judicial Impact Statement, SB 996 (Dec. 7, 2011) (on file with the House Criminal Justice Subcommittee).

### **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 use of commas in the list of documents in lines 24-28 makes it unclear what types of documents are included.

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

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1                                    A bill to be entitled  
 2            An act relating to property fraud; creating s.  
 3            817.535, F.S.; providing that a person who, with  
 4            intent to defraud another, knowingly files or causes  
 5            to be filed with the clerk of the circuit court a  
 6            document relating to the ownership, transfer, or  
 7            encumbrance of or claim against real or personal  
 8            property, or any interest in real or personal, which  
 9            contains a material misstatement, misrepresentation,  
 10           or omission of fact commits the offense of fraudulent  
 11           creation of an interest in real or personal property;  
 12           providing criminal penalties; providing an effective  
 13           date.

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

16  
 17            Section 1. Section 817.535, Florida Statutes, is created  
 18 to read:

19            817.535 Fraudulent creation of interest in real or  
 20 personal property.-

21            (1) A person who, with intent to defraud another,  
 22 knowingly files or causes to be filed with the clerk of the  
 23 circuit court for any county of this state a document,  
 24 including, but not limited to, a deed, lease, bill of sale,  
 25 agreement, mortgage, notice or claim of lien, notice of levy, or  
 26 any other instrument that relates to the ownership, transfer, or  
 27 encumbrance of or claim against real or personal property, or  
 28 any interest in real or personal property, and that contains a

HB 1331

2012

29 material misstatement, misrepresentation, or omission of fact,  
30 commits the offense of fraudulent creation of an interest in  
31 real or personal property.

32 (2) A person who violates subsection (1) commits a felony  
33 of the third degree, punishable as provided in s. 775.082, s.  
34 775.083, or s. 775.084.

35 Section 2. This act shall take effect October 1, 2012.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1385 Child Pornography
SPONSOR(S): Trujillo
TIED BILLS: None IDEN./SIM. BILLS: SB 1618

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, Cunningham, Cunningham.

SUMMARY ANALYSIS

Section 827.071, F.S, establishes four crimes that involve the sexual performance by a child. Two of these offenses are described below:

- Subsection (4) makes it a second degree felony for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.
• Subsection (5) makes it a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.

In 2011, Florida's Second District Court of Appeal reviewed a case in which the defendant pled no contest to multiple counts of possessing child pornography in violation of s. 827.071(5), F.S., and appealed. The images at issue were "morphed" images in which photographs of children's heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of "sexual conduct" and the elements of the offense, the court reversed the lower court's decision holding that "no child engaged in the sexual conduct" and that "no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child."

The bill amends s. 827.071(4) and (5), F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view.

The bill provides the following definitions, which largely mirror the definitions found in federal law:

- "Child pornography" means any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.
• "Minor" means a person who had not attained the age of 18 years at the time the visual depiction was created, adapted, or modified, or whose image while a minor was used in creating, adapting, or modifying the visual depiction, and who is recognizable as an actual person by the person's facial features, likeness, or other distinguishing characteristics.

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill would have an indeterminate prison bed impact on the Department of Corrections.

The bill is effective October 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Sexual Performance by a Child**

Section 827.071, F.S., establishes four crimes that involve the sexual performance by a child. Two of these offenses are described below:

- Subsection (4) makes it a second degree felony<sup>1</sup> for a person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.
- Subsection (5) makes it a third degree felony<sup>2</sup> for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.

The statute provides the following definitions that apply to the above-listed offenses:

- "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."
- "Simulated" means the explicit depiction of conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.<sup>3</sup>

##### **Federal Law – Child Pornography**

18 U.S.C. 2256 defines "child pornography" as any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (B) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
- (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

"Identifiable minor" is defined as a person:

- Who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
- Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristics, such as unique birthmark or other recognizable feature.<sup>4</sup>

The term "identifiable minor" shall not be construed to require proof of the actual identity of the identifiable minor.<sup>5</sup>

<sup>1</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 827.071(1), F.S.

<sup>4</sup> 18 U.S.C. 2256(9).

