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# **Criminal Justice Subcommittee**

**December 6<sup>th</sup>, 2011**

**8:00 AM**

**404 HOB**

**Dean Cannon  
Speaker**

**Gayle Harrell  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, December 06, 2011 08:00 am  
**End Date and Time:** Tuesday, December 06, 2011 10:30 am  
**Location:** 404 HOB  
**Duration:** 2.50 hrs

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

HB 215 Video Voyeurism by Young  
HB 429 Robbery by Sudden Snatching by Hudson  
HB 4107 Water Hyacinths by Trujillo  
HB 4109 Adulterated Syrup by Trujillo  
HB 4111 Cotton or Leaf Tobacco by Trujillo  
HB 4113 Levying War Against People of the State by Trujillo

Presentation by Department of Juvenile Justice Secretary, Wansley Walters, on 2012/2013 juvenile justice reform initiatives.

Presentation by the Florida Department of Law Enforcement on Florida's sexual offender statutes and the Federal Adam Walsh Act.

Workshop on mental health and veterans courts.

**NOTICE FINALIZED on 11/29/2011 16:18 by hudson.jessica**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 215 Video Voyeurism  
**SPONSOR(S):** Young and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 436

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

**SUMMARY ANALYSIS**

Section 810.145, F.S., establishes crimes related to video voyeurism. Currently, first-time violations of "video voyeurism," "video voyeurism dissemination," and "commercial video voyeurism dissemination" are 1<sup>st</sup> degree misdemeanors. Second or subsequent violations are 3<sup>rd</sup> degree felonies.

Section 810.145(8)(a), F.S., specifies that video voyeurism is a 3<sup>rd</sup> degree felony if committed by certain persons and the victim was a child less than 16 years of age or a student. However, a violation of subsection (8)(a) by a person who has previously been convicted of any violation of s. 810.145, F.S., is a 2<sup>nd</sup> degree felony.

The bill increases the penalties associated with video voyeurism offenses. The penalty for a first-time violation of "video voyeurism," "video voyeurism dissemination," or "commercial video voyeurism dissemination" is increased from a 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony. The penalty for a second or subsequent violation is increased from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony.

The bill also increases the penalty for violations of subsection (8)(a) of the statute from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony. A violation of subsection (8)(a) by persons who have previously been convicted or adjudicated delinquent for any violation of s. 810.145, F.S., remains a 2<sup>nd</sup> degree felony, but the bill ranks such offense in Level 6 of the Offense Severity Ranking Chart.

The bill amends the definition of the phrase "place and time when a person has a reasonable expectation of privacy," which is used throughout the video voyeurism statute, to specify that such locations include "residential dwellings."

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, F.S., it will likely have a negative prison bed impact on the Department of Corrections. The bill may have a positive jail bed impact on local governments to the extent that those who commit first-time violations of "video voyeurism," "video voyeurism dissemination," or "commercial video voyeurism dissemination" will be subject to a state prison sentence rather than a county jail sentence.

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Voyeurism and Video Voyeurism**

Section 810.14, F.S., establishes the crime of voyeurism. This section provides that the offense of voyeurism is committed when a person, having lewd, lascivious, or indecent intent, secretly observes another person when he or she is in a dwelling,<sup>1</sup> structure,<sup>2</sup> or conveyance<sup>3</sup> that provides a reasonable expectation of privacy.<sup>4</sup> The offense is a 1<sup>st</sup> degree misdemeanor<sup>5</sup> but becomes a 3<sup>rd</sup> degree felony<sup>6</sup> if the person violating the section and has two or more prior convictions for the offense.<sup>7</sup>

In 2004, the Legislature created s. 810.145, F.S., to distinguish video voyeurism from the existing crime of voyeurism.<sup>8</sup> 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.<sup>9</sup>

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

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<sup>1</sup> Section 810.011(2), F.S., defines the term "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

<sup>2</sup> Section 810.011(1), F.S., defines the term "structure" as a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

<sup>3</sup> Section 810.011(3), F.S., defines the term "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

<sup>4</sup> Section 810.14(1), F.S.

<sup>5</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 810.14(2) and (3), F.S.

<sup>8</sup> Chapter 2008-188, L.O.F.

<sup>9</sup> Section 810.145(2), F.S.

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.<sup>10</sup>

Section 810.145, F.S., also includes offenses of "video voyeurism dissemination" and "commercial video voyeurism dissemination." Video voyeurism dissemination occurs when a person knows or has reason to believe that an image was created as a result of video voyeurism and intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.<sup>11</sup> Commercial video voyeurism dissemination occurs when a person:

- Knows or has reason to believe that an image was created as a result of video voyeurism and sells the image for consideration to another person; or
- Creates the image using video voyeurism and disseminates, distributes, or transfers the image to another person for that person to sell the image to others.<sup>12</sup>

A first-time violation of "video voyeurism," "video voyeurism dissemination," or "commercial video voyeurism dissemination" is a 1<sup>st</sup> degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000.<sup>13</sup> A second or subsequent violation is a 3<sup>rd</sup> degree felony, punishable by imprisonment for up to five years and a fine of not more than \$5,000.<sup>14</sup>

Section 810.145(8)(a), F.S., enhances the penalty for video voyeurism to a 3<sup>rd</sup> 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,<sup>15</sup> a school,<sup>16</sup> or a voluntary prekindergarten education program,<sup>17</sup> 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.<sup>18</sup>

Section 810.145(8)(b), F.S., makes it is a 2<sup>nd</sup> degree felony 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,"<sup>19</sup> it defaults to a Level 4 ranking, which equates to 22 sentencing points.<sup>20</sup>

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<sup>10</sup> Section 810.145(1)(c), F.S.

<sup>11</sup> Section 810.145(3), F.S.

<sup>12</sup> Section 810.145(4), F.S.

<sup>13</sup> Section 810.145(6), F.S.

<sup>14</sup> Section 810.145(7), F.S.

<sup>15</sup> As defined in s. 1002.01, F.S.

<sup>16</sup> As defined in s. 1003.01, F.S.

<sup>17</sup> As described in s. 1002.53(3)(a), (b), or (c), F.S.

<sup>18</sup> Section 810.145(8)(a), F.S.

<sup>19</sup> 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.

<sup>20</sup> Section 921.0023, F.S.

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.<sup>21</sup> There is also an exception for providers of electronic communication services and providers of remote computing services.<sup>22</sup>

### **Effect of the Bill**

The bill increases the penalties associated with all of the above-described video voyeurism offenses. In regards to violations of "video voyeurism," "video voyeurism dissemination," and "commercial video voyeurism dissemination":

- The penalty for a first-time violation is increased from a 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony.
- The penalty for a second or subsequent violation of is increased from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony, which is punishable by imprisonment for up to fifteen years and a fine of not more than \$10,000.<sup>23</sup>

The penalty for first-time violations of subsection (8)(a) of the statute is increased from a 3<sup>rd</sup> degree felony to a 2<sup>nd</sup> degree felony. Violations of s. 810.145(8)(b), F.S., remain 2<sup>nd</sup> degree felonies, but the bill ranks such 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 "residential dwellings."

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

Section 1. Amends s. 810.145, F.S., relating to video voyeurism.

Section 2. Amends s. 921.0022, F.S., relating to 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 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, F.S., it will likely 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.

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<sup>21</sup> Section 810.145(5), F.S.

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

<sup>23</sup> Sections.775.082 and 775.083, F.S.

2. Expenditures:

The bill increases the penalty for first-time violations of s. 810.145(2), (3), and (4), F.S., from a 1<sup>st</sup> degree misdemeanor to a 3<sup>rd</sup> degree felony. This will have a positive fiscal impact on local governments to the extent that those who commit first-time violations of s. 810.145(2), (3), and (4), F.S., will be subject to a state prison sentence rather than a county jail sentence.

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:

The bill is effective July 1, 2012. Generally, bills that create or enhance criminal penalties are effective October 1 in an effort to provide adequate notice to those impacted by the bill (e.g., law enforcement, state attorneys, public defenders, clerks of court, etc.).

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



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A bill to be entitled  
 An act relating to video voyeurism; 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; 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. Paragraph (c) of subsection (1) and subsections  
 (6), (7), and (8) of section 810.145, Florida Statutes, are  
 amended to read:

810.145 Video voyeurism.—

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

(c) "Place and time when a person has a reasonable  
 expectation of privacy" means 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 residential  
dwelling, bathroom, changing room, fitting room, dressing room,  
 or tanning booth.

(6) Except as provided in subsections (7) and (8), a

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29 person who violates this section commits a felony ~~misdemeanor~~ of  
 30 the third ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~  
 31 s. 775.083, or s. 775.084.

32 (7) A person who violates this section and who has  
 33 previously been convicted of or adjudicated delinquent for any  
 34 violation of this section commits a felony of the second ~~third~~  
 35 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 36 775.084.

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

38 1. Eighteen years of age or older who is responsible for  
 39 the welfare of a child younger than 16 years of age, regardless  
 40 of whether the person knows or has reason to know the age of the  
 41 child, and who commits an offense under this section against  
 42 that child;

43 2. Eighteen years of age or older who is employed at a  
 44 private school as defined in s. 1002.01; a school as defined in  
 45 s. 1003.01; or a voluntary prekindergarten education program as  
 46 described in s. 1002.53(3)(a), (b), or (c) and who commits an  
 47 offense under this section against a student of the private  
 48 school, school, or voluntary prekindergarten education program;  
 49 or

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

54  
 55 commits a felony of the second ~~third~~ degree, punishable as  
 56 provided in s. 775.082, s. 775.083, or s. 775.084.

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

61 Section 2. Paragraph (f) of subsection (3) of section  
 62 921.0022, Florida Statutes, is amended to read:

63 921.0022 Criminal Punishment Code; offense severity  
 64 ranking chart.—

65 (3) OFFENSE SEVERITY RANKING CHART

66 (f) LEVEL 6

67

Florida	Felony	Description
Statute	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.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.

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73	775.0875(1)	3rd	Taking firearm from law enforcement officer.
74	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
75	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
76	784.041	3rd	Felony battery; domestic battery by strangulation.
77	784.048(3)	3rd	Aggravated stalking; credible threat.
78	784.048(5)	3rd	Aggravated stalking of person under 16.
79	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
80	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
81	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.

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82	784.081(2)	2nd	Aggravated assault on specified official or employee.
83	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
84	784.083(2)	2nd	Aggravated assault on code inspector.
85	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
86	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
87	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
88	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

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89	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
90	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
91	794.05(1)	2nd	Unlawful sexual activity with specified minor.
92	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.
93	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
94	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
95	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.

