



Criminal Justice Subcommittee

November 15th, 2011

9:00 AM

404 HOB

**Dean Cannon
Speaker**

**Gayle Harrell
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, November 15, 2011 09:00 am
End Date and Time: Tuesday, November 15, 2011 11:30 am
Location: 404 HOB
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 31 Funerals, Burials, and Memorial Services by Rooney
HB 329 Parole Interview Dates for Certain Inmates by Trujillo, Perry
HB 437 Protection of Minors by Eisnaugle
HB 4073 Florida Motor Vehicle Theft Prevention Authority by Young

Presentations on Risk Assessment Instruments.

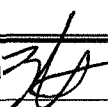
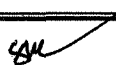
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 31 Funerals, Burials, and Memorial Services

SPONSOR(S): Rooney and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 632

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

SUMMARY ANALYSIS

Florida law currently contains a number of provisions that make it unlawful to incite riots, breach the peace, and disturb lawful assemblies. For example, s. 871.01, F.S., makes it unlawful for a person to:

- Willfully interrupt or disturb any lawful assembly, including schools and assemblies gathered for the worship of God.
- Willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a "military funeral honors detail" as defined by 10 U.S.C. s. 1491.

The bill expands current law targeting funeral disturbances by prohibiting a wider scope of conduct in a broader range of instances. Specifically, the bill makes it a first degree misdemeanor to knowingly picket or engage in protest activities or knowingly cause picketing or other protest activities to occur:

- Within 500 feet of the property line of any location,
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place for any military service member, emergency response worker, elected official, or minor.

The bill defines "other protest activities" as "any actions that are disruptive or undertaken to disrupt or disturb a funeral, burial, or memorial service."

The distinction between s. 871.01, F.S., and the bill's provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly *and that does in fact significantly disturb the assembly*. The bill prohibits "actions that are undertaken to disrupt" certain funerals under the specified conditions, regardless of whether those actions *do in fact* disrupt such funerals.

The bill may have a fiscal impact on county jails in that it creates a new first degree misdemeanor offense.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently contains a number of provisions that make it unlawful to incite riots, breach the peace, and disturb lawful assemblies. A summary of these statutes follows.

Section 877.03, F.S.

Section 877.03, F.S., relates to breach of the peace and disorderly conduct. The statute makes it a second degree misdemeanor¹ for a person to commit acts that:

- Corrupt public morals;
- Outrage the sense of public decency;
- Affect the peace and quiet of persons who may witness them;
- Engage in brawling or fighting; or
- Engage in such conduct as to constitute a breach of peace or disorderly conduct.

Florida courts have narrowed the construction of this language to prohibit speech that constitutes "fighting words"² or words that "inflict injury or tend to incite immediate breach of peace."³

Section 870.01, F.S.

Section 870.01, F.S., makes it a first degree misdemeanor⁴ for a person to commit an affray. The statute also makes it a third degree felony⁵ for a person to riot, or incite or encourage a riot. Although the terms "affray" and "riot" are not defined, the courts have upheld the statute against vagueness challenges.⁶

Section 870.02, F.S.

Section 870.02, F.S., relates to unlawful assemblies. The statute makes it a second degree misdemeanor for three or more persons to meet together to commit a breach of the peace,⁷ or to do any other unlawful act.

Section 871.01, F.S.

Section 871.01(1), F.S., makes it a second degree misdemeanor to willfully interrupt or disturb any lawful assembly, including schools and assemblies gathered for the worship of God. The Florida Supreme Court upheld this statute against First Amendment and overbreadth challenges.⁸

In 2006, in response to various groups creating public disturbances at high profile military funerals, subsection (2) was added to s. 871.01, F.S.⁹ Section 871.01(2), F.S., makes it a first degree misdemeanor for a person to willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a "military funeral honors detail" as defined by 10 U.S.C. s. 1491. A military honors detail includes the presence of two uniformed members of the armed forces, the playing of Taps, the folding of the United States flag and its presentation to the family.¹⁰

¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

² *Macon v. State*, 854 So.2d 834, 837 (Fla. 5th DCA 2003)

³ *United States v. Lyons*, 403 F.3d 1248, 1254 (11th Cir. 2005)

⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

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

⁶ *See D.L.B. v. State*, 707 So.2d 844, 845 (Fla. 2d DCA 1998) (statute sufficiently defines "affray", given that "readily available dictionaries define "affray" as a public fight or brawl"); *State v. Beasley*, 317 So.2d 750, 753 (Fla. 1975) (upholding Section 870.01(2), F.S. as constitutional upon the Court's authoritative, limiting construction).

⁷ Breach of the peace is described in s. 877.03, F.S.

⁸ *S.H.B. v. State*, 355 So.2d 1176 (Fla. 1978).

⁹ Chapter 2006-264, L.O.F., *Also see*, Florida House of Representatives Staff Analysis, House Bill 7127 (2006).

¹⁰ 10 U.S.C. s. 1491

Although s. 871.01, F.S., does not define the phrase “interrupt or disturb,” the Supreme Court of Florida has described the phrase as follows:

[A] person must have deliberately acted to create a disturbance...the person must have acted with the intention that his behavior impede the successful functioning of the assembly or with reckless disregard of the effect of his behavior; additionally, the acts complained of must be such that a reasonable person would expect them to be disruptive and the acts must, in fact, significantly disturb the assembly.¹¹

Effect of the Bill

The bill creates s. 871.015, F.S, which targets conduct that takes place within a specified time and distance of certain funerals. The bill expands current law targeting funeral disturbances by prohibiting a wider scope of conduct in a broader range of instances.

The bill makes it a first degree misdemeanor to knowingly picket or engage in protest activities or knowingly cause picketing or other protest activities to occur:

- Within 500 feet of the property line of any location,¹²
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place for any military service member, emergency response worker, elected official, or minor.

The bill defines “other protest activities” as “any actions that are disruptive or undertaken to disrupt or disturb a funeral, burial, or memorial service.”

The distinction between s. 871.01, F.S., and the bill’s provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly *and that does in fact significantly disturb the assembly*. The bill prohibits “actions that are undertaken to disrupt” certain funerals under the specified conditions, regardless of whether those actions *do in fact* disrupt such funerals.

B. SECTION DIRECTORY:

Section 1. Creates s. 871.015, F.S., relating to unlawful protests.

Section 2. Provides that the act shall take effect October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

¹¹ *S.H.B. v. State*, 355 So.2d 1176 (Fla. 1977) (“These elements are inherent in the statute as drafted.”).

¹² Including but not limited to a residence, cemetery, funeral home, or house of worship.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a fiscal impact on county jails in that it creates a new first degree misdemeanor offense.