<sup>5</sup> *Id.*

## Recent Caselaw

In 2011, Florida's Second District Court of Appeal reviewed a case in which the defendant pled no contest to multiple counts of possessing child pornography in violation of s. 827.071(5), F.S., and appealed.<sup>6</sup> The images at issue were "morphed" images in which photographs of children's heads were pasted onto photographs of nude women engaged in sexual intercourse, deviate sexual intercourse, or masturbation. After extensively reviewing the definition of "sexual conduct" and the elements of the offense, the court reversed the lower court's decision holding that "no child engaged in the sexual conduct" and that "no matter how one parses the words, section 827.071 requires that the depicted sexual conduct be that of a child."<sup>7</sup>

The dissent noted that the definition of "sexual conduct" included "*simulated* sexual intercourse, sexual bestiality, and masturbation," and concluded that "simulated sexual conduct by a child" included composites made by attaching children's heads to adult bodies engaged in sexual activity. The majority disagreed, citing a United States Supreme Court decision construing the word "simulated," which held that "a reasonable viewer [must] believe that the actors actually engaged in that conduct on camera" and "although the sexual intercourse may be simulated, it must involve actual children."<sup>8</sup>

In reversing the trial court's decision, the Second District Court of Appeal also reviewed the legislative history of the relevant federal statutes. The court noted that Congress had enacted child pornography legislation three times (in 1994, 1996, and 2003), each time broadening the definition of child pornography.<sup>9</sup> The latest iteration,<sup>10</sup> defines child pornography to include not only images of actual children engaged in sexually explicit conduct, but also images created by computer that are "indistinguishable" from images of actual minors engaging in such conduct and images that are created or modified to appear as though an identifiable minor was involved in the production of the depiction.<sup>11</sup> After noting that Congress specifically removed the defense that no actual minor was involved in the production of the depiction, the court stated that "if our legislature wants to follow Congress's example and prohibit the possession of the types of photographs involved here, we are confident that it can, and perhaps should, craft an appropriate statute."<sup>12</sup>

## Effect of the Bill

The bill amends s. 827.071(4) and (5), F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view. The bill provides the following definitions, which largely mirror the definitions found in federal law:

- "Child pornography" means any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.
- "Minor" means a person who had not attained the age of 18 years at the time the visual depiction was created, adapted, or modified, or whose image while a minor was used in creating, adapting, or modifying the visual depiction, and who is recognizable as an actual person by the person's facial features, likeness, or other distinguishing characteristics.

The bill amends s. 775.0847, F.S., which reclassifies violations of s. 827.071, F.S., (and other sexual offenses) to the next higher degree of felony in specified instances, to include the above-described definitions.

<sup>6</sup> *Parker v. State*, 2011 WL 4467635 (Fla. 2<sup>nd</sup> DCA 2011).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2, citing *United States v. Williams*, 553 U.S. 285 at 297 (2008).

<sup>9</sup> *Supra* note 4 at 4-5.

<sup>10</sup> The PROTECT Act of 2003, Public Law 108-21, April 30, 2003.

<sup>11</sup> *Supra* note 4 at 4-5. *Also see*, 18 U.S.C. 2256(8)(b) and (c).

<sup>12</sup> *Supra* note 4 at 4-5.

The bill also makes conforming changes to s. 921.0022, F.S. (the offense severity ranking chart), and reenacts s. 794.0115, F.S. (dangerous sexual felony offender; mandatory sentencing), to incorporate the bill's changes to s. 827.071, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.0847, F.S., relating to possession or promotion of certain images of child pornography; reclassification.

Section 2. Amends s. 827.071, F.S., relating to sexual performance by a child; penalties.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Reenacts s. 794.0115, F.S., relating to dangerous sexual felony offender; mandatory sentencing.

Section 5. 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:

On January 30, 2012, the Criminal Justice Impact Conference determined that the bill would have an indeterminate 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 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 appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

## 2. Other:

The First Amendment to the United States Constitution provides that "Congress shall make no law ...abridging the freedom of speech." However, the United States Supreme Court has held that child pornography is unprotected by the First Amendment and that states have greater leeway in regulating it than other obscenity or adult pornography. This is so because of the compelling state interest in the prevention of sexual exploitation of children and child abuse.<sup>13</sup> In contrast, "sexual expression which is indecent but not obscene is protected by the First Amendment...."<sup>14</sup>

As explained by the Florida Supreme Court, "the doctrines of overbreadth and vagueness are separate and distinct."<sup>15</sup> The overbreadth doctrine applies only if the legislation is susceptible of application to conduct protected by the First Amendment.<sup>16</sup> The overbreadth doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression.<sup>17</sup> As the United States Supreme Court has explained, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."<sup>18</sup> Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.<sup>19</sup>