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96	<u>810.145(8)(b)</u>	<u>2nd</u>	<u>Video voyeurism; certain minor victims; 2nd or subsequent offense.</u>
97	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
98	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
99	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
100	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
101	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
102	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
	817.4821(5)	2nd	Possess cloning paraphernalia

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			with intent to create cloned cellular telephones.
103	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
104	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
105	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
106	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
107	827.03(1)	3rd	Abuse of a child.
108	827.03(3)(c)	3rd	Neglect of a child.
109	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
110	836.05	2nd	Threats; extortion.
111			



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112	836.10	2nd	Written threats to kill or do bodily injury.
113	843.12	3rd	Aids or assists person to escape.
114	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
115	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
116	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
117	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community

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supervision, resulting in great  
bodily harm.

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944.40                      2nd      Escapes.

119

944.46                      3rd      Harboring, concealing, aiding  
escaped prisoners.

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944.47(1)(a)5.            2nd      Introduction of contraband  
(firearm, weapon, or explosive)  
into correctional facility.

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951.22(1)                      3rd      Intoxicating drug, firearm, or  
weapon introduced into county  
facility.

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





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 429 Robbery by Sudden Snatching

SPONSOR(S): Hudson and others

TIED BILLS: None IDEN./SIM. BILLS: SB 876

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

SUMMARY ANALYSIS

Section 812.131, F.S., defines "robbery by sudden snatching" as the taking of money or other property from the victim's person, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking, the victim was or became aware of the taking. Robbery by sudden snatching is generally a third degree felony.

Recently, Florida's 1<sup>st</sup> District Court of Appeal reviewed a case where the defendant was charged with robbery by sudden snatching after he took a victim's purse. At the time of the taking, the victim was sitting on a park bench and her purse was next to her, touching her right hip. The court held that the defendant could not be charged with robbery by sudden snatching because the statute required that the purse actually be "on" the victim's person, not simply next to her. Several other courts have reached the same conclusion when presented with similar facts.

The bill amends s. 812.131, F.S., to provide that the offense of robbery by sudden snatching include the taking of money or other property from the victim's person or presence or from the area within the victim's reach or control.

The bill may have a negative prison bed impact on the Department of Corrections, a positive jail bed impact on local governments, and may increase the workload for state attorneys. See fiscal section.

The bill is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Theft**

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses,<sup>1</sup> or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>2</sup>

The penalties for a violation of s. 812.014, F.S., are generally tied to the value of stolen goods.<sup>3</sup> For example:

- If the value of the stolen property is \$100,000 or greater, the offense is punishable as a first degree felony.<sup>4</sup>
- If the value of the stolen property is between \$20,000 and \$100,000, the offense is a second degree felony.<sup>5</sup>
- If the value of the stolen property is between \$300 and \$20,000, the offense is a third degree felony.<sup>6</sup>
- If the value of the stolen goods is between \$100 and \$300, the offense is a first degree misdemeanor.<sup>7</sup>
- If the value of the stolen goods is valued at less than \$100, the offense is a second degree misdemeanor.<sup>8,9</sup>

Additionally, theft of specifically identified property may be subject to greater penalties regardless of the value of the stolen items.<sup>10</sup>

#### **Robbery**

Section 812.13, F.S., defines "robbery" as the taking of money or other property which may be the subject of larceny<sup>11</sup> from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking<sup>12</sup> there is the use of force, violence, assault, or putting in fear. Robbery is a generally a second degree felony.<sup>13</sup> However, if in the course of committing the robbery<sup>14</sup> the offender carried a firearm or

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<sup>1</sup> The term "obtains or uses" means any manner of: taking or exercising control over property; making an unauthorized use, disposition, or transfer of property; obtaining property by fraud, willful misrepresentation of a future act, or false promise; conduct previously known as stealing, larceny, purloining, abstracting, embezzlement, misapplication, misappropriation, conversion, obtaining money or property by false pretenses, fraud, or deception; or other conduct similar in nature. Section 812.012(3), F.S.

<sup>2</sup> Section 812.014(1), F.S.

<sup>3</sup> See s. 812.014(3)(a), F.S.

<sup>4</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

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

<sup>8</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>9</sup> Section 812.14(2) and (3), F.S.

<sup>10</sup> For example, s. 812.14, F.S., provides that theft of a stop sign is a third degree felony.

<sup>11</sup> In 1977, the legislature amended ch. 812, F.S., extensively and replaced the term "larceny" with the term "theft." See Ch. 77-342, L.O.F., and *Daniels v. State*, 587 So.2d 460, 462 (Fla. 1991). However, the legislature has not changed the term "larceny" in the statute prohibiting robbery.

<sup>12</sup> Section 812.13(3)(b), F.S., specifies that an act is "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

<sup>13</sup> Section 812.13(2)(c), F.S.

<sup>14</sup> Section 812.13(3)(a), F.S., specifies that an act is "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

other deadly weapon, the offense is a first degree felony, punishable by imprisonment for a term of years not exceeding life imprisonment.<sup>15</sup> Robbery where the offender carried a weapon (other than a deadly weapon) is a first degree felony.<sup>16</sup>

### **Robbery by Sudden Snatching**

Section 812.131, F.S., defines "robbery by sudden snatching" as the taking of money or other property from the victim's person, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking,<sup>17</sup> the victim was or became aware of the taking.<sup>18</sup> Robbery by sudden snatching, as opposed to robbery, does not require proof of force, violence, assault, or putting in fear.

Robbery by sudden snatching is generally a third degree felony.<sup>19</sup> However, if in the course of committing robbery by sudden snatching<sup>20</sup> the offender carried a firearm or other deadly weapon, the offense is a second degree felony.<sup>21</sup>

Recently, Florida's 1<sup>st</sup> District Court of Appeal reviewed a case where the defendant was charged with robbery by sudden snatching after he took a victim's purse.<sup>22</sup> At the time of the taking, the victim was sitting on a park bench and her purse was next to her, touching her right hip.<sup>23</sup> The court held that the defendant could not be charged with robbery by sudden snatching because the statute required that the purse actually be "on" the victim's person, not simply next to her.<sup>24</sup>

### **Effect of the Bill**

As noted above, robbery by sudden snatching currently requires that the property being taken be on the victim's person. The bill amends s. 812.131, F.S., to provide that the offense of robbery by sudden snatching includes the taking of money or other property from the victim's person *or presence or from the area within the victim's reach or control.*

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 812.131, F.S., relating to robbery by sudden snatching.

Section 2. Provides and 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.

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<sup>15</sup> Section 812.13(2)(a), F.S.

<sup>16</sup> Section 812.13(2)(b), F.S..

<sup>17</sup> Section 812.131(3)(b), F.S., specifies that an act is "in the course of the taking" if the act occurs prior to, contemporaneous with, or subsequent to the taking of the property and if such act and the act of taking constitute a continuous series of acts or events.

<sup>18</sup> In order to satisfy this definition, it is not necessary to show that the offender used any amount of force beyond that effort necessary to obtain possession of the money or other property, or that there was any resistance offered by the victim to the offender or that there was injury to the victim's person. See section 812.131(1)(a) and (b), F.S.

<sup>19</sup> Section 812.131(2)(b), F.S.

<sup>20</sup> Section 812.131(3)(a), F.S., specifies that an act is "in the course of committing a robbery by sudden snatching" if the act occurs in an attempt to commit robbery by sudden snatching or in fleeing after the attempt or commission.

<sup>21</sup> Section 812.131(2)(a), F.S.

<sup>22</sup> *Wess v. State*, 67 So.3d 1133 (Fla. 1<sup>st</sup> DCA 2011).

<sup>23</sup> *Id.*

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

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of the bill. However, because the bill expands the definition of "robbery by sudden snatching" to include additional conduct, it could have a prison bed impact on the Department of Corrections.

Additionally, the bill may have a workload impact on state attorneys. According to the Florida Prosecuting Attorneys Association, "cases now prosecuted as simple theft could become sudden snatching robbery, and carry greater penalty exposure, thus increasing workload if more defendants insisted on a trial."<sup>25</sup> However, the number of cases which might be captured is unknown.<sup>26</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Certain theft offenses are punishable as misdemeanors. Robbery by sudden snatching is generally punishable as a third degree felony. Because the bill expands the definition of "robbery by sudden snatching" to include conduct that was previously only punishable as a misdemeanor theft offense, it could have a positive jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. As drafted, the bill defines "robbery by sudden snatching" as the taking of money or other property from the victim's person or presence or from the area within the victim's reach or control, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking, the victim was or became aware of the taking.

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<sup>25</sup> Email from William Cervone, Florida Prosecuting Attorneys Association. November 9, 2011. (On file with House Criminal Justice Subcommittee staff).

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

Expanding the crime to include items taken from the victim's "presence" or "control" may include acts that aren't traditionally thought of as "robbery by sudden snatching" acts (i.e., thefts that involve close proximity to a person).

2. 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**



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1                                   A bill to be entitled  
 2           An act relating to robbery by sudden snatching;  
 3           amending s. 812.131, F.S.; clarifying that the offense  
 4           of robbery by sudden snatching includes the taking of  
 5           money or other property from the victim's person or  
 6           presence or from the area within the victim's reach or  
 7           control; providing criminal penalties; providing an  
 8           effective date.

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

11  
 12           Section 1. Section 812.131, Florida Statutes, is amended  
 13   to read:

14           812.131 Robbery by sudden snatching.—

15           (1) (a) "Robbery by sudden snatching" means the taking of  
 16   money or other property from the victim's person or presence or  
 17   from the area within the victim's reach or control, with intent  
 18   to permanently or temporarily deprive the victim or the owner of  
 19   the money or other property, when, in the course of the taking,  
 20   the victim was or became aware of the taking. In order to  
 21   satisfy this definition, it is not necessary to show that:

22           ~~1.(a)~~ The offender used any amount of force beyond that  
 23   effort necessary to obtain possession of the money or other  
 24   property; or

25           ~~2.(b)~~ There was any resistance offered by the victim to  
 26   the offender or that there was injury to the victim's person.

27           ~~(b)(3)(a)~~ An act shall be deemed:

28           1. "In the course of committing a robbery by sudden

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29 snatching" if the act occurs in an attempt to commit robbery by  
 30 sudden snatching or in fleeing after the attempt or commission.

31 ~~2.(b) An act shall be deemed~~ "In the course of the taking"  
 32 if the act occurs prior to, contemporaneous with, or subsequent  
 33 to the taking of the property and if such act and the act of  
 34 taking constitute a continuous series of acts or events.