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 of the U.S. Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech*, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."¹³

The First Amendment protects not only verbal speech, but also expressive conduct such as picketing.¹⁴

Snyder v. Phelps

A recent U.S. Supreme Court case addressed the First Amendment's relation to funeral protests. In March 2006, Westboro Baptist Church demonstrated near the funeral of Marine Lance Cpl. Matthew Snyder, who had been killed in Iraq. The demonstration included the display of signs reading "Thank God for Dead Soldiers," took place within 200-300 feet of the funeral procession, and concluded before the funeral began. Cpl. Snyder's father subsequently sued Westboro under state tort law, including a claim for intentional infliction of emotional distress. The jury found in favor of Snyder and awarded damages. On appeal, the U.S. Supreme Court found that the First Amendment protected Westboro's speech because, among other reasons, the speech took place in a public forum and the content was a matter of public concern. The Court also noted that even though the speech in this case was protected, even protected speech "may be subject to reasonable *time, place, or manner* restrictions that are *consistent with the standards announced in this Court's precedents*."¹⁵

It is important to note that the *Snyder* case did not involve the Court reviewing the constitutionality of a state statute regulating picketing. Rather, the Court addressed whether the First Amendment was a defense to a state tort claim for intentional emotional distress, which is a separate issue. Thus, when

¹³ Amendment I, United States Constitution (emphasis added).

¹⁴ See *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) ("ordinance affects picketing, which is expressive conduct" and is protected by the First Amendment).

¹⁵ *Snyder v. Phelps*, 131 S.Ct. 1207, 1218 (2011).

examining, the constitutionality of a statute that regulates picketing, it is important to examine whether the statute conforms to U.S. Supreme Court precedent.

Court Precedent

Content-Neutrality

The central analysis for First Amendment purposes is whether the government is restraining certain speech based on disagreement with its content.¹⁶ Statutes that do not restrain speech based on content are referred to as content-neutral statutes, while statutes that restrain speech based on are referred to as content-based statutes.

A statute is "content-neutral" if it regulates the activity regardless of the subject matter of the speech.¹⁷ The court reviews content-neutral time, place, manner regulations under "intermediate scrutiny."¹⁸ To survive intermediate scrutiny, the statute must (1) achieve a substantial state interest (2) through narrowly tailored means.¹⁹ As to the first element, a U.S. District Court in Ohio held in 2007 that the state has a significant interest in protecting its citizens from disruption during events associated with a funeral or burial service.²⁰ As to the second element, a statute is not narrowly tailored where "a substantial portion of the burden on speech does not serve to advance [the State's content-neutral] goals."²¹ For example, the District Court in the 2007 Ohio case held the 300 feet "fixed" buffer zone around funeral locations constitutional, but held the "floating buffer zone" around funeral processions unconstitutional because it was not narrowly tailored.²²

On the other hand, a regulation is "content-based" if it makes distinctions between the subject matter of speech affected by the regulation.²³ If a statute regulates speech based on subject matter, it is said to be content-based, and is subject to strict scrutiny by the Court. Strict scrutiny is substantially more difficult to survive, as it requires a compelling state interest (as opposed to a significant state interest), and must be narrowly tailored to that interest.²⁴

It could be argued that the bill is content-neutral, because it prohibits a person from engaging in protest activities with the intent to disrupt a funeral, regardless of the content of the protest activity. If content-neutral, the bill would be subject to intermediate scrutiny.²⁵

However, it could also be argued that the bill is content-based, because in reality, only protest activities involving certain content will be targeted. If content-based, the bill would be subject to strict scrutiny.²⁶

¹⁶ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)

¹⁷ For example, a U.S. Court of Appeals held in 2008 that an Ohio statute prohibiting protest activities within 300 ft of the location of a funeral during or within 1 hour before or 1 hour after a funeral being conducted is content-neutral. See *Phelps-Roper v. Taft*, 523 F.Supp.2d 612, 618 (N.D. Ohio 2007).

¹⁸ *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994) ("regulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny").

¹⁹ *Turner v. F.C.C.*, 512 U.S. at 662 (1994)

²⁰ *Phelps-Roper v. Taft*, 523 F.Supp.2d 612, 618 (N.D. Ohio 2007) aff'd in part sub nom. *Phelps-Roper v. Strickland*, 539 F.3d 356 (6th Cir. 2008)

²¹ *Turner Broad. v. F.C.C.*, 512 U.S. at 682 (quoting *Simon & Schuster*, 502 U.S. 105, 122 (1991) (internal quotation marks omitted)).

²² *Phelps-Roper v. Taft*, 523 F.Supp.2d at 620 (N.D. Ohio 2007) ("statute not narrowly tailored, in that it burdens substantially more speech than necessary to serve the State of Ohio's interest protecting its citizens from disruption during the events associated with a funeral or burial service").

²³ *Police Dept. v. Mosley*, 408 U.S. at 94 (statute that prohibits picketing within a certain distance of a school but exempts labor-related picketing is content-based).

²⁴ *Id.* at 535 (strict scrutiny means the statute must be "a narrowly tailored means of serving a compelling state interest").

²⁵ See *McQueary v. Stumbo*, 453 F.Supp.2d 975 (E.D. Ky. 2006) (holding funeral protest statute constitutional).

²⁶ See *Phelps-Roper v. Nixon*, 545 F.3d 685 (8th Cir. 2008).

Overbreadth Doctrine of the First Amendment

A statute that prohibits a substantial amount of protected speech may be held to be unconstitutionally overbroad.²⁷ In order for a statute to overcome an overbreadth challenge, it must be narrowly tailored to serve a significant government interest, similar to the content-neutral First Amendment analysis. "Narrowly tailored" does not necessarily mean it must be the least restrictive means of achieving that interest. As a U.S. District Court noted, "the requirement of narrow tailoring is satisfied so long as regulation promotes a substantial government interest that would be achieved less effectively absent the regulation."²⁸

The bill may be vulnerable to overbreadth challenges for two reasons. First, it may prohibit a substantial amount of protected speech as it may have a chilling effect on constitutionally protected speech. Second, it may prohibit more conduct than that which is necessary to protect the state interest at issue. A July 2010 Michigan case provides a relevant example. In that case, a Michigan couple, who was part of a vehicle funeral procession, were in their van, which had for years displayed various messages critical of U.S. policy and President Bush. These messages were observable from the outside of the van. The couple was arrested and held in jail for 24 hours under Michigan's funeral protest law which makes it illegal, in pertinent part, to engage in conduct that will adversely affect a funeral or funeral procession. The U.S. District Court found that parts of the statute were likely unconstitutional under the overbreadth doctrine of the First Amendment.²⁹

Vagueness Doctrine of the Fourteenth Amendment

A statute is unconstitutional under the vagueness doctrine if an ordinary person of average intelligence would not be put on notice as to what conduct is prohibited by the statute. Vague statutes invite arbitrary and discriminatory enforcement.³⁰ When a statute is challenged as having a chilling effect on constitutionally protected speech due to vagueness, courts have held that a more stringent vagueness test should apply.³¹

The bill may be vulnerable to vagueness challenges if an ordinary person of average intelligence would not understand what type of conduct would be deemed conduct "undertaken to disrupt" a funeral.