The vagueness doctrine has a broader application because it was developed to ensure compliance with the Due Process Clause in the Fifth Amendment of the United States Constitution.<sup>20</sup> A criminal law may violate due process if it fails to give a potential offender fair notice that his or her contemplated conduct is forbidden or if it encourages arbitrary enforcement and gives the police too much discretion in determining whether it is applicable to a particular individual.<sup>21</sup> When the law fails these tests, it is "void for vagueness."<sup>22</sup> Because of its imprecision, a vague statute may also invite arbitrary or discriminatory enforcement.<sup>23</sup> A statute is not void for vagueness if the language conveys a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."<sup>24</sup> However, the Supreme Court has indicated that a statute that lends itself to arbitrary enforcement can be void for vagueness even if it gives fair notice of what conduct it prohibits.<sup>25</sup> Further, the need for definiteness is even greater when the ordinance imposes criminal penalties on individual behavior or when it implicates constitutionally protected rights.<sup>26</sup>

As noted above, the definition of "child pornography" contained in 18 U.S.C. 2256 has been amended numerous times throughout the past decade to broaden its reach. As expected, there has been extensive caselaw relating to these various versions of the definition. In many instances, the definition as applied to what is commonly referred to as "morphed" images of child pornography, has been held to be unconstitutionally overbroad.<sup>27</sup> To date, the most recent version of the definition as applied to morphed images has been upheld.<sup>28</sup>

<sup>13</sup> *State v. Beckman*, 547 So.2d 210 (Fla. 5<sup>th</sup> DCA 1989). Also see, *New York v. Ferber*, 458 U.S. 747 (1982).

<sup>14</sup> *Simmons v. State*, 944 So.2d 317, 323 (Fla. 2006)(quoting *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989)).

<sup>15</sup> *Southeastern Fisheries Ass'n v. Dep't of Natural Res.*, 453 So.2d 1351, 1353 (Fla.1984).

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

<sup>17</sup> See *City of Daytona Beach v. Del Percio*, 476 So.2d 197, 202 (Fla.1985).

<sup>18</sup> *NAACP v. Button*, 371 U.S. 415, 433 (1963).

<sup>19</sup> *Firestone v. News-Press Publ'g Co.*, 538 So.2d 457, 459 (Fla.1989).

<sup>20</sup> See *Simmons*, 944 So.2d at 324. Florida's Constitution includes a similar due process guarantee in Article I, Section 9.

<sup>21</sup> See *Simmons*, 944 So.2d at 324.

<sup>22</sup> See *Simmons*, 944 So.2d at 324 (quoting *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972)).

<sup>23</sup> See *Southeastern Fisheries*, 453 So.2d at 1353.

<sup>24</sup> *Hitchcock v. State*, 413 So.2d 741, 747 (Fla.1982)(quoting *United States v. Petrillo*, 332 U.S. 1, 8 (1947)).

<sup>25</sup> See *Kolender v. Lawson*, 461 U.S. 352, 358 (1983)(stating that the "more important aspect of the vagueness doctrine is not actual notice, but the ... requirement that a legislature establish minimal guidelines to govern law enforcement").

<sup>26</sup> See *Simmons*, 944 So.2d at 324.

<sup>27</sup> See *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

<sup>28</sup> See, e.g., *United States v. Hotaling*, 599 F.Supp.2d 306 (N.D.N.Y 2008)(holding that federal statute prohibiting possession of morphed images was not unconstitutionally overbroad or vague); *affirmed by*, 634 F.3d 725; *cert. denied*, 2011 WL 2174374 (2011).

The bill amends s. 827.071, F.S., to add "child pornography" to the list of items that it is unlawful to possess, possess with the intent to promote, control, or intentionally view, and defines "child pornography" as:

Any visual depiction, including, but not limited to, any photograph, film, video, picture, computer or computer-generated image or picture, or digitally created image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, where the production of such visual depiction involves the use of a minor engaging in sexual conduct, or such visual depiction has been created, adapted, or modified to appear that a minor is engaging in sexual conduct. Proof of the identity of the minor is not required in order to find a violation of this section.

Although this definition largely mirrors the definition found in 18 U.S.C. 2256, which has thus far been upheld, it may subject the offenses in s. 827.071, F.S., that involve "child pornography" to overbreadth and vagueness challenges. As noted in a decision by Florida's 2<sup>nd</sup> DCA interpreting the current definition of child pornography in s. 827.071, F.S.,<sup>29</sup> "[i]f the legislature had intended to proscribe the possession of composite images that simulate lewd and lascivious exhibition of the genitals, it could have included a provision doing so. We leave for another day a discussion of the constitutionality of such a provision."

**B. RULE-MAKING AUTHORITY:**

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

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

Chapter 847, F.S., relating to obscenity, contains a variety of offenses that specifically relate to child pornography. Chapter 847, F.S., defines "child pornography" as "any image depicting a minor<sup>30</sup> engaged in sexual conduct."<sup>31</sup> The term "sexual conduct" is defined as:

Actual or simulated<sup>32</sup> sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."<sup>33</sup>

The bill does not change any of the definitions in ch. 847, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

<sup>29</sup> *Stelmack v. State*, 58 So.3d 874, at 876 (Fla. 2<sup>nd</sup> DCA 2010).