35 (2)~~(a)~~ If, in the course of committing a robbery by sudden  
 36 snatching, the offender:

37 (a) Carried a firearm or other deadly weapon, the offense  
 38 ~~robbery by sudden snatching~~ is a felony of the second degree,  
 39 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

40 ~~(b) If, in the course of committing a robbery by sudden~~  
 41 ~~snatching, the offender~~ Carried no firearm or other deadly  
 42 weapon, the offense ~~robbery by sudden snatching~~ is a felony of  
 43 the third degree, punishable as provided in s. 775.082, s.  
 44 775.083, or s. 775.084.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 429 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Hudson offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 16-17 and insert:  
7 money or other property from the victim's person or from the  
8 area within the victim's immediate reach or control, with intent  
9

10  
11 -----  
12 **T I T L E A M E N D M E N T**

13 Remove line 6 and insert:  
14 from the area within the victim's immediate reach or



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4107 Water Hyacinths  
**SPONSOR(S):** Trujillo  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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

**SUMMARY ANALYSIS**

Section 861.04, F.S., makes it a second degree misdemeanor to place water hyacinths in any state streams or waters. The statute has not been amended in a substantive way since its creation in 1899.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.

The bill repeals s. 861.04, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Section 369.25, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to establish, by rule, a list of aquatic plants that can only be possessed if a permit is obtained. Currently Administrative Rule 5B-64.011 lists water hyacinth as a "Class I Prohibited Aquatic Plant," which under no circumstances may a person possess, collect, transport, cultivate, and import except when a permit is obtained through DACS.

Section 369.25, F.S., further states that no permit shall be issued until DACS determines that the proposed activity poses no threat or danger to the waters, wildlife, natural resources, or environment of the state.<sup>1</sup> Permit applications are evaluated and issued using the following standards and criteria:

- The ability of native aquatic vegetation in wild collection sites in sovereignty lands to maintain self-sustaining growth.
- No adverse impacts upon fish and wildlife resources including endangered species, threatened species, non-game species, species of special concern, and their habitat.
- No impairment of the public's access to, or use of, the waterbody.
- No adverse cumulative impacts upon the natural resources or the environment of the state.<sup>2</sup>

Any person who violates the above provisions commits a misdemeanor of the second degree<sup>3,4</sup>.

DACS reports that since 2003 there have been seven forced destructions of water hyacinths at businesses.<sup>5</sup>

Section 861.04, F.S., was created in 1899.<sup>6</sup> The statute makes it a second degree misdemeanor<sup>7</sup> for any person to willfully place or cause to be placed any water hyacinths in any of the territorial waters of the state whether navigable or nonnavigable.

Section 861.04, F.S., has not been amended in a substantive way since its creation. It was amended in 1971<sup>8</sup> to update the associated penalty to a second degree misdemeanor from its original penalty of up to 90 days imprisonment or up to a \$200 fine.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.<sup>9</sup>

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

The bill repeals s. 861.04, F.S. Persons who place water hyacinths in any state streams or waters would likely still be able to be penalized pursuant to s. 369.25, F.S.

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<sup>1</sup> Section 369.25(2), F.S.

<sup>2</sup> Department of Agriculture and Consumer Services, Administrative Rule 5B-64.003.

<sup>3</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Section 369.25(5)(b), F.S., provides that all law enforcement officers of the state and its agencies with power to make arrests for violations of state law are responsible for enforcing the provisions of this section.

<sup>5</sup> E-mail from Wayne Dixon, Division of Plant Industry, Florida of Department of Agriculture and Consumer Services. November 30, 2011. (On file with Criminal Justice Subcommittee staff).

<sup>6</sup> Section 1, ch. 4752, 1899; GS 3667; RGS 5610; CGL 7799.

<sup>7</sup> A second degree misdemeanor is punishable by up to 60 days imprisonment and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 1103, ch. 71-136, L.O.F.

<sup>9</sup> E-mail from Lynn Dodson with the Florida Department of Law Enforcement. November 30, 2011. (On file with subcommittee staff).

**B. SECTION DIRECTORY:**

Section 1. Repeals s. 861.04, F.S., relating to placing water hyacinths in any of the streams or waters of the state.

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

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

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

1. Revenues:

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

2. Expenditures:

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

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

1. Revenues:

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

2. Expenditures:

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

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

None.

**D. FISCAL COMMENTS:**

None.

**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**

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A bill to be entitled  
An act relating to water hyacinths; repealing s.  
861.04, F.S., relating to a prohibition on placement  
of water hyacinths in any of the streams or waters of  
the state; providing an effective date.  
Be It Enacted by the Legislature of the State of Florida:  
Section 1. Section 861.04, Florida Statutes, is repealed.  
Section 2. This act shall take effect July 1, 2012.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4109 Adulterated Syrup  
SPONSOR(S): Trujillo  
TIED BILLS: None IDEN./SIM. BILLS: None

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

SUMMARY ANALYSIS

Section 865.07, F.S., makes it a second degree misdemeanor to sell or advertise for sale any adulterated or mixed syrups unless the percentage of such adulteration or mixture is clearly marked. The statute has not been amended in a substantive way since its creation in 1903.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.

The bill repeals s. 865.07, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Current law provides protection to consumers against misbranding of food<sup>1</sup> in ch. 500, F.S. Section 500.11(1), F.S., provides that a food is misbranded if:

- Its labeling is false or misleading in any particular.
- It is offered for sale under the name of another food.
- It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the words "imitation" and, immediately thereafter, the name of the food imitated.
- Its container is so made, formed, or filled as to be misleading.
- In package form, unless it bears a label containing:
  - The name and place of business of the manufacturer, packer, or distributor;
  - An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; however, under this subparagraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department.

Section 500.12(1)(a)4., F.S., provides that a food permit<sup>2</sup> is not needed by any person who sells sugar cane or sorghum syrup that has been boiled and bottled on a premise located within the state. However, the statute still requires that such bottles contain:

- A label listing the producer's name and street address,
- All added ingredients,
- The net weight or volume of product, and
- A statement that reads, "This product has not been produced in a facility permitted by the Florida Department of Agriculture and Consumer Services."

Any person who violates the above provisions may have his or her food permit suspended<sup>3</sup> or revoked, and may have a fine of up to \$5,000 imposed by the Department of Agriculture and Consumer Services.

Section 865.07, F.S., was created in 1903.<sup>4</sup> The statute makes it a second degree misdemeanor<sup>5</sup> for any person to sell, offer for sale, or advertise for sale any adulterated or mixed syrups whatever, unless the percentage of such adulteration or mixture and the name and post office address of the manufacturer is clearly stamped or labeled on the barrel, can, case, bottle, or other receptacle containing such syrup or mixture.

Section 865.07, F.S., defines "adulterated mixture" or "admixture," as "all mixtures of two or more ingredients differing in their nature and quality, such as sugarcane syrup, sorghum syrup, maple syrup, molasses, or glucose."

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<sup>1</sup> Section 500.03(1)(l), F.S., defines "food" as "articles used for food or drink for human consumption; chewing gum; articles used for components of any such article; and articles for which health claims are made, which claims are approved by the Secretary of the United States Department of Health and Human Services and which claims are made in accordance with s. 343(r) of the federal act, and which are not considered drugs solely because their labels or labeling contain health claims."

<sup>2</sup> See s. 500.12, F.S.

<sup>3</sup> Section 500.12(4)(a), F.S.

<sup>4</sup> Sections 1, 2, 3, ch. 5231, 1903; GS 3706; RGS 5657; CGL 7860.

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

Section 865.07, F.S., has not been amended in a substantive way since its creation. It was amended in 1971<sup>6</sup> to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a \$1,000 fine.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.<sup>7</sup>

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

The bill repeals s. 865.07, F.S. Persons who sell or advertise for sale any adulterated or mixed syrups without the percentage of such adulteration or mixture clearly marked would likely still be able to be penalized pursuant to ss. 500.11 and 500.12, F.S.

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

Section 1. Repeals s. 865.07, F.S., relating adulterated syrup.

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

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

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

1. Revenues:

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

2. Expenditures:

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

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

1. Revenues:

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

2. Expenditures:

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

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

None.

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

None.

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<sup>6</sup> Section 1119, ch. 71-136, L.O.F.

<sup>7</sup> E-mail from Lynn Dodson with the Florida Department of Law Enforcement. November 30, 2011. (On file with Criminal Justice Subcommittee staff).

### **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**

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A bill to be entitled  
An act relating to adulterated syrup; repealing s.  
865.07, F.S., relating to a prohibition on certain  
acts relating to adulterated syrup unless specified  
information is provided; providing an effective date.

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

Section 1. Section 865.07, Florida Statutes, is repealed.

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4111 Cotton or Leaf Tobacco

SPONSOR(S): Trujillo

TIED BILLS: None IDEN./SIM. BILLS: None

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

SUMMARY ANALYSIS

Section 865.08, F.S., makes it a second degree misdemeanor for a person to trade, traffic, or buy any unpackaged cotton or leaf tobacco without written authorization from the producer of such crops. The statute has not been amended in a substantive way since its creation in 1866.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.

The bill repeals s. 865.08, F.S.

The bill is estimated to have no fiscal impact and is effective July 1, 2012.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Section 865.08, F.S., was created in 1866.<sup>1</sup> It provides whoever trades, traffics for, or buys, except from the producer or the producer's authorized agent, any cotton or leaf tobacco, unless the same be baled or boxed in the usual manner, or unless upon some exhibition of evidence in writing that the producer has parted with her or his interest therein, is guilty of a misdemeanor of the second degree.<sup>2</sup>

Section 865.08, F.S., has not been amended in a substantive way since its creation. It was amended in 1971 to update the associated penalty to a second degree misdemeanor from its original penalty of up to six months imprisonment or up to a \$1,000 fine.<sup>3</sup> In 1997, the statute was amended again to remove gender-specific references.<sup>4</sup>

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 1995.<sup>5</sup>

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

The bill repeals s. 865.08, F.S.

#### B. SECTION DIRECTORY:

Section 1. Repeals s. 865.08, F.S., relating to purchase of cotton or leaf tobacco.

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

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

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

##### 2. Expenditures:

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

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

##### 1. Revenues:

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

##### 2. Expenditures:

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

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<sup>1</sup> Section 11, ch. 1466, 1866; RS 2711; GS 3707; RGS 5658; CGL 7861.

<sup>2</sup> A second degree misdemeanor is punishable by up to 60 days imprisonment and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 1120, ch. 71-136, L.O.F.

<sup>4</sup> Section 1396, ch. 97-102, L.O.F.

<sup>5</sup> E-mail from Lynn Dodson with the Florida Department of Law Enforcement. November 30, 2011. (On file with Criminal Justice Subcommittee staff).

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB4111

2012

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A bill to be entitled  
An act relating to cotton or leaf tobacco; repealing  
s. 865.08, F.S., relating to the purchase of cotton or  
leaf tobacco; repealing provisions prohibiting a  
person from trading, trafficking for, or buying,  
except from the producer or the producer's authorized  
agent, cotton or leaf tobacco unless it is baled or  
boxed in the usual manner or written evidence that the  
producer has parted with her or his interest is  
exhibited; providing an effective date.

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

- Section 1. Section 865.08, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2012.