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 uses the terms "disrupt," without providing a definition.

Section 871.01, F.S., prohibits conduct that "disturbs," which is not defined in the statute but has withstood vagueness challenges in the Florida Supreme Court.³² If the intent of the bill is to prohibit a broader scope of conduct than s. 871.01, F.S., by distinguishing "disturb" from "disrupt," then "disrupt" may need to be defined, because the two terms are similar and are used in similar contexts, and therefore may be difficult for a common person to distinguish.

The bill uses the term "picket" without providing a definition.

The bill defines "other protest activities," but it does not include "picket" within that definition. Instead, the bill prohibits picketing *or* other protest activities. If the intent of the bill is to prohibit picketing that disrupts or disturbs certain funerals, "picketing" should be included in the definition as a specific example of a protest activity.³³

²⁷ *United States v. Williams*, 553 U.S. 285, 292 (2008).

²⁸ *Phelps-Roper v. Taft*, 523 F.Supp.2d 612 (N.D. Ohio 2007).

²⁹ *Lowden v. County of Clare*, 709 F.Supp.2d 540, 563 (E.D. Mich. 2010) ("...the interaction of the 500 foot buffer zone and the "adversely affects" language is particularly problematic given the broad scope of expressive activity restricted in such a large space").

³⁰ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

³¹ *Vill. Of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982).

³² *S.H.B. v. State*, 355 So.2d 1176, 1178 (Fla. 1977)

³³ For example, the definition could read: "As used in this section, the term "other protest activities" means any actions, including but not limited to picketing, that are disruptive or undertaken to disrupt or disturb a funeral, burial, or memorial service."

The bill does not link the intent element of the conduct to the prohibited instance of that conduct.

The bill prohibits “other protest activities” in instances where such conduct is within 500 feet and 1 hour of funerals, burials, or memorial services of specified individuals. The bill defines “other protest activities” as “any actions that are disruptive or undertaken to disrupt or disturb a funeral, burial, or memorial service.” If the intent of the bill is to prohibit protest activities that disrupt only the funerals, burials, or memorial services of the specified individuals, the definition should reference activities that disrupt only those specific funerals, burials, or memorial services. Otherwise, conduct that meets the criteria of a protest activity but does not meet the criteria for the prohibited instance of a protest activity could be prohibited.³⁴

The bill uses the terms “military service member,” “emergency service worker,” and “minor” without providing definitions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁴ For example, if there are two funerals taking place. A protest activity targeted at a military funeral could be 2 hours after that funeral, but within 30 minutes of the funeral for an emergency worker. The activity would be illegal, although it is not intended to disrupt the funeral for the emergency worker.

1 A bill to be entitled
 2 An act relating to funerals, burials, and memorial
 3 services; creating s. 871.015, F.S.; providing a
 4 definition; prohibiting picketing or engaging in other
 5 protest activities within a specified distance of the
 6 property line of the location of a funeral, burial, or
 7 memorial service for certain persons; providing
 8 criminal penalties; providing an effective date.

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

11
 12 Section 1. Section 871.015, Florida Statutes, is created
 13 to read:

14 871.015 Unlawful protests.-

15 (1) As used in this section, the term "other protest
 16 activities" means any actions that are disruptive or undertaken
 17 to disrupt or disturb a funeral, burial, or memorial service.

18 (2) A person may not knowingly picket or engage in other
 19 protest activities, and a person may not knowingly cause
 20 picketing or other protest activities to occur, within 500 feet
 21 of the property line of any residence, cemetery, funeral home,
 22 house of worship, or other location during or within 1 hour
 23 before or 1 hour after the conducting of a funeral, burial, or
 24 memorial service at that place for any military service member,
 25 emergency response worker, elected official, or minor.

26 (3) A person who violates this section commits a
 27 misdemeanor of the first degree, punishable as provided in s.
 28 775.082 or s. 775.083.

HB 31

2012

29

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Parole Interview Dates for Certain Inmates
SPONSOR(S): Trujillo, Perry, and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 506

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

SUMMARY ANALYSIS

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

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

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

- Kidnapping; or
- Robbery, burglary of dwelling, or burglary of a structure or conveyance in which a human being is present and a sexual act is completed or attempted.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission. Parolees are supervised by Correctional Probation Officers of the Department of Corrections (department). Parole is not available for most crimes that were committed on or after October 1, 1983.¹ There is no parole eligibility for any crime committed on or after October 1, 1995. The commission reports that currently there are 5,360 Florida inmates still eligible for parole consideration with about 489 under supervision in the community.²

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

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

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

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

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

²E-mail from Sarah Rumph, Florida Parole Commission, November 4, 2011. (On file with subcommittee staff.)

³Section 947.172, F.S.

⁴Section 947.005(8), F.S.

⁵Section 947.173(1), F.S.

⁶Section 947.174, F.S.

⁷*Id.*

⁸*Id.*

⁹Section 947.174(1)(b), F.S.

¹⁰*Id.*

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

¹²Section 947.174(1)(c), F.S.

¹³Section 947.174(3), F.S.

¹⁴Rule 23-21.0052, F.A.C.

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

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

Proposed Changes

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

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

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

- Kidnapping; or
- Robbery, burglary of dwelling, or burglary of a structure or conveyance in which a human being is present and a sexual act is completed or attempted.

B. SECTION DIRECTORY:

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

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

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

Section 4. Provides an effective date of July 1, 2012.

¹⁵ Rule 23-21.004, F.A.C.

¹⁶ Section 947.06, F.S.

¹⁷ *Id.*

¹⁸ Section 947.1745(1), F.S.

¹⁹ Section 947.1745(6), F.S.

²⁰ *Id.*

²¹ Rule 23-21.015, F.A.C.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Parole Commission, through working with the Department of Corrections, reports that this bill will affect an estimated 162 to 531 inmates. However, the Parole Commission reports that the bill will have no impact on the number of commission hearings held annually because the workload associated with these subsequent parole interviews is not being eliminated; it is merely being postponed for an additional time period.

This bill is similar to SB 200 which passed during the 2010 Legislative Session. Senate Bill 200 extended the interview dates from five to seven years for specified crimes which resulted in a workload equivalent to 0.5 FTE (\$26,968 annually).²² However, unlike SB 200, where interview dates were based upon the crime the offender committed, this bill bases the interview dates upon the behavior during the crime.²³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

On June 1, 1997, the Legislature changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years.²⁴ According to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.²⁵

²² Florida Parole Commission 2012 Analysis of HB 329.