<sup>30</sup> The term "minor" is defined as any person under the age of 18 years. Section 847.001(8), F.S.

<sup>31</sup> Section 847.001(3), F.S.

<sup>32</sup> The term "simulated" is defined as the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks. Section 847.001(19), F.S.

<sup>33</sup> Section 847.001(16), F.S.

1                   A bill to be entitled  
 2           An act relating to child pornography; amending s.  
 3           775.0847, F.S.; revising the definition of the term  
 4           "child pornography" to include visual depictions in  
 5           which it appears that a minor is engaging in sexual  
 6           conduct; providing that proof of the identity of a  
 7           minor is not required; defining the term "minor";  
 8           amending s. 827.071, F.S.; defining the terms "child  
 9           pornography" and "minor"; conforming cross-references;  
 10          including possession of child pornography within  
 11          specified offenses; providing penalties; amending s.  
 12          921.0022, F.S.; conforming provisions of the offense  
 13          severity ranking chart of the Criminal Punishment Code  
 14          to changes made by the act; reenacting s. 794.0115(2),  
 15          F.S., relating to dangerous sexual felony offenders  
 16          and mandatory sentencing thereof, to incorporate the  
 17          amendment to s. 827.071, F.S., in references thereto;  
 18          providing an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Paragraph (b) of subsection (1) of section  
 23           775.0847, Florida Statutes, is amended, a new paragraph (c) is  
 24           added to that subsection, and present paragraphs (c) through (f)  
 25           of that subsection are redesignated as paragraphs (d) through  
 26           (g), respectively, to read:

27           775.0847 Possession or promotion of certain images of  
 28           child pornography; reclassification.—



29 (1) For purposes of this section:

30 (b) "Child pornography" means any image depicting a minor  
 31 engaged in sexual conduct or such visual depiction that has been  
 32 created, adapted, or modified to appear that a minor is engaging  
 33 in sexual conduct. Proof of the identity of the minor is not  
 34 required in order to find a violation of this section.

35 (c) "Minor" means a person who had not attained the age of  
 36 18 years at the time the visual depiction was created, adapted,  
 37 or modified, or whose image while a minor was used in creating,  
 38 adapting, or modifying the visual depiction, and who is  
 39 recognizable as an actual person by the person's facial  
 40 features, likeness, or other distinguishing characteristics.

41 Section 2. New paragraphs (a) and (d) are added to  
 42 subsection (1) of section 827.071, Florida Statutes, present  
 43 paragraphs (a) through (j) of that subsection are redesignated  
 44 as paragraphs (b), (c), and (e) through (l) of that subsection,  
 45 respectively, and present paragraph (j) of subsection (1),  
 46 subsection (4), and paragraph (a) of subsection (5) of that  
 47 section are amended, to read:

48 827.071 Sexual performance by a child; penalties.—

49 (1) As used in this section, the following definitions  
 50 shall apply:

51 (a) "Child pornography" means any visual depiction,  
 52 including, but not limited to, any photograph, film, video,  
 53 picture, computer or computer-generated image or picture, or  
 54 digitally created image or picture, whether made or produced by  
 55 electronic, mechanical, or other means, of sexual conduct, where  
 56 the production of such visual depiction involves the use of a

57 minor engaging in sexual conduct, or such visual depiction has  
 58 been created, adapted, or modified to appear that a minor is  
 59 engaging in sexual conduct. Proof of the identity of the minor  
 60 is not required in order to find a violation of this section.

61 (d) "Minor" has the same meaning as provided in s.  
 62 775.0847.

63 (1)~~(j)~~ "Simulated" means the explicit depiction of conduct  
 64 set forth in paragraph (j) ~~(h)~~ which creates the appearance of  
 65 such conduct and which exhibits any uncovered portion of the  
 66 breasts, genitals, or buttocks.

67 (4) It is unlawful for any person to possess with the  
 68 intent to promote any child pornography or any other photograph,  
 69 motion picture, exhibition, show, representation, or other  
 70 presentation which, in whole or in part, includes any sexual  
 71 conduct by a child. The possession of three or more copies of  
 72 such photograph, motion picture, representation, or presentation  
 73 is prima facie evidence of an intent to promote. Whoever  
 74 violates this subsection commits ~~is guilty of~~ a felony of the  
 75 second degree, punishable as provided in s. 775.082, s. 775.083,  
 76 or s. 775.084.