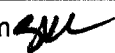


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4113 Levying War Against People of the State

SPONSOR(S): Trujillo

TIED BILLS: None IDEN./SIM. BILLS: None

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

SUMMARY ANALYSIS

Section 876.35, F.S., makes it a third degree felony for two or more persons to combine to levy war against any part of a people of this state, or to remove them forcibly out of this state, or to remove them from their habitations to any other part of the state by force. This statute has not been amended in a substantive way since its creation in 1868.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 2000.

The proposed committee bill repeals s. 876.35, F.S.

The proposed committee bill is estimated to have no fiscal impact and is effective July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Section 876.35, F.S., was created in 1868.<sup>1</sup> The statute makes it a third degree felony<sup>2</sup> for two or more persons to combine to levy war against any part of a people of this state, or to remove them forcibly out of this state, to remove them from their habitations to any other part of the state by force, or assemble for such purposes.

Section 876.35, F.S., has not been amended in a substantive way since its creation. It was amended in 1971<sup>3</sup> to update the associated penalty to a third degree felony from its original penalty of imprisonment not exceeding five years, or fines not exceeding \$1,000. In 1974,<sup>4</sup> the statute was renumbered.

The Florida Department of Law Enforcement reports that there have been no arrests associated with this section of statute since 2000.<sup>5</sup>

##### **Effect of the Proposed Committee Bill**

The proposed committee bill repeals s. 876.35, F.S.

#### B. SECTION DIRECTORY:

Section 1. Repeals s. 876.35, F.S., relating to combination against part of the people of the state.

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 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.

##### 2. Expenditures:

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

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<sup>1</sup> Section 6, ch. 1637, 1868; RS 2375; GS 3200; RGS 5030; CGL 7132.

<sup>2</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 705, ch. 71-136, L.O.F.

<sup>4</sup> Section 65, ch. 74-383, L.O.F.

<sup>5</sup> Email message from Lynn Dodson, Legislative Affairs Director, Florida Department of Law Enforcement. November 21, 2011). (On file with House Criminal Justice Subcommittee staff).

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 proposed committee 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**

HB4113

2012

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A bill to be entitled  
An act relating to levying war against people of the  
state; repealing s. 876.35, F.S., relating to a  
prohibition on combinations against part of the people  
of the state for certain purposes; providing an  
effective date.

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

- Section 1. Section 876.35, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2012.



## **Sex Offender Statutes**



**Federal Adam Walsh Child Protection and Safety Act**  
**Title I ~Sex Offender Registration and Notification Act (SORNA)**

Goal ~ “Seamless National Network” to insure sexual offenders and predators are registered appropriately as they move across U.S. state, tribal and territory lines.

*SORNA* sets *minimums* for who is required to register, frequency of registration, duration of registration and information required at registration.

Financial Risk to Florida ~ 10% of Federal Byrne/JAG Grant Funds

Florida Status ~ Substantial Implementation

Ongoing Assessment ~ Annual review to assess progress towards full compliance

**Requirements Covered under Current Florida Law**

- ~ Specified Juvenile Offenders
- ~ Frequency of In-Person Reregistration
- ~ Qualifying Offenses
- ~ Registration Information
- ~ Broader Community Notification ~ agencies etc. ~ Email Notification System
- ~ Registration of Transient Offenders, Non-Resident Employees, Students
- ~ Felony Penalties for Failure to Register
- ~ Coordination with U.S. Marshals and Interpol
- ~ DNA Collection
- ~ Public Notification and Access to Registration Information
- ~ Allowable Exemption for “Romeo & Juliet” cases

**SORNA Issues not yet Fully Addressed**

Qualifying Offenses for Registration

- ~ Video Voyeurism Against a Minor
- ~ Prohibition of Certain Acts (Distribution of Child Pornography) (f.s. 847.011)
- ~ Forcing, Compelling, or Coercing a Minor to Become a Prostitute (f.s. 796.04)
- ~ Sex Trafficking of a Minor (f.s. 796.045)
- ~ Sexual Misconduct of Developmentally Disabled Client (f.s. 393.135(2))
- ~ Sexual Misconduct of Mental Health Patient (f.s. 394.4593(2))
- ~ Sexual Misconduct of Mentally Deficient & Mentally Ill Forensic Client (f.s. 916.1075 (2))
- ~ Federal, military & foreign offenses not similar to Florida qualifying offenses for which the offender has not previously registered in another state or jurisdiction

Registration Requirements

- ~ Professional licenses, Secondary School Enrollment, Volunteer Activity
- ~ Instant Employment Change Updates
- ~ Clarification of Internet Identifiers ~ all mail, instant message, social networking etc.
- ~ Palm Prints
- ~ Vehicles Owned
- ~ All Home and Cellular Phone Numbers
- ~ Passport, Alien Registration Documents, Foreign Travel Plans

**Select Year:** 2011

## The 2011 Florida Statutes

<u>Title</u> <u>XLVI</u>	<u>Chapter 775</u> DEFINITIONS; GENERAL PENALTIES; REGISTRATION OF CRIMINALS	<u>View Entire</u> <u>Chapter</u>
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### **775.21 The Florida Sexual Predators Act.—**

- (1) **SHORT TITLE.**—This section may be cited as “The Florida Sexual Predators Act.”
- (2) **DEFINITIONS.**—As used in this section, the term:
- (a) “Change in enrollment or employment status” means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.
- (b) “Chief of police” means the chief law enforcement officer of a municipality.
- (c) “Child care facility” has the same meaning as provided in s. [402.302](#).
- (d) “Community” means any county where the sexual predator lives or otherwise establishes or maintains a temporary or permanent residence.
- (e) “Conviction” means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction 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.
- (f) “Department” means the Department of Law Enforcement.
- (g) “Electronic mail address” has the same meaning as provided in s. [668.602](#).
- (h) “Entering the county” includes being discharged from a correctional facility or jail or secure treatment facility within the county or being under supervision within the county for the commission of a violation enumerated in subsection (4).
- (i) “Instant message name” means an identifier that allows a person to communicate in real time with another person using the Internet.
- (j) “Institution of higher education” means a career center, community college, college, state university, or independent postsecondary institution.
- (k) “Permanent residence” means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- (l) “Temporary residence” means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person’s permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- (m) “Transient residence” means a place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person’s permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

(3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.—

(a) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are sexual predators who present an extreme threat to the public safety. Sexual offenders are extremely likely to use physical violence and to repeat their offenses, and most sexual offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of sexual offender victimization to society at large, while incalculable, clearly exorbitant.

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.30. The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those who are financially able must pay all or part of the costs of supervision.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

(c) The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

(d) It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence. The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.

(e) It is the intent of the Legislature to address the problem of sexual predators by:

1. Requiring sexual predators supervised in the community to have special conditions of supervision and to be supervised by probation officers with low caseloads;

2. Requiring sexual predators to register with the Florida Department of Law Enforcement, as provided in this section; and

3. Requiring community and public notification of the presence of a sexual predator, as provided in this section.

(4) SEXUAL PREDATOR CRITERIA.—

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

1. The felony is:

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

b. 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;

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

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

(b) In order to be counted as a prior felony for purposes of this subsection, the felony must have resulted in a conviction sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense and sentenced or adjudicated separately from any other felony conviction that is to be counted as a prior felony regardless of the date of offense of the prior felony.

(c) If an offender has been registered as a sexual predator by the Department of Corrections, the department, or any other law enforcement agency and if:

1. The court did not, for whatever reason, make a written finding at the time of sentencing that the offender was a sexual predator; or

2. The offender was administratively registered as a sexual predator because the Department of Corrections, the department, or any other law enforcement agency obtained information that indicated that the offender met the criteria for designation as a sexual predator based on a violation of a similar law in another jurisdiction,

the department shall remove that offender from the department's list of sexual predators and, for an offender described under subparagraph 1., shall notify the state attorney who prosecuted the offense that met the criteria for administrative designation as a sexual predator, and, for an offender described under this paragraph, shall notify the state attorney of the county where the offender establishes or maintains a permanent, temporary, or transient residence. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the criteria for designation as a sexual predator. If the court makes a written finding that the offender is a sexual predator, the offender must be designated as a sexual predator, must register or be registered as a sexual predator with the department as provided in subsection (6), and is subject to the community and public notification as provided in subsection (7). If the court does not make a written finding that the offender is a sexual predator, the offender may not be designated as a sexual predator with respect to that offense and is not required to register or be registered as a sexual predator with the department.

(d) An offender who has been determined to be a sexually violent predator pursuant to a civil

commitment proceeding under chapter 394 shall be designated as a "sexual predator" under subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(5) **SEXUAL PREDATOR DESIGNATION.**—An offender is designated as a sexual predator as follows:

(a)1. An offender who meets the sexual predator criteria described in paragraph (4)(d) is a sexual predator, and the court shall make a written finding at the time such offender is determined to be a sexually violent predator under chapter 394 that such person meets the criteria for designation as a sexual predator for purposes of this section. The clerk shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order;

2. An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order; or

3. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent, temporary, or transient residence in this state meets the sexual predator criteria described in paragraph (4)(a) or paragraph (4)(d) because the offender was civilly committed or committed a similar violation in another jurisdiction on or after October 1, 1993, the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent, temporary, or transient residence of the offender's presence in the community. The state attorney shall file a petition with the criminal division of the circuit court for the purpose of holding a hearing to determine if the offender's criminal record or record of civil commitment from another jurisdiction meets the sexual predator criteria. If the court finds that the offender meets the sexual predator criteria because the offender has violated a similar law or similar laws in another jurisdiction, the court shall make a written finding that the offender is a sexual predator.

When the court makes a written finding that an offender is a sexual predator, the court shall inform the sexual predator of the registration and community and public notification requirements described in this section. Within 48 hours after the court designating an offender as a sexual predator, the clerk of the circuit court shall transmit a copy of the court's written sexual predator finding to the department. If the offender is sentenced to a term of imprisonment or supervision, a copy of the court's written sexual predator finding must be submitted to the Department of Corrections.

(b) If a sexual predator is not sentenced to a term of imprisonment, the clerk of the court shall ensure that the sexual predator's fingerprints are taken and forwarded to the department within 48 hours after the court renders its written sexual predator finding. The fingerprint card shall be clearly marked, "Sexual Predator Registration Card." The clerk of the court that convicts and sentences the sexual predator for the offense or offenses described in subsection (4) shall forward to the department and to the Department of Corrections a certified copy of any order entered by the court imposing any special condition or restriction on the sexual predator which restricts or prohibits access to the victim, if the victim is a minor, or to other minors.

(c) If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state for offenders described in subparagraph (a)3. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the state attorney fails to establish that an offender meets the sexual predator criteria and the court does not make a written finding that an offender is a sexual predator, the offender is not required to register with the department as a sexual predator. The Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

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

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any instant message name required to be provided pursuant to subparagraph (g)4.; home telephone number and any cellular telephone number; date and place of any employment; date and place of each conviction; fingerprints; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

a. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the

department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

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

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(b) If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections, or is in the custody of a private correctional facility, the sexual predator must register with the Department of Corrections. A sexual predator who is under the supervision of the Department of Corrections but who is not incarcerated must register with the Department of Corrections within 3 business days after the court finds the offender to be a sexual predator. The Department of Corrections shall provide to the department registration information and the location of, and local telephone number for, any Department of Corrections office that is responsible for supervising the sexual predator. In addition, the Department of Corrections shall notify the department if the sexual predator escapes or absconds from custody or supervision or if the sexual predator dies.

(c) If the sexual predator is in the custody of a local jail, the custodian of the local jail shall register the sexual predator within 3 business days after intake of the sexual predator for any reason and upon release, and shall forward the registration information to the department. The custodian of the local jail shall also take a digitized photograph of the sexual predator while the sexual predator remains in custody and shall provide the digitized photograph to the department. The custodian shall notify the department if the sexual predator escapes from custody or dies.

(d) If the sexual predator is under federal supervision, the federal agency responsible for supervising the sexual predator may forward to the department any information regarding the sexual predator which is consistent with the information provided by the Department of Corrections under this section, and may indicate whether use of the information is restricted to law enforcement purposes only or may be used by the department for purposes of public notification.

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

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



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

2. Any change in the sexual predator's permanent or temporary residence, name, or any electronic mail address and any instant message name required to be provided pursuant to subparagraph (g)4., after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1., shall be accomplished in the manner provided in paragraphs (g), (i), and (j). When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the predator and forward the photographs and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(f) Within 48 hours after the registration required under paragraph (a) or paragraph (e), a sexual predator who is not incarcerated and who resides in the community, including a sexual predator under the supervision of the Department of Corrections, shall register in person at a driver's license office of the Department of Highway Safety and Motor Vehicles and shall present proof of registration. At the driver's license office the sexual predator shall:

1. If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual predator shall identify himself or herself as a sexual predator who is required to comply with this section, provide his or her place of permanent, temporary, or transient residence, including a rural route address and a post office box, and submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual predators. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the Department of Highway Safety and Motor Vehicles the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued to the sexual predator must be in compliance with s. 322.141(3).

3. Provide, upon request, any additional information necessary to confirm the identity of the sexual predator, including a set of fingerprints.

(g)1. Each time a sexual predator's driver's license or identification card is subject to renewal, and, without regard to the status of the predator's driver's license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver's license office and shall be subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement

for purposes of public notification of sexual predators as provided in this section.

2. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator must provide or update all of the registration information required under paragraph (a). The sexual predator must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

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

4. A sexual predator must register any electronic mail address or instant message name with the department prior to using such electronic mail address or instant message name on or after October 1, 2007. The department shall establish an online system through which sexual predators may securely access and update all electronic mail address and instant message name information.

(h) The department must notify the sheriff and the state attorney of the county and, if applicable, the police chief of the municipality, where the sexual predator maintains a residence.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction. The sexual predator must provide to the sheriff the address, municipality, county, and state of intended residence. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(j) A sexual predator who indicates his or her intent to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida and later decides to remain in this state shall, within 48 hours after the date upon which the sexual predator indicated he or she would leave this state, report in person to the sheriff to which the sexual predator reported the intended change of residence, and report his or her intent to remain in this state. If the sheriff is notified by the sexual predator that he or she intends to remain in this state, the sheriff shall promptly report this information to the department. A sexual predator who reports his or her intent to establish a permanent, temporary, or transient residence in another state or jurisdiction, but who remains in this state without reporting to the sheriff in the manner required by this paragraph, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(k)1. The department is responsible for the online maintenance of current information regarding each registered sexual predator. The department must maintain hotline access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sexual predators for purposes of monitoring, tracking, and prosecution. The photograph and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record. The department is authorized to disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose. When the department provides information regarding a registered sexual predator to the public, department personnel must advise the person making the inquiry that positive identification of a person believed to be a sexual predator cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as required by this section.

(l) A sexual predator must maintain registration with the department for the duration of his or her life, unless the sexual predator 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.

(7) COMMUNITY AND PUBLIC NOTIFICATION.—

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify members of the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides shall notify each licensed child care facility, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Information provided to members of the community and the public regarding a sexual predator must include:

1. The name of the sexual predator;
2. A description of the sexual predator, including a photograph;
3. The sexual predator's current permanent, temporary, and transient addresses, and descriptions of registered locations that have no specific street address, including the name of the county or municipality if known;
4. The circumstances of the sexual predator's offense or offenses; and
5. Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

This paragraph does not authorize the release of the name of any victim of the sexual predator.

(b) The sheriff or the police chief may coordinate the community and public notification efforts with the department. Statewide notification to the public is authorized, as deemed appropriate by

local law enforcement personnel and the department.

(c) The department shall notify the public of all designated sexual predators through the Internet. The Internet notice shall include the information required by paragraph (a).

(d) The department shall adopt a protocol to assist law enforcement agencies in their efforts to notify the community and the public of the presence of sexual predators.

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

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

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any instant message name required to be provided pursuant to subparagraph (6)(g)4.; home telephone number and any cellular telephone number; date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.

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

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

(b) The sheriff's office shall, within 2 working days, electronically submit and update all information provided by the sexual predator to the department in a manner prescribed by the department.

(9) IMMUNITY.—The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual predator fails to report or falsely reports his or her current place of permanent or temporary residence.

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver's license or identification card; who fails to provide required location information, electronic mail address information, instant message name information, home telephone number and any cellular telephone number, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; or who otherwise fails, by act or omission, to comply with the requirements of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted 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. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual predator, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(e) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

(f) Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

(g) Any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sexual predator's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;
2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;
3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or
4. Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This paragraph does not apply if the sexual predator is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

**History.**—s. 1, ch. 93-277; s. 1, ch. 95-264; s. 54, ch. 95-283; s. 61, ch. 96-388; s. 5, ch. 97-299; s. 3, ch. 98-81; s. 1, ch. 98-267; s. 1, ch. 2000-207; s. 3, ch. 2000-246; s. 113, ch. 2000-349; s. 1, ch. 2002-58; s. 1, ch. 2004-371; s. 33, ch. 2004-373; s. 3, ch. 2005-28; s. 5, ch. 2005-67; s. 1, ch. 2006-200; s. 1, ch. 2006-235; s. 2, ch. 2006-299; s. 150, ch. 2007-5; s. 9, ch. 2007-143; s. 3, ch. 2007-207; s. 1, ch. 2007-209; s. 16, ch. 2008-172; s. 2, ch. 2009-194; s. 2, ch. 2010-92.

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Select Year: 2011



## The 2011 Florida Statutes

Title XLVII  
CRIMINAL PROCEDURE AND  
CORRECTIONS

Chapter 943  
DEPARTMENT OF LAW  
ENFORCEMENT

View Entire  
Chapter

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

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

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

a.(I) 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: 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. [847.0137](#); s. [847.0138](#); s. [847.0145](#); or s. [985.701\(1\)](#); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-subparagraph (I). For purposes of sub-sub-subparagraph (I), 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;

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

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: 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. [847.0137](#); s. [847.0138](#); s. [847.0145](#); or s. [985.701\(1\)](#); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for 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 when the juvenile was 14 years of age or older at the time of the offense:

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

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

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

(b) "Convicted" means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, and includes an adjudication of delinquency of a juvenile as specified in this section. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction 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.

(c) "Permanent residence," "temporary residence," and "transient residence" have the same meaning ascribed in s. 775.21.

(d) "Institution of higher education" means a career center, community college, college, state university, or independent postsecondary institution.

(e) "Change in enrollment or employment status" means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.

(f) "Electronic mail address" has the same meaning as provided in s. 668.602.

(g) "Instant message name" means an identifier that allows a person to communicate in real time with another person using the Internet.

(2) A sexual offender shall:

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

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

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

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

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.



Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence, name, any electronic mail address and any instant message name required to be provided pursuant to paragraph (4)(d), after the sexual offender reports in person at the sheriff's office, shall be accomplished in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; occupation and place of employment; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; home telephone number and any cellular telephone number; any electronic mail address and any instant message name required to be provided pursuant to paragraph (4)(d); date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address.

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

2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department through the sheriff's office the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, within 48 hours after any change in status. The sheriff shall promptly notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status.

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

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver's license office of the Department of Highway Safety and Motor Vehicles, unless a driver's license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver's license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual

offender reported as required in subsection (2). The sexual offender shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sexual offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section. The driver's license or identification card issued must be in compliance with s. 322.141(3).

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.

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

(b) A sexual offender who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual offender must provide or update all of the registration information required under paragraph (2)(b). The sexual offender must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

(c) A sexual offender who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to paragraph (b) for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under paragraph (b) but fails to make a report as required under this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A sexual offender must register any electronic mail address or instant message name with the department prior to using such electronic mail address or instant message name on or after October 1, 2007. The department shall establish an online system through which sexual offenders may securely access and update all electronic mail address and instant message name information.

(5) This section does not apply to a sexual offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.

(6) County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual offenders who are not under the care, custody, control, or supervision of the Department of Corrections in a manner that is consistent with the provisions of

the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. Local law enforcement agencies shall report to the department any failure by a sexual offender to comply with registration requirements.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction. The notification must include the address, municipality, county, and state of intended residence. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state or jurisdiction of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

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

(9)(a) A sexual offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual offender who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, the county of the last registered address of the sexual offender, or the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual offender.

(c) An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under subsection (2), the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

(d) Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

(10) The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, any law enforcement agency in this state, and

the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual offender fails to report or falsely reports his or her current place of permanent, temporary, or transient residence.

(11) Except as provided in s. 943.04354, a sexual offender must maintain registration with the department for the duration of his or her 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 meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender:

(a)1. Who has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and has not been arrested for any felony or misdemeanor offense since release, provided that the sexual offender's requirement to register was not based upon an adult conviction:

- a. For a violation of s. 787.01 or s. 787.02;
- b. For a violation of s. 794.011, excluding s. 794.011(10);
- c. For a violation of s. 800.04(4)(b) where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- d. For a violation of s. 800.04(5)(b);
- e. For a violation of s. 800.04(5)c.2. where the court finds the offense involved unclothed genitals or genital area;
- f. For any attempt or conspiracy to commit any such offense; or
- g. For a violation of similar law of another jurisdiction,

may petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender.

2. The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection.

3. The department shall remove an offender from classification as a sexual offender for

purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the offender is no longer required to comply with the requirements for registration as a sexual offender.

(b) As defined in sub-subparagraph (1)(a)1.b. must maintain registration with the department for the duration of his or her life until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(12) The Legislature finds that sexual offenders, especially those who have committed offenses against minors, often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount government interest. Sexual offenders have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Releasing information concerning sexual offenders to law enforcement agencies and to persons who request such information, and the release of such information to the public by a law enforcement agency or public agency, will further the governmental interests of public safety. The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes.

(13) Any person who has reason to believe that a sexual offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual offender in eluding a law enforcement agency that is seeking to find the sexual offender to question the sexual offender about, or to arrest the sexual offender for, his or her noncompliance with the requirements of this section:

(a) Withholds information from, or does not notify, the law enforcement agency about the sexual offender's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual offender;

(b) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual offender; or

(c) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual offender; or

(d) Provides information to the law enforcement agency regarding the sexual offender that the person knows to be false information,

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

(14)(a) A sexual offender must report in person each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister.

(b) However, a sexual offender who is required to register as a result of a conviction for:

1. Section 787.01 or s. 787.02 where the victim is a minor and the offender is not the victim's parent or guardian;

2. Section 794.011, excluding s. 794.011(10);

3. Section 800.04(4)(b) where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
4. Section 800.04(5)(b);
5. Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals or genital area;
6. Section 800.04(5)(c)2. where the court finds molestation involving unclothed genitals or genital area;
7. Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals or genital area;
8. Any attempt or conspiracy to commit such offense; or
9. A violation of a similar law of another jurisdiction,

must reregister each year during the month of the sexual offender's birthday and every third month thereafter.

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

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; any electronic mail address and any instant message name required to be provided pursuant to paragraph (4)(d); home telephone number and any cellular telephone number; date and place of any employment; vehicle make, model, color, and license tag number; fingerprints; and photograph. A post office box shall not be provided in lieu of a physical residential address.
2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status.
3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.
4. Any sexual offender who fails to report in person as required at the sheriff's office, or who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence or who fails to report electronic mail addresses or instant message names, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) The sheriff's office shall, within 2 working days, electronically submit and update all

information provided by the sexual offender to the department in a manner prescribed by the department.

**History.**—s. 8, ch. 97-299; s. 7, ch. 98-81; s. 114, ch. 99-3; s. 3, ch. 2000-207; s. 3, ch. 2000-246; s. 3, ch. 2002-58; s. 2, ch. 2004-371; s. 9, ch. 2005-28; s. 3, ch. 2006-200; s. 4, ch. 2006-299; s. 159, ch. 2007-5; s. 10, ch. 2007-143; s. 4, ch. 2007-207; s. 2, ch. 2007-209; s. 3, ch. 2009-194; s. 4, ch. 2010-92.

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Select Year: 2011



## The 2011 Florida Statutes

Title XLVII  
CRIMINAL PROCEDURE AND  
CORRECTIONS

Chapter 943  
DEPARTMENT OF LAW  
ENFORCEMENT

View Entire  
Chapter

### **943.04354 Removal of the requirement to register as a sexual offender or sexual predator in special circumstances.—**

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

(a) Was or will be convicted or adjudicated delinquent of a violation of s. [794.011](#), s. [800.04](#), s. [827.071](#), or s. [847.0135\(5\)](#) or the person committed a violation of s. [794.011](#), s. [800.04](#), s. [827.071](#), or s. [847.0135\(5\)](#) 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 s. [794.011](#), s. [800.04](#), s. [827.071](#), or s. [847.0135\(5\)](#);

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

(c) 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.

(2) If a person meets the criteria in subsection (1) and the violation of s. [794.011](#), s. [800.04](#), s. [827.071](#), or s. [847.0135\(5\)](#) was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or sexual predator. The person must allege in the motion that he or she meets the criteria in subsection (1) and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. At sentencing or disposition of this violation, the court shall rule on this motion and, if the court determines the person meets the criteria in subsection (1) and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement.

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

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

2. Is subject to registration as a sexual offender or sexual predator for a violation of s. [794.011](#), s. [800.04](#), or s. [827.071](#); and

3. Meets the criteria in subsection (1).

(b) A person may petition the court in which the sentence or disposition for the violation of s. [794.011](#), s. [800.04](#), or s. [827.071](#) occurred for removal of the requirement to register as a sexual offender or sexual predator. The person must allege in the petition that he or she meets the criteria in subsection (1) and removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition and may present evidence in opposition to the requested relief or may otherwise



demonstrate why the petition should be denied. The court shall rule on the petition and, if the court determines the person meets the criteria in subsection (1) and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement. If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement.

(4) If a person provides to the Department of Law Enforcement a certified copy of the court's order removing the requirement that the person register as a sexual offender or sexual predator for the violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0135(5), the registration requirement will not apply to the person and the department shall remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the department. However, the removal of this information from the public registry does not mean that the public is denied access to information about the person's criminal history or record that is otherwise available as a public record.

**History.**—s. 3, ch. 2007-209; s. 26, ch. 2008-172; s. 6, ch. 2010-92.

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## Office of the State Courts Administrator

### Mental Health Courts in Florida October 2011

CIRCUIT	COUNTY	IMPLEMENTATION DATE	OPERATIONAL
★ 1	Okaloosa	March 2003	Yes
3	Columbia	June 23, 2008	Yes
4	Duval	January 1, 2008	Yes
4	Nassau	November 1, 2007	Yes
5	Marion	March 5, 2009	Yes
8	Alachua	November 1, 2001	Yes
8	Alachua	June 1, 2003	Yes
9	Orange	September 1, 2006	Yes
10	Polk	October, 2007	Yes
★ 11	Miami-Dade	January 1, 2005	Yes
★ 12	Sarasota	October 1, 2001	Yes
★ 15	Palm Beach	January, 2009	Yes
★ 17	Broward	July 9, 1997	Yes
17	Broward	November 3, 2003	Yes
17	Broward	November 3, 2003	Yes
17	Broward	January 7, 2001	Yes
18	Brevard	2005	Yes
19	St. Lucie	June 6, 2006	Yes
19	Martin	October 31, 2007	Yes
20	Lee	May 13, 2002	Yes
20	Collier	October 18, 2007	Yes
20	Charlotte	December 1, 2004	Yes

★ Judicial Circuits that have established Veteran's Courts / Veteran's Court Dockets  
The 6th Judicial Circuit has also established a Veteran's Court

The contents of this spreadsheet were provided to the Office of the State Courts Administrator (OSCA) by the Trial Court Administrators and/or primary points of contact.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 4.905-11/10

IN RE: PALM BEACH COUNTY VETERANS' DOCKET/  
AND CREATION OF "VA" DIVISION

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A report by the Substance Abuse and Mental Health Services Administration's Center for Mental Health Services National GAINS Center determined that on any given day, veterans account for nine (9) out of every one hundred (100) individuals in U.S. jails and prisons. Statistics show that in the Fifteenth Judicial Circuit, approximately sixty (60) veterans enter the criminal justice system on a monthly basis.

In 2010, the Chief Judge of the Fifteenth Judicial Circuit formed a Veterans' Committee comprised of stakeholders from the Judiciary, Office of the State Attorney, Office of the Public Defender, the Clerk and Comptroller's Office, Pride Probation, Department of Corrections, Veteran's Association, Stand Down House, Vietnam Veterans of America, Law Enforcement and Court Administration. The Committee's goal was to improve public safety by providing meaningful treatment to address the needs of veterans while reducing recidivism.

The Veterans' Committee determined that a need existed for a Veterans' Docket staffed by a full time case coordinator who will work on individualized treatment plans to address existing substance abuse, mental health, homelessness and employment issues of veterans charged with misdemeanor, municipal ordinance violations, county ordinance violations, and felony crimes. The case coordinator will link the veterans to services available at the Veteran's Hospital and local Community Service Providers with the goal of having the veterans become crime free citizens. The Veteran's Association agreed to fund the case coordinator to establish an individualized treatment plan for veterans. The Veterans' Committee also determined that a Volunteer Mentor Program, made up entirely of specially trained veteran volunteers, is a critical component of the Veterans' Docket. As such, the Stand Down House and Vietnam Veterans of America have agreed to oversee the Mentor Program and to coordinate training and background checks of the mentors.


**NOW, THEREFORE**, pursuant to the authority conferred by Florida Rule of Judicial Administration 2.215, it is **ORDERED** as follows:

1. Effective November 11, 2010, Veterans' Day, the Palm Beach County Veterans' Docket ("Veterans' Docket") is hereby established. The Veterans' Docket will hear qualified

charges pursuant to criteria which will be set forth in the Veterans' Treatment Docket procedural manual which will be found at [www.15thcircuit.com](http://www.15thcircuit.com).

2. County Judge Ted Booras will preside over this docket and hearings shall take place at the Criminal Justice Complex/Gun Club Facility.
3. The Clerk and Comptroller shall designate all Veteran cases as Division "VA" for case assignment purposes. Upon receipt of court orders transferring individual cases to the Veterans' Docket, the Clerk of the Circuit Court shall assign those designated cases to Division "VA", Veterans' Docket.
4. The Veterans' Docket shall occur on the first (1<sup>st</sup>) and third (3<sup>rd</sup>) Thursday of each month, subject to change by the presiding Judge, beginning at 1:30 p.m. in Courtroom 1 of the Criminal Justice Complex ("Gun Club") Courthouse.
5. In all cases in which defendants have been referred to the Veterans' Docket, but subsequently either elect not to participate in the program, are rejected from the program for any reason, or are removed from the program prior to entry of a plea of guilty or nolo contendere, then the Clerk and Comptroller, or Criminal Case Manager, shall transfer those cases back to the previously assigned divisions for further proceedings.
6. In those cases where felony and misdemeanor offenders participating in the Palm Beach County Veterans' Docket are placed on probation, they shall be supervised in the normal course by the Florida Department of Corrections staff or Pride Probation.
7. A Mentor Program is hereby created and will be overseen by The Stand Down House and Vietnam Veterans of America who will conduct trainings and background checks on the assigned mentors.
8. The Administrative Office of the Court, in collaboration with the Veteran's Association and Palm Beach County Pretrial Services, will facilitate collection and maintenance of the statistical data for the program.
9. The case coordinator, funded by the Veteran's Association, shall attend all case staffings and court sessions.

10 **DONE and SIGNED**, in Chambers, at West Palm Beach, Palm Beach County, Florida, this day of November, 2010.

  
\_\_\_\_\_  
Peter D. Blanc  
Chief Judge



## **Veterans Treatment Docket**

Fifteenth Judicial Circuit of Florida  
West Palm Beach VA Medical Center

The purpose of the following document is to provide a general framework of common principles, policies, and practices for the Palm Beach County Veterans Treatment Docket. This will:

- Minimize duplication of efforts and ensure greater coordination as court supervised Veteran treatment programs are established;
- Maximize coordination and sharing of scarce monitoring and treatment resources;
- Strengthen efforts to obtain federal, state, and local funding; and
- Facilitate development of coordinated long-range plans for financing Veterans Treatment Court operations.

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## INTRODUCTION

The Veterans Treatment Docket is specifically designated and staffed to supervise felony or misdemeanor combat and non-combat Veteran defendants who have been referred to a comprehensive and judicially monitored program of treatment and rehabilitation services.

The Veterans Treatment Docket represents a very non-traditional approach to criminal offenders who have served both during peace and wartime. Rather than focusing only on the crimes they commit and the punishments they receive, Veterans Treatment Court also attempts to solve some of the participants' underlying health and psychosocial problems.

The Veterans Treatment Docket is built upon a unique partnership between the Judiciary, Veterans Administration, West Palm Beach VA Medical Center (WPB VAMC), State Attorney, Public Defender, Probation (Felony and Misdemeanor), Clerk and Comptroller, Administrative Office of the Court, Sheriff, and other community partners from the criminal justice and treatment communities. It is a program that structures treatment intervention around the authority and personal involvement of a single Veterans Treatment Docket Judge. Veterans Treatment Docket is also dependent upon the creation of a non-adversarial courtroom atmosphere where a single judge, dedicated court staff, and the treatment team work together toward the common goals of breaking the cycle of substance abuse and criminal behavior, and addressing mental and physical health issues. An environment with clear and certain rules is created, and each participant's compliance is within his or her own control.

Because of the unique problems and opportunities that present themselves in working with Veterans, treatment and rehabilitation strategies must be "reality-based." The Veterans Treatment Docket must therefore recognize that:

- Veterans are often most receptive to successful interventions when they are in the crisis of arrest and incarceration, so intervention should be immediate and up-front.
- Preventing gaps in communication and ensuring offender accountability are of critical importance, so court supervision must be coordinated and comprehensive.
- Mental health issues combined with addiction can be a longstanding, debilitating condition, so treatment should be expected to be long term and comprehensive.
- Addiction seldom exists in isolation from other serious problems that undermine rehabilitation, so treatment must include integration of other available services and resources such as educational assessments, vocational assessments, training and job placement.
- Progressive sanctions and incentives must be integral to the Veterans Treatment Docket intervention strategy to address relapses and promote recovery.



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The goals of the Veterans Treatment Docket are to:

- Reduce participant contacts with the criminal justice system;
- Reduce costs associated with criminal case processing and re-arrest;
- Introduce participants to an ongoing process of recovery designed to help them become stable, employed, and substance free while continuing mental health care through community/peer counseling groups or the VA.

The National Association of Drug Court Professionals (NADCP) has developed the following Ten Key Components for Drug Courts, which have been utilized as the foundation of the Veterans Treatment Court as follows:

- 1) Veterans Treatment Court integrates drug and alcohol and mental health treatment services with justice system case processing.
- 2) Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- 3) Eligible participants are identified early and promptly placed in the Veterans Treatment Court program.
- 4) Veterans Court provides access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- 5) Abstinence is monitored by frequent alcohol and other drug testing.
- 6) A coordinated strategy governs Veterans Treatment Court responses to participants' compliance.
- 7) Ongoing judicial interaction with each participant is essential.
- 8) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- 9) Continuing interdisciplinary education promotes effective Veterans Treatment Court planning, implementation, and operations.
- 10) Forging partnerships among the Veterans Treatment Court, public agencies, and community-based organizations generates local support and enhances the Veterans Treatment Court's effectiveness.

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## **I. ADMINISTRATION**

### **a. VETERANS TREATMENT DOCKET DEFINED**

#### **i. Palm Beach County Veterans Treatment Docket**

1. The operational Veterans Treatment Program of the Palm Beach County Docket will reflect the overall uniformity of procedures and principals set forth in this document.

### **b. ESTABLISHMENT AND PURPOSE OF THE VETERANS TREATMENT DOCKET TEAM**

- i. The Veterans Treatment Docket program will establish a team comprised of operations staff from the Fifteenth Judicial Circuit Court of Florida, and the West Palm Beach VA Medical Center. This team will meet on a regular basis for the purpose of resolution of daily operational issues.

## **II. OPERATIONS**

### **a. AGENCY RESPONSIBILITIES**

#### **i. Duty of Agencies to Make Necessary Adjustments to Programs**

1. Participating agencies will support the Veterans Treatment Docket by making appropriate adjustments to internal policies, practices, and procedures to ensure successful day-to-day operations. The Court, State Attorney, Public Defender, Administrative Office of the Court, Probation, VA, and law enforcement agree, where appropriate, to:
  - Provide administrative support for the development and compliance with uniform policies and procedures for all Veterans Treatment Docket operations;
  - Encourage communication and cooperation among dedicated Veterans Treatment Docket personnel; and
  - Develop procedures to collect and maintain statistical and evaluation information based upon county-wide and Veteran Health Administration standards.

ii. Adherence to Confidentiality of Client Records

1. Participating agencies will strictly observe clients' rights to confidentiality in accordance with Florida Statutes including HIPPA, and Florida Statutes including sections 456.057(7)a, and 90.503 (2)."

➤ VA staff and residential treatment programs will obtain and file in Veteran treatment records, "Consent to Release Information," forms signed by participants to authorize exchange of information between participating individuals/agencies. Separate consent forms must specify the Veterans Treatment Docket Judge and the representative for the State Attorney, the Public Defender, and the Probation (Felony or Misdemeanor) Department. Additional signed forms will be obtained as necessary to designate other agencies serving the participants. (Attachment A)

b. OPERATIONAL AGREEMENT

i. Operational Agreement Between Agencies

1. Participating agencies will establish, as necessary, a countywide Operational Agreement to ensure the continuity of legal policies, the integrity of the therapeutic intervention, and other standards necessary to the operation of Veterans Treatment Docket.

ii. Renewal of Operational Agreement

1. The operational agreement will be updated as needed.

c. PERSONNEL

i. Staff Assignment

1. Participating agencies will make full or part-time staff assignments of interested, appropriate professionals dedicated to the Veterans Treatment Docket to ensure stability and continuity of day-to-day operations and to strengthen collaborative relationships between the key professionals except holidays and weekends.

2. The VJO Coordinator may be physically present at the Palm Beach County Veterans Treatment Docket.

ii. Training and Orientation

1. Participating agencies will provide assigned staff with an orientation to the Veterans Treatment Docket concept and training in the day-to-day Veterans Treatment Docket operations.
2. The VJO Coordinator will provide orientation to court staff on the mission and goals of the Veterans Treatment Docket.
3. The VJO Coordinator will provide training to the local police departments, jail, and Court personnel.
4. VJO Coordinator will work collaboratively with Veteran Service Organizations to develop mentoring program.

**III. INTAKE AND REFERRAL**

a. PROMPT ASSESSMENT

i. Time Frame for Enrollment

1. Public Defender will provide information regarding the nature and purpose of Veterans Treatment Docket and the consequences of abiding or failing to abide by the rules; explain all of the rights that the defendant will temporarily or permanently relinquish, and assist in the evaluation of potential defendants for eligibility and willingness to participate.
2. Defendants in custody will be referred to the VJO for assessment of eligibility and placed on the docket for the Veterans Treatment Docket within the statutory time frame required to ensure prompt program enrollment and participation. Defendants out of custody and/or referred by other courts (OR releases, bail-outs, diversion fallouts) will be assessed for eligibility and suitability as soon as reasonably possible. Upon Veterans agreement to be assessed to participate in the Veterans Treatment Docket, the VJO Coordinator will be notified.

ii. Assessment for Eligibility

1. VJO Coordinator will obtain a list of identified Veterans scheduled for the Palm Beach County Veterans' Treatment Docket.
2. Upon receiving notification or corrections of the list of identified

Veterans the VJO Coordinator will determine the Veteran's VA eligibility and enrollment status, in coordination with representatives from Eligibility and Enrollment department at the WPB VAMC prior to the initial appearance in the Veterans Treatment Docket.

3. If the Veteran's eligibility status is unable to be determined at the initial First Appearance hearing, and the Veteran identifies that he/she would like to enroll, the VJO Coordinator will direct the Veteran to the West Palm Beach VAMC with a copy of his/her DD-214, to enroll after the First Appearance hearing.
4. The VJO Coordinator will bring any relevant information gathered on the Veteran to the court.
5. The VJO Coordinator will meet with interested participants, and complete the initial VA intake form.
6. The VJO Coordinator will meet with Palm Beach County Court Administration, the Public Defender and probation (Felony or Misdemeanor) department as needed.

iii. Determination of Acceptance

1. To provide the greatest flexibility, with input from the State Attorney and defense counsel, the Veterans Treatment Docket judge will fashion a proposed resolution that will be appropriate in light of all circumstances and will also allow the Veteran offender to receive maximum benefit from the program while adhering to State Law and guidelines.

iv. Immediate Referral for Orientation

1. If accepted into the Veterans Treatment Docket, participants are immediately referred to the VA and, if appropriate, probation department for program orientation.

v. Admissibility of Statements during Assessment

1. No statement, or any information procured there from, made by the defendant to any Veterans Treatment Docket assessment team member during the course of the assessment for eligibility and prior to the

reporting of the Veterans Treatment Docket assessment team's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the assessment, including for the purposes of impeachment, nor in the specific action in which the defendant is charged.

**b. ADVISEMENT AND COACHING**

**i. Determination of Potential Eligibility**

1. The Veterans Treatment team will determine eligibility for Veterans, at the earliest practical time. Further, once determination of eligibility has been confirmed the VJO will in turn inform the team.

**ii. Advise ment and Explanation of Program**

1. The Assistant Public Defender will provide information regarding the nature and purpose of Veterans Treatment Docket and the consequences of abiding or failing to abide by the rules; explain all of the rights that the defendant will temporarily or permanently relinquish, and assist in the evaluation of potential defendants for eligibility and willingness to participate.

**IV. ASSESSMENT**

**a. ELIGIBILITY**

**i. Admission Criteria**

Consideration for admission to the Veterans Treatment Docket program will be available to United States military service Veterans who have an open, and who are approved for admission by the Court. To be accepted into the Veterans Treatment Docket, defendants may be required to plead guilty and agree to participate in the treatment plan outlined by the VA program and concurrence must be obtained by Judge. Defendants will be evaluated on a case-by-case basis with the admission dependent upon the team's assessment as to whether or not the individual can be successfully treated. The team will consider both public safety and likelihood of good treatment outcomes in their decision.

1. Veterans accepted into the diversion program must be screened by the

receiving VA program. The VA program will take into consideration Veteran's current legal circumstances and determine whether the program can meet the Veteran's needs.

b. SUITABILITY

i. Screening Responsibility

1. All Veterans Treatment Docket participants will be screened for suitability by the treatment staff at the time of initial placement. The treatment team, consisting of staff from the VA and, if appropriate, probation department, will assist the Veterans Treatment Docket Judge in determining the overall suitability of defendants for the program by completing a comprehensive assessment.

- Risk assessment factors considered in admission to the Veterans Treatment Docket program include: family and community ties, gang affiliation or lack thereof, employment status, victim input and a summary of the defendant's prior criminal history and other factors which may be helpful in determining suitability for the Veterans Treatment Docket. Consideration of risk assessment factors is discretionary and is used by the Veterans Treatment Judge on a case-by-case basis.
- Final determination for the admission of a defendant to the Veterans Treatment Docket will be made by the Veterans Treatment Docket Judge based on recommendations from, and as appropriate with the concurrence of, the Assistant State Attorney, Assistant Public Defender, VA, and Probation.
- The treatment team will assist the Veterans Treatment Docket Judge in determining ongoing participant suitability through periodic risk/needs assessments. This will assist in monitoring progress, identifying relapse cues and changing the Veterans' treatment plans as necessary.

ii. Characteristics of Suitability

1. Characteristics defining suitability of Veterans Treatment Docket

participants include but are not limited to the following:

- Must be willing to comply with the conditions of Veterans Treatment Docket.
- Must be capable of complying with Veterans Treatment Docket program requirements, including all requirements of outpatient and residential treatment programs.
- Must demonstrate a sincere willingness to comply with all Veterans Treatment Docket program requirements, including all requirements of outpatient and residential treatment programs.

## **V. THE COURTROOM**

### **a. SPECIALIZED COURTROOM**

#### **i. Establishment of a Specialized Courtroom**

1. The Court recognizes the Veterans Treatment calendar as a priority and will establish a specialized, separate docket, dedicated to the evaluation, treatment, and supervision of eligible and suitable Veterans Treatment Docket participants.

### **b. ADMINISTRATIVE PROCEDURE**

#### **i. Court Administrative Responsibility**

1. Court Administration will keep the Veterans Treatment Docket Judge aware of administrative procedures that affect Veterans Treatment Court operations, and ensure that Veterans Treatment Docket cases are processed within the established time lines and guidelines.

- Veterans Treatment Court sessions include the admittance and orientation of new participants into the program, and progress reports on participants previously admitted.
- The Court Clerk provides clerical support for the operation of the Veterans Treatment. This support includes the timely preparation of court files and courtroom calendars. All docket entries and/or minute orders follow common practices and protocols.
- A representative of Court Administration will oversee all



clerical and management aspects of the Veterans Treatment Docket.

ii. Document Confidentiality

1. Veterans Treatment Court will comply with all Federal and State laws.

VI. PROGRAM FEES

a. BASIS FOR FEES

i. Requirement of Payment of Fees

1. All Veterans Treatment Docket participants may be required to pay fees and court costs as required by statute and/or ordered by the Veterans Treatment Docket Judge. No one will be denied treatment due to inability to pay.

- Those Veterans Treatment Docket participants who are on formal probation, may be required to pay the costs of probation supervision.
- Fees and co-pays will also be assessed based on Veterans Health Administration Eligibility Priority Group determination for any treatment/medication it provides, as well as by any other residential program that the participant may enter.
- All fees must be paid prior to graduating from the program unless otherwise ordered by the court or unless participant does not have the ability to pay outstanding fees, and then a judgment will be entered.

b. COLLECTION

i. Collection Responsibility

1. The Probation Department and Veterans Health Administration will utilize established administrative procedures to ensure collection of fees unless it is determined by the Court that the Veterans Treatment Docket participant does not have the ability to pay outstanding fees, and then a judgment will be entered.
2. Those Veterans Treatment Docket participants who are on formal probation may be required to pay the costs of probation supervision.

## **VII. PROGRESSIVE RESPONSES**

### **a. INCENTIVES**

#### **i. Program Plan for Graduated Rewards**

1. The Veterans Treatment Docket will include a plan for graduated rewards which may be applied by the Veterans Treatment Docket Judge as an immediate and direct response to incremental success in program compliance. The Veterans Treatment Docket Judge, with input from the treatment team, will employ the following graduated rewards to encourage progress and program compliance:

- Encouragement and praise from the bench; and
- Ceremonies and tokens of progress, including advancement to the next treatment phase.

#### **ii. Graduation from Program/Dismissal of Charges**

1. At the time of graduation, and if the State is in agreement, the Court may dismiss the charges to which the participant previously pled guilty. The Court may also terminate probation.

### **b. SANCTIONS**

#### **i. Program Plan for Graduated Sanctions**

1. The Veterans Treatment Docket will include a plan for graduated sanctions which may be applied as an immediate and direct consequence for failure to comply with program requirements. The Veterans Treatment Docket Judge, with input from the treatment team, will employ the following graduated treatment interventions to assist participants in complying with the program

- Admonishment from the Court
- Written essay on a topic selected by the Court
- Increased frequency of court appearances
- Increased frequency of random drug testing
- Increased participation in individual and/or group counseling
- Completion of community service hours
- Increased frequency of self-help meeting attendance

- Placement in a residential treatment facility
- Brief periods of incarceration
- Formal probation violation

ii. Terminated from Program for Failure to Comply

1. Participants may be terminated from the Veterans Treatment Docket for willful failure to comply with the terms and conditions of probation, including any treatment plan imposed by the Court through the Veterans Treatment Docket treatment team. In ordering a participant's termination from the Veterans Treatment Docket, the court should consider such factors as, but not limited to, the following: the nature of the violation, the duration the participant has been in the program, the number of previous violations, the participant's criminal history, whether the participant's substance abuse can be abated within the time limitations set by the program, the participant's desire to achieve sobriety as evidenced by the nature and quality of prior positive steps to maintain sobriety, whether or not the participant agrees to comply with medications as prescribed, and whether the nature of the violation would have initially precluded the participant from being accepted into the program.
2. Upon a violation of probation, with the recommendation of the treatment team, and in those cases involving a suspended sentence, the Veterans Treatment Docket Judge may remove a participant from the program and impose any lawful sentence.
3. Notwithstanding the above, any crime committed while enrolled in the Veterans Treatment Docket may result in termination in the program.

**VIII. DATA COLLECTION AND PROGRAM EVALUATION**

a. AUTOMATION OF INFORMATION

i. Court Administration Responsibility

1. Court Administration, in collaboration with the WPB VAMC VJO Coordinator, will facilitate collection and maintenance of the statistical data for the program. Management of information will monitor daily

activities, evaluate quality of service provided, and produce outcome evaluations. Program evaluation activities will be part of the ongoing process.

ii. Requirements for Automated Data Collection and Formal Evaluation

1. The Veterans Treatment Docket will establish a coordinated, automated data collection and formal program evaluation process.

iii. The Veterans Treatment Docket Data System Design

1. The design of the Veterans Treatment Docket data-base system will include:

- Maximum utilization of existing countywide justice information systems and interfaces,
- Maximum utilization of existing county data communication networks;
- Minimum reliance on manual data entry and report generation to reduce redundancy and errors;
- Safeguards to ensure data integrity for all affected systems; and
- Safeguards to ensure privacy and security of all records.

## IX. TREATMENT AND MONITORING

### a. TREATMENT TEAM

i. Treatment Team Members and Approved Veterans Treatment Facilities

1. The Veterans Treatment Docket team consists of WPB VAMC clinicians, to include the Veteran Justice Outreach Coordinator, Probation Department, the Public Defender, and the State Attorney. Only established treatment facilities which are licensed and/or certified by the State and/or approved by the Veteran Health Administration and the Probation Department for Veterans treatment services will be utilized.

ii. Staff Liaisons to the Veterans Treatment Court

1. The WPB VAMC and Probation Department will designate specific staff and alternates to serve as liaisons to the Veterans Treatment Docket and to attend all Veterans Treatment Docket sessions.

iii. Summary Progress Reports

1. Prior to each Veterans Treatment Docket appearance, the treatment team will prepare and submit to the Court a summary progress report which documents test results, compliance with treatment appointments, and any relevant case information which can be appropriately shared with the Judge in open court.

iv. Maintaining Confidentiality

1. The treatment team will maintain confidentiality of all client information in accordance with Federal and State Laws.

v. Ancillary Services

1. The treatment team, in collaboration with the Veterans Treatment Court Judge, will assist participants by providing referrals to meet needs such as housing, education, vocational training, and job placement.

b. COMPREHENSIVE AND INTEGRATED SERVICES

i. Appropriate Treatment Programs

1. All Veterans Treatment Court participants will be offered a comprehensive and integrated program of treatment and rehabilitation services to be supervised by the Veterans Treatment Court Judge.

c. DRUG TESTING

i. Drug Testing Results

1. When appropriate the West Palm Beach VA Medical Center will issue drug screenings as deemed appropriate by the Court. Drug test results will be used to assist the court and treatment team in evaluating the participant's progress in the Veterans Treatment Court program. The results will be used to determine: if the participant is progressing satisfactorily; if the treatment plan needs to be modified; and, if the participant will be terminated or graduated from the program.

ii. Urinalysis

1. Drug testing will be initiated when appropriate and at the discretion of the VA and Probation Department staff based upon participant compliance and progress.

d. TREATMENT PLAN

i. Co-Occurring Problems to be Considered in Treatment Plan

1. The treatment plan will consider co-occurring disorders to maximize the opportunity of the participant's success. Treatment must also be culturally relevant to the participant's background.

ii. Long Term Residential Program

1. Participants in long term residential programs will satisfactorily complete the phases prescribed by those programs to successfully fulfill the Veterans Treatment Court program requirements for graduation. A participant may advance through Phase II of Veterans Treatment Court while in a residential program.

iii. Individualized Outpatient Treatment Plans

1. Individualized treatment plans for outpatient participants will consist of specified treatment objectives, therapeutic and rehabilitative activities and requirements for graduation.

**X. ROLE OF THE JUDGE**

a. FOCUS AND DIRECTION OF PROGRAM

i. Leadership

1. The focus and direction of the Veterans Treatment Court program are provided through the effective leadership of the Veterans Treatment Court Judge.

ii. Courtroom Non-Adversarial Atmosphere

1. The Judge will be responsible for maintaining a non-adversarial atmosphere in the Veterans Treatment Court. All staff must see their primary responsibility as the facilitation of the participant's recovery and rehabilitation.

b. PROGRAM ADVOCACY

i. Representation of Program

1. Within the limitations provided by the Code of Judicial Conduct the Veterans Treatment Court Judge must be willing to serve as the program advocate and represent the program in the community, before

government and criminal justice agencies and other forums.

ii. Facilitation of Staff Participation

1. To encourage full commitment to the success of the Veterans Treatment Court program, the Judge will encourage program staff to participate in the design and implementation of the program.

iii. Partnerships with Participating Agencies

1. The Judge will form a partnership with the VA, State Attorney, Public Defender, Probation, law enforcement and the treatment team, which