²³ *Id.*

²⁴ Chapter 97-289, L.O.F.

²⁵ *Tuff v. State*, 732 So.2d 461 (3rd DCA 1999).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill adds the following offenses to the list of specified crimes that would require an inmate to be re-interviewed by the Parole Commission every seven years instead of every two years: kidnapping, or robbery, burglary of dwelling, or burglary of a structure or conveyance in which a human being is present and a sexual act is completed or attempted.

In section 2 of the bill, it is unclear what crimes the phrase "in which a human being is present and a sexual act is completed or attempted" applies to.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to parole interview dates for certain
 3 inmates; amending ss. 947.16, 947.174, and 947.1745,
 4 F.S.; extending from 2 years to 7 years the period
 5 between parole interview dates for inmates convicted
 6 of committing specified crimes; requiring a periodic
 7 parole interview for an inmate convicted of
 8 kidnapping, robbery, burglary of a dwelling, or
 9 burglary of a structure or conveyance in which a human
 10 being is present and a sexual act is completed or
 11 attempted; providing an effective date.

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

14
 15 Section 1. Paragraph (g) of subsection (4) of section
 16 947.16, Florida Statutes, is amended to read:

17 947.16 Eligibility for parole; initial parole interviews;
 18 powers and duties of commission.—

19 (4) A person who has become eligible for an initial parole
 20 interview and who may, according to the objective parole
 21 guidelines of the commission, be granted parole shall be placed
 22 on parole in accordance with the provisions of this law; except
 23 that, in any case of a person convicted of murder, robbery,
 24 burglary of a dwelling or burglary of a structure or conveyance
 25 in which a human being is present, aggravated assault,
 26 aggravated battery, kidnapping, sexual battery or attempted
 27 sexual battery, incest or attempted incest, an unnatural and
 28 lascivious act or an attempted unnatural and lascivious act,

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

46 | (g) The decision of the original sentencing judge or, in
 47 | her or his absence, the chief judge of the circuit to vacate any
 48 | parole release order as provided in this section is not
 49 | appealable. Each inmate whose parole release order has been
 50 | vacated by the court shall be reinterviewed within 2 years after
 51 | the date of receipt of the vacated release order and every 2
 52 | years thereafter, or earlier by order of the court retaining
 53 | jurisdiction. However, each inmate whose parole release order
 54 | has been vacated by the court and who has been:

- 55 | 1. Convicted of murder or attempted murder;
- 56 | 2. Convicted of sexual battery or attempted sexual

57 battery; ~~or~~

58 3. Convicted of kidnapping;

59 4. Convicted of robbery, burglary of a dwelling, or
 60 burglary of a structure or conveyance in which a human being is
 61 present and a sexual act is completed or attempted; or

62 ~~5.3.~~ Sentenced to a 25-year minimum mandatory sentence
 63 previously provided in s. 775.082,

64

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

73 Section 2. Paragraph (b) of subsection (1) of section
 74 947.174, Florida Statutes, is amended to read:

75 947.174 Subsequent interviews.—

76 (1)

77 (b) For any inmate convicted of murder, attempted murder,
 78 sexual battery, ~~or attempted sexual battery,~~ kidnapping,
 79 robbery, burglary of a dwelling, or burglary of a structure or
 80 conveyance in which a human being is present and a sexual act is
 81 completed or attempted, or any inmate who has been sentenced to
 82 a 25-year minimum mandatory sentence previously provided in s.
 83 775.082, and whose presumptive parole release date is more than
 84 7 years after the date of the initial interview, a hearing

85 | examiner shall schedule an interview for review of the
 86 | presumptive parole release date. The interview shall take place
 87 | once within 7 years after the initial interview and once every 7
 88 | years thereafter if the commission finds that it is not
 89 | reasonable to expect that parole will be granted at a hearing
 90 | during the following years and states the bases for the finding
 91 | in writing. For any inmate who is within 7 years of his or her
 92 | tentative release date, the commission may establish an
 93 | interview date before the 7-year schedule.

94 | Section 3. Subsection (6) of section 947.1745, Florida
 95 | Statutes, is amended to read:

96 | 947.1745 Establishment of effective parole release date.—
 97 | If the inmate's institutional conduct has been satisfactory, the
 98 | presumptive parole release date shall become the effective
 99 | parole release date as follows:

100 | (6) Within 90 days before the effective parole release
 101 | date interview, the commission shall send written notice to the
 102 | sentencing judge of any inmate who has been scheduled for an
 103 | effective parole release date interview. If the sentencing judge
 104 | is no longer serving, the notice must be sent to the chief judge
 105 | of the circuit in which the offender was sentenced. The chief
 106 | judge may designate any circuit judge within the circuit to act
 107 | in the place of the sentencing judge. Within 30 days after
 108 | receipt of the commission's notice, the sentencing judge, or the
 109 | designee, shall send to the commission notice of objection to
 110 | parole release, if the judge objects to such release. If there
 111 | is objection by the judge, such objection may constitute good
 112 | cause in exceptional circumstances as described in s. 947.173,

113 and the commission may schedule a subsequent review within 2
 114 years, extending the presumptive parole release date beyond that
 115 time. However, for an inmate who has been:

116 (a) Convicted of murder or attempted murder;

117 (b) Convicted of sexual battery or attempted sexual
 118 battery; ~~or~~

119 (c) Convicted of kidnapping;

120 (d) Convicted of robbery, burglary of a dwelling, or
 121 burglary of a structure or conveyance in which a human being is
 122 present and a sexual act is completed or attempted; or

123 (e) ~~(e)~~ Sentenced to a 25-year minimum mandatory sentence
 124 previously provided in s. 775.082,

125

126 the commission may schedule a subsequent review under this
 127 subsection once every 7 years, extending the presumptive parole
 128 release date beyond that time if the commission finds that it is
 129 not reasonable to expect that parole would be granted at a
 130 review during the following years and states the bases for the
 131 finding in writing. For any inmate who is within 7 years of his
 132 or her release date, the commission may schedule a subsequent
 133 review prior to the 7-year schedule. With any subsequent review
 134 the same procedure outlined above will be followed. If the judge
 135 remains silent with respect to parole release, the commission
 136 may authorize an effective parole release date. This subsection
 137 applies if the commission desires to consider the establishment
 138 of an effective release date without delivery of the effective
 139 parole release date interview. Notice of the effective release
 140 date must be sent to the sentencing judge, and either the

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141 | judge's response to the notice must be received or the time
142 | period allowed for such response must elapse before the
143 | commission may authorize an effective release date.

144 | Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 437 Protection of Minors
SPONSOR(S): Eisnaugle
TIED BILLS: None IDEN./SIM. BILLS: SB 436

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, Cunningham, Cunningham. Row 2: 2) Justice Appropriations Subcommittee. Row 3: 3) Judiciary Committee.

SUMMARY ANALYSIS

Section 810.145, F.S., establishes the crime of video voyeurism. Subsection (8)(a) of the statute makes it a 3rd degree felony for specified persons to commit video voyeurism if the victim is a student or a child less than 16. The penalty is enhanced to a 2nd degree felony, ranked in Level 4 of the Offense Severity Ranking Chart, if the person who violates subsection (8)(a) has a prior video voyeurism conviction.

The bill increases the penalty for violations of subsection (8)(a) of the statute from a 3rd degree felony to a 2nd degree felony. A violation of subsection (8)(a) by persons who have a prior video voyeurism conviction remains a 2nd degree felony, but the bill ranks such offense in Level 6 of the Offense Severity Ranking Chart.

The bill also amends the definition of the phrase "place and time when a person has a reasonable expectation of privacy," as used in the video voyeurism statute, to specify that such locations include a "residential dwelling."

The bill amends the definition of the term "sexual offender" to add s. 810.145(8)(a), F.S., to the list of offenses that qualify a person as a sexual offender. The bill also amends s. 775.21, F.S., to require a person be designated a sexual predator if the person is convicted of s. 810.145(8), F.S., and has previously been convicted of a qualifying offense. This will have the effect of expanding the number of persons who qualify as sexual offenders and sexual predators.

The bill also amends s. 827.071(5), F.S., which makes it a 3rd degree felony for any person to knowingly possess, control, or intentionally view photographs, images, etc., which, in whole or in part, he or she knows to include any sexual conduct by a child. The bill specifies that if such photographs, images, etc. include sexual conduct by more than one child, then each child in each photograph, image, etc. is a separate offense. As a result, a person who knowingly possesses one photograph that depicts sexual conduct by four different children could be charged with four separate violations of the statute.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill increases the penalties for violations of s. 810.145(8), F.S., and increases the instances in which a person can be charged with a violation of s. 827.071(5), F.S., it will likely have a negative prison bed impact on the Department of Corrections. Additionally, FDLE reports that expanding the number of persons who qualify as sexual offenders and sexual predators will require programming changes to the sexual offender/sexual predator database, which will cost \$28,625 in non-recurring dollars.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Video Voyeurism

Section 810.145, F.S., establishes the crime of video voyeurism. A person commits the offense of video voyeurism if that person:

- For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;
- For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
- For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.¹

For purposes of video voyeurism, the phrase "place and time when a person has a reasonable expectation of privacy" is defined as:

A place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.²

Generally, a first-time violation of video voyeurism is a 1st degree misdemeanor,³ and second or subsequent violations are 3rd degree felonies.⁴ However, s. 810.145(8)(a), F.S., specifies that the penalty for video voyeurism is a 3rd degree felony for persons:

- Who are 18 years of age or older and who are responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, who commit video voyeurism against that child;
- Who are 18 years of age or older and who are employed at a private school,⁵ a school,⁶ or a voluntary prekindergarten education program,⁷ who commit video voyeurism against a student of the private school, school, or voluntary prekindergarten education program; or
- Who are 24 years of age or older who commit video voyeurism against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child.⁸

¹ Section 810.145(2), F.S.

² Section 810.145(1)(c), F.S.

³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁵ As defined in s. 1002.01, F.S.

⁶ As defined in s. 1003.01, F.S.

⁷ As described in s. 1002.53(3)(a), (b), or (c), F.S.

⁸ Section 810.145(8)(a), F.S.

Section 810.145(8)(b), F.S., makes it a 2nd degree felony⁹ if a person violates s. 810.145(8)(a), F.S., and that person has previously been convicted or adjudicated delinquent for any violation of s. 810.145, F.S. Because this offense is not currently ranked in the Criminal Punishment Code “offense severity ranking chart,”¹⁰ it defaults to a Level 4 ranking, which equates to 22 sentencing points.¹¹

The statute provides exceptions for the above-described criminal penalties to ensure that the statute does not criminalize legitimate law enforcement surveillance, security systems if a notice is posted, and video surveillance devices that are clearly and immediately obvious.¹² There is also an exception for providers of electronic communication services and providers of remote computing services.¹³

Effect of the Bill

The bill amends s. 810.145, F.S., to increase the penalties associated with the video voyeurism offenses specified in subsection (8). The penalty for first-time violations of subsection (8)(a) of the statute is increased from a 3rd degree felony to a 2nd degree felony. Violations of s. 810.145(8)(b), F.S., remain 2nd degree felonies, but the bill ranks this offense in Level 6 of the Criminal Punishment Code “offense severity ranking chart,” which equates to 36 sentencing points.

The bill also amends the definition of the phrase “place and time when a person has a reasonable expectation of privacy” to specify that such locations include a “residential dwelling.”

Sexual Offenders and Sexual Predators – Qualifying Offenses

In very general terms, the distinction between a sexual predator and a sexual offender is based 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 was committed.

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

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 and has been released on or after October 1, 1997, from the sanction imposed for any conviction of such offense:

- Section 787.01, F.S. (kidnapping)
- Section 787.02, F.S. (false imprisonment)
- Section 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.¹⁴
- 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)

⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record; and other aggravating factors. The points are added in order to determine the “lowest permissible sentence” for the offense. Sections 921.0022 and 921.0024, F.S.

¹¹ Section 921.0023, F.S.

¹² Section 810.145(5), F.S.

¹³ *Id.*

¹⁴ Section 794.011(1), F.S., relates to falsely accusing specified persons of sexual battery.

- 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.¹⁵
- 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)

Section 775.21, F.S., the “Florida Sexual Predators Act,” provides, in part, that a person must be designated a “sexual predator”:

- If the person was convicted of a felony on or after October 1, 1993, that is any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction; and
- The offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction.¹⁶

Effect of the Bill

The bill amends the definition of the term “sexual offender” in s. 943.0435, F.S., to add s. 810.145(8)(a), F.S. (video voyeurism where the victim is a student or under the age of 16), to the list of offenses that, upon conviction, qualify a person as a sexual offender.

The bill also amends s. 775.21, F.S., to require a person be designated a sexual predator if the person is convicted of s. 810.145(8)(a) or (b), F.S. (video voyeurism where the victim is a student or under the age of 16 with a prior conviction of video voyeurism), and has previously been convicted of one of the above-described qualifying offenses (including s. 810.145(8), F.S.).

Sexual Performance by a Child

Section 827.071(5), F.S., makes it a 3rd degree felony for any 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 conduct¹⁷ by a child. The statute specifies that the possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense.

¹⁵ Section 947.0135(6), F.S., provides that it is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of s. 947.0135, F.S.

¹⁶ Section 775.21(4)(a), F.S.

¹⁷ The term “sexual conduct” is defined as 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. *See* section 827.071(1), F.S.

Recently, Florida's 1st District Court of Appeal reviewed a case where the defendant had been convicted of multiple counts of s. 827.071(5), F.S., based on a single video.¹⁸ The State argued that the convictions were proper because multiple children were depicted in the video.¹⁹ The court disagreed noting that s. 827.071(5), F.S., does not contemplate a separate conviction for each child depicted in a single photograph.²⁰

Effect of the Bill

The bill specifies that if a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation is a separate offense. As a result, a person who knowingly possesses one photograph that depicts sexual conduct by four different children could be charged with four separate violations of the statute.

B. SECTION DIRECTORY:

Section 1. Cites the bill as the "Protect Our Children Act of 2012."

Section 2. Amends s. 775.21, F.S., relating to the Florida Sexual Predator Act.

Section 3. Amends s. 827.071, F.S., relating to sexual performance by a child; penalties.

Section 4. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 5. Amends s. 810.145, F.S., relating to video voyeurism.

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

Section 7. Provides an October 1, 2012 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 Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, because the bill increases the penalties for violations of s. 810.145(8), F.S., and increases the instances in which a person can be charged with a violation of s. 827.071(5), F.S., it will likely have a negative prison bed impact on the Department of Corrections.

Additionally, FDLE reports that expanding the number of persons who qualify as sexual offenders and sexual predators will require programming changes to the sexual offender/sexual predator database, which will cost \$28,625 in non-recurring dollars.²¹

¹⁸ *Stowe v. State*, 66 So.3d 1015 (Fla. 1st DCA 2011).

¹⁹ *Id.*

²⁰ *Id.*

²¹ FDLE Analysis of HB 437, dated November 9, 2011. On file with Criminal Justice Subcommittee staff.

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:

1. 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, also contain definitions of the term "sexual offender" that include the list of offenses in s. 943.0435, F.S. These statutes should also be amended to include the offense of video voyeurism as an offense that qualifies a person as a sexual offender.

2. Section 3 of the bill amends s. 827.071(5), F.S., which makes it a 3rd degree felony for any person to *knowingly possess, control, or intentionally view* a photograph, etc., which, in whole or in part, he or she knows to include any sexual conduct by a child. The statute specifies that the *possession, control, or intentional viewing* of each such photograph, etc., is a separate offense.

The bill specifies that if a photograph, etc., includes sexual conduct by more than one child, then each such child in each such photograph, etc., is a separate offense. This language does not include a requirement that such photograph, etc., be knowingly possessed, controlled, or intentionally viewed.

3. The bill adds specified video voyeurism offenses to the list of offenses that qualify a person as a sexual offender and a sexual predator. As drafted, a person who violates s. 810.145(8)(a), F.S. (*first-time* video voyeurism involving a student or child younger than 16) qualifies as a sexual offender, but a person who violates s. 810.145(8)(b), F.S., (*multiple* violations of the video voyeurism statute) does not. Similarly, a person who *only* violates s. 810.145(8)(a), F.S., could be designated a sexual predator. If the intent is to ensure that persons who violate s. 810.145(8)(a) and (b) qualify as a sexual offender, and to ensure that only those who commit multiple violations of the video voyeurism statute qualify to designated sexual predators, the video voyeurism citations in ss. 943.0435 and 775.21, F.S., need to be amended.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to protection of minors; providing a
 short title; amending s. 775.21, F.S.; requiring a
 person convicted of a second or subsequent violation
 of a specified video voyeurism provision to register
 as a sexual offender if the victim of the violation
 was a minor; amending s. 827.071, F.S.; providing that
 if more than one child is involved in a violation of
 provisions prohibiting sexual performance by a child,
 each child involved in the violation creates a
 separate offense; amending s. 943.0435, F.S.;
 requiring a person convicted of a video voyeurism
 violation to register as a sexual offender if the
 victim of the violation was a minor; amending s.
 810.145, F.S.; revising the definition of the term
 "place and time when a person has a reasonable
 expectation of privacy" to include the interior of a
 residential dwelling; increasing the classification of
 specified video voyeurism offenses involving minors;
 amending s. 921.0022, F.S.; ranking a violation of s.
 810.145(8)(b), F.S., above its default value for
 purposes of the offense severity ranking chart of the
 Criminal Punishment Code; providing an effective date.

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

Section 1. This act may be cited as the "Protect Our
 Children Act of 2012."

29 Section 2. Paragraph (a) of subsection (4) of section
 30 775.21, Florida Statutes, is amended to read:

31 775.21 The Florida Sexual Predators Act.—

32 (4) SEXUAL PREDATOR CRITERIA.—

33 (a) For a current offense committed on or after October 1,
 34 1993, upon conviction, an offender shall be designated as a
 35 "sexual predator" under subsection (5), and subject to
 36 registration under subsection (6) and community and public
 37 notification under subsection (7) if:

38 1. The felony is:

39 a. A capital, life, or first-degree felony violation, or
 40 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 41 is a minor and the defendant is not the victim's parent or
 42 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 43 violation of a similar law of another jurisdiction; or

44 b. Any felony violation, or any attempt thereof, of s.
 45 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 46 minor and the defendant is not the victim's parent or guardian;
 47 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 48 796.035; s. 800.04; s. 810.145(8); s. 825.1025(2)(b); s.
 49 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a
 50 violation of a similar law of another jurisdiction, and the
 51 offender has previously been convicted of or found to have
 52 committed, or has pled nolo contendere or guilty to, regardless
 53 of adjudication, any violation of s. 787.01, s. 787.02, or s.
 54 787.025(2)(c), where the victim is a minor and the defendant is
 55 not the victim's parent or guardian; s. 794.011, excluding s.
 56 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.

57 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 58 excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a
 59 violation of a similar law of another jurisdiction;

60 2. The offender has not received a pardon for any felony
 61 or similar law of another jurisdiction that is necessary for the
 62 operation of this paragraph; and

63 3. A conviction of a felony or similar law of another
 64 jurisdiction necessary to the operation of this paragraph has
 65 not been set aside in any postconviction proceeding.

66 Section 3. Paragraph (a) of subsection (5) of section
 67 827.071, Florida Statutes, is amended to read:

68 827.071 Sexual performance by a child; penalties.—

69 (5)(a) It is unlawful for any person to knowingly possess,
 70 control, or intentionally view a photograph, motion picture,
 71 exhibition, show, representation, image, data, computer
 72 depiction, or other presentation which, in whole or in part, he
 73 or she knows to include any sexual conduct by a child. The
 74 possession, control, or intentional viewing of each such
 75 photograph, motion picture, exhibition, show, image, data,
 76 computer depiction, representation, or presentation is a
 77 separate offense. If a photograph, motion picture, exhibition,
 78 show, representation, image, data, computer depiction, or other
 79 presentation includes sexual conduct by more than one child,
 80 then each such child in each such photograph, motion picture,
 81 exhibition, show, representation, image, data, computer
 82 depiction, or other presentation is a separate offense. A person
 83 who violates this subsection commits a felony of the third
 84 degree, punishable as provided in s. 775.082, s. 775.083, or s.

85 | 775.084.

86 | Section 4. Paragraph (a) of subsection (1) of section
87 | 943.0435, Florida Statutes, is amended to read:

88 | 943.0435 Sexual offenders required to register with the
89 | department; penalty.—

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

91 | (a)1. "Sexual offender" means a person who meets the
92 | criteria in sub-subparagraph a., sub-subparagraph b., sub-
93 | subparagraph c., or sub-subparagraph d., as follows:

94 | a.(I) Has been convicted of committing, or attempting,
95 | soliciting, or conspiring to commit, any of the criminal
96 | offenses proscribed in the following statutes in this state or
97 | similar offenses in another jurisdiction: s. 787.01, s. 787.02,
98 | or s. 787.025(2)(c), where the victim is a minor and the
99 | defendant is not the victim's parent or guardian; s. 794.011,
100 | excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
101 | 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071; s. 847.0133;
102 | s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;
103 | s. 847.0145; or s. 985.701(1); or any similar offense committed
104 | in this state which has been redesignated from a former statute
105 | number to one of those listed in this sub-sub-subparagraph; and

106 | (II) Has been released on or after October 1, 1997, from
107 | the sanction imposed for any conviction of an offense described
108 | in sub-sub-subparagraph (I). For purposes of sub-sub-
109 | subparagraph (I), a sanction imposed in this state or in any
110 | other jurisdiction includes, but is not limited to, a fine,
111 | probation, community control, parole, conditional release,
112 | control release, or incarceration in a state prison, federal

113 | prison, private correctional facility, or local detention
 114 | facility;

115 | b. Establishes or maintains a residence in this state and
 116 | who has not been designated as a sexual predator by a court of
 117 | this state but who has been designated as a sexual predator, as
 118 | a sexually violent predator, or by another sexual offender
 119 | designation in another state or jurisdiction and was, as a
 120 | result of such designation, subjected to registration or
 121 | community or public notification, or both, or would be if the
 122 | person were a resident of that state or jurisdiction, without
 123 | regard to whether the person otherwise meets the criteria for
 124 | registration as a sexual offender;

125 | c. Establishes or maintains a residence in this state who
 126 | is in the custody or control of, or under the supervision of,
 127 | any other state or jurisdiction as a result of a conviction for
 128 | committing, or attempting, soliciting, or conspiring to commit,
 129 | any of the criminal offenses proscribed in the following
 130 | statutes or similar offense in another jurisdiction: s. 787.01,
 131 | s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 132 | the defendant is not the victim's parent or guardian; s.
 133 | 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 134 | 796.035; s. 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071;
 135 | s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137;
 136 | s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar
 137 | offense committed in this state which has been redesignated from
 138 | a former statute number to one of those listed in this sub-
 139 | subparagraph; or

140 | d. On or after July 1, 2007, has been adjudicated

141 delinquent for committing, or attempting, soliciting, or
 142 conspiring to commit, any of the criminal offenses proscribed in
 143 the following statutes in this state or similar offenses in
 144 another jurisdiction when the juvenile was 14 years of age or
 145 older at the time of the offense:

- 146 (I) Section 794.011, excluding s. 794.011(10);
- 147 (II) Section 800.04(4)(b) where the victim is under 12
 148 years of age or where the court finds sexual activity by the use
 149 of force or coercion;
- 150 (III) Section 800.04(5)(c)1. where the court finds
 151 molestation involving unclothed genitals; or
- 152 (IV) Section 800.04(5)(d) where the court finds the use of
 153 force or coercion and unclothed genitals.

154 2. For all qualifying offenses listed in sub-subparagraph
 155 (1)(a)1.d., the court shall make a written finding of the age of
 156 the offender at the time of the offense.

157
 158 For each violation of a qualifying offense listed in this
 159 subsection, the court shall make a written finding of the age of
 160 the victim at the time of the offense. For a violation of s.
 161 800.04(4), the court shall additionally make a written finding
 162 indicating that the offense did or did not involve sexual
 163 activity and indicating that the offense did or did not involve
 164 force or coercion. For a violation of s. 800.04(5), the court
 165 shall additionally make a written finding that the offense did
 166 or did not involve unclothed genitals or genital area and that
 167 the offense did or did not involve the use of force or coercion.

168 Section 5. Paragraph (c) of subsection (1) and subsection
 169 (8) of section 810.145, Florida Statutes, are amended to read:

170 810.145 Video voyeurism.—

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

172 (c) "Place and time when a person has a reasonable
 173 expectation of privacy" means a place and time when a reasonable
 174 person would believe that he or she could fully disrobe in
 175 privacy, without being concerned that the person's undressing
 176 was being viewed, recorded, or broadcasted by another,
 177 including, but not limited to, the interior of a residential
 178 dwelling, bathroom, changing room, fitting room, dressing room,
 179 or tanning booth.

180 (8)(a) A person who is:

181 1. Eighteen years of age or older who is responsible for
 182 the welfare of a child younger than 16 years of age, regardless
 183 of whether the person knows or has reason to know the age of the
 184 child, and who commits an offense under this section against
 185 that child;

186 2. Eighteen years of age or older who is employed at a
 187 private school as defined in s. 1002.01; a school as defined in
 188 s. 1003.01; or a voluntary prekindergarten education program as
 189 described in s. 1002.53(3)(a), (b), or (c) and who commits an
 190 offense under this section against a student of the private
 191 school, school, or voluntary prekindergarten education program;
 192 or

193 3. Twenty-four years of age or older who commits an
 194 offense under this section against a child younger than 16 years
 195 of age, regardless of whether the person knows or has reason to

196 know the age of the child

197

198 commits a felony of the second ~~third~~ degree, punishable as
 199 provided in s. 775.082, s. 775.083, or s. 775.084.

200 (b) A person who violates this subsection and who has
 201 previously been convicted of or adjudicated delinquent for any
 202 violation of this section commits a felony of the second degree,
 203 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

204 Section 6. Paragraph (f) of subsection (3) of section
 205 921.0022, Florida Statutes, is amended to read:

206 921.0022 Criminal Punishment Code; offense severity
 207 ranking chart.—

208 (3) OFFENSE SEVERITY RANKING CHART

209 (f) LEVEL 6

210

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.

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215	499.0051 (5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
216	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
217	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
218	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
219	784.041	3rd	Felony battery; domestic battery by strangulation.
220	784.048 (3)	3rd	Aggravated stalking; credible threat.
221	784.048 (5)	3rd	Aggravated stalking of person under 16.
222	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility

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			staff.
223	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
224	784.081(2)	2nd	Aggravated assault on specified official or employee.
225	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
226	784.083(2)	2nd	Aggravated assault on code inspector.
227	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
228	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
229	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
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231	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
232	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
233	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
234	794.05(1)	2nd	Unlawful sexual activity with specified minor.
235	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.
236	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any

237			other person.
	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
238	<u>810.145(8)(b)</u>	<u>2nd</u>	<u>Video voyeurism; certain minor victims; 2nd or subsequent offense.</u>
239	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
240	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
241	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
242	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
243	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
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245	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
246	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
247	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
248	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
249	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
250	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
251	827.03(1)	3rd	Abuse of a child.
252	827.03(3)(c)	3rd	Neglect of a child.
	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote

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253			or direct such performance.
254	836.05	2nd	Threats; extortion.
255	836.10	2nd	Written threats to kill or do bodily injury.
256	843.12	3rd	Aids or assists person to escape.
257	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
258	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
259	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
260	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.

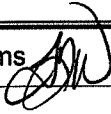

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261	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
262	944.40	2nd	Escapes.
263	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
264	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
265	951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
266	Section 7. This act shall take effect October 1, 2012.		

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4073 Florida Motor Vehicle Theft Prevention Authority
SPONSOR(S): Young
TIED BILLS: None IDEN./SIM. BILLS: SB 638

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

SUMMARY ANALYSIS

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Motor Vehicle Theft Prevention Act - Background

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

Powers and Duties of the Authority

The power and duties of the Authority include:

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

Membership of the Authority

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

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

Florida Motor Vehicle Theft Prevention Trust Fund

In addition to the Authority, the Act created the Florida Motor Vehicle Theft Prevention Trust Fund (Trust Fund).⁶ The Trust Fund was funded pursuant to s. 320.08046, F.S., which appropriated 18 percent of a \$1 license tax⁷ surcharge (vehicle registration fee) to the Trust Fund.⁸ Trust Fund dollars were required to be used to:

¹ Chapter 1992-145, L.O.F.

² Section 860.152, F.S.

³ Section 860.154, F.S.

⁴ Section 860.157, F.S.

⁵ Section 860.154, F.S.

⁶ Chapter 1992-145, L.O.F.

⁷ Section 320.08, F.S., imposes license taxes.

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

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

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

Effect of the Bill

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

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

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

B. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

⁹ Chapter 1992-145, L.O.F.

¹⁰ Chapter 2003-179, L.O.F.

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to the Florida Motor Vehicle Theft
 Prevention Authority; repealing ss. 860.151, 860.152,
 860.153, 860.154, 860.155, 860.156, 860.157, and
 860.158, F.S., relating to the Florida Motor Vehicle
 Theft Prevention Authority; repealing provisions
 relating to a short title, purpose, definitions,
 establishment, compensation of members, personnel,
 powers and duties, and expenditures; amending s.
 713.78, F.S.; conforming a cross-reference; providing
 an effective date.

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

Section 1. Sections 860.151, 860.152, 860.153, 860.154,
860.155, 860.156, 860.157, and 860.158, Florida Statutes, are
repealed.

Section 2. Paragraph (e) of subsection (13) of section
 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles
 and vessels.—

(13)

(e) When a wrecker operator files a notice of wrecker
 operator's lien under this subsection, the department shall
 charge the wrecker operator a fee of \$2, which shall be
 deposited into the General Revenue Fund ~~established under s.~~
~~860.158~~. A service charge of \$2.50 shall be collected and
 retained by the tax collector who processes a notice of wrecker

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29 operator's lien.

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

Testimony Before The House Criminal Justice Subcommittee
 Representative Gayle Harrell, Chair


John Petrla, J.D., LL.M.
 Professor
 University of South Florida
petrla@usf.edu

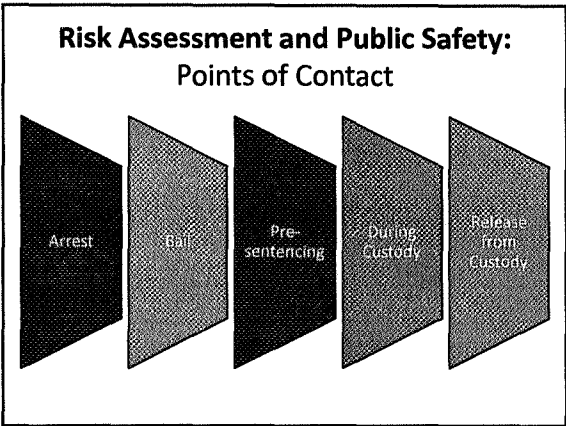
November 16, 2011



What is Risk Assessment?

- It is a process that attempts to identify those things about the person
 - ◆ That *increase* the probability that the person will re-offend, and
 - ◆ That may *reduce* the probability that the person will re-offend





Major Risk Factors for Future Offending: Static (fixed) and Dynamic (changeable)

Risk Factor	Static or Dynamic?
Criminal History	Static
Age (under 32)	Static
Male Gender	Static
Antisocial Personality	Dynamic
Antisocial Friends	Dynamic
Employment (yes/no)	Dynamic
Substance abuse	Dynamic
Marital status	Dynamic

Essential Elements of Risk Assessment

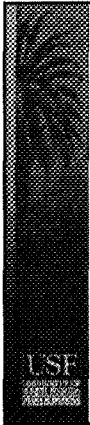
- ☒ Static *and* dynamic factors are captured
- ☒ It is as comprehensive as time allows
- ☒ It is repeated over time
- ☒ It assesses special factors such as mental illness
- ☒ It relies on the best available knowledge
- ☒ Limits on its utility are acknowledged



How Is Risk Assessment Done?

- ☒ History: (self-report, family, criminal records, clinical records)
- ☒ Check accuracy
- ☒ Use a risk assessment instrument that
 - ◆ Is tied to what we know about future risk
 - ◆ Assesses both static and dynamic risk and protective factors
 - ◆ Is administered in a consistent way by trained people
 - ◆ Is scored in a consistent way





What Do We Do With It?

- ☒ It should shape selection of programs and interventions
- ☒ Changes in dynamic risk factors *good or bad* should constantly be incorporated
- ☒ It should be a core element in communicating about the person across systems