77 (5)(a) It is unlawful for any person to knowingly possess,  
 78 control, or intentionally view child pornography or any other a  
 79 photograph, motion picture, exhibition, show, representation,  
 80 image, data, computer depiction, or other presentation which, in  
 81 whole or in part, he or she knows to include any sexual conduct  
 82 by a child. The possession, control, or intentional viewing of  
 83 each such photograph, motion picture, exhibition, show, image,  
 84 data, computer depiction, representation, or presentation is a

85 separate offense. A person who violates this paragraph  
 86 ~~subsection~~ commits a felony of the third degree, punishable as  
 87 provided in s. 775.082, s. 775.083, or s. 775.084.

88 Section 3. Paragraph (e) of subsection (3) of section  
 89 921.0022, Florida Statutes, is amended to read:

90 921.0022 Criminal Punishment Code; offense severity  
 91 ranking chart.—

- 92 (3) OFFENSE SEVERITY RANKING CHART
- 93 (e) LEVEL 5

94

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.

99

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100	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
101	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
102	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
103	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
104	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than <u>\$100,000</u> .
105	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
106	790.01(2)	3rd	Carrying a concealed firearm.
	790.162	2nd	Threat to throw or discharge

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107			destructive device.
108	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
109	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
110	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
111	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
112	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
113	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
114	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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115	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
116	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
117	812.131(2)(b)	3rd	Robbery by sudden snatching.
118	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
119	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
120	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
121	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.
	817.568(2)(b)	2nd	Fraudulent use of personal

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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.

122

817.625(2)(b)                      2nd      Second or subsequent fraudulent  
 use of scanning device or  
 reencoder.

123

825.1025(4)                      3rd      Lewd or lascivious exhibition  
 in the presence of an elderly  
 person or disabled adult.

124

827.071(4)                      2nd      Possess with intent to promote  
 any child pornography or other  
 photographic material, motion  
 picture, etc., which includes  
 sexual conduct by a child.

125

827.071(5)                      3rd      Possess, control, or  
 intentionally view any child  
pornography or other  
 photographic material, motion

126			picture, etc., which includes sexual conduct by a child.
127	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.
128	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
129	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
130	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
131	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent



132	893.13(1)(a)1.	2nd	<p>offense.</p> <p>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).</p>
133	893.13(1)(c)2.	2nd	<p>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.</p>
134	893.13(1)(d)1.	1st	<p>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) within 1,000 feet of university.</p>
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136	893.13(1)(e)2.	2nd	<p>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.</p>
137	893.13(1)(f)1.	1st	<p>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.</p>
138	893.13(4)(b)	2nd	<p>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., (2)(c)8., (2)(c)9., (3), or (4) drugs).</p>
	893.1351(1)	3rd	<p>Ownership, lease, or rental for trafficking in or manufacturing</p>

of controlled substance.

139

140 Section 4. For the purpose of incorporating the amendment  
 141 made by this act to section 827.071, Florida Statutes, in  
 142 references thereto, subsection (2) of section 794.0115, Florida  
 143 Statutes, is reenacted to read:

144 794.0115 Dangerous sexual felony offender; mandatory  
 145 sentencing.-

146 (2) Any person who is convicted of a violation of s.  
 147 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.  
 148 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or  
 149 (4); or s. 847.0145; or of any similar offense under a former  
 150 designation, which offense the person committed when he or she  
 151 was 18 years of age or older, and the person:

152 (a) Caused serious personal injury to the victim as a  
 153 result of the commission of the offense;

154 (b) Used or threatened to use a deadly weapon during the  
 155 commission of the offense;

156 (c) Victimized more than one person during the course of  
 157 the criminal episode applicable to the offense;

158 (d) Committed the offense while under the jurisdiction of  
 159 a court for a felony offense under the laws of this state, for  
 160 an offense that is a felony in another jurisdiction, or for an  
 161 offense that would be a felony if that offense were committed in  
 162 this state; or

163 (e) Has previously been convicted of a violation of s.  
 164 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.  
 165 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or

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166 (4); s. 847.0145; of any offense under a former statutory  
 167 designation which is similar in elements to an offense described  
 168 in this paragraph; or of any offense that is a felony in another  
 169 jurisdiction, or would be a felony if that offense were  
 170 committed in this state, and which is similar in elements to an  
 171 offense described in this paragraph,

172  
 173 is a dangerous sexual felony offender, who must be sentenced to  
 174 a mandatory minimum term of 25 years imprisonment up to, and  
 175 including, life imprisonment.

176 Section 5. This act shall take effect October 1, 2012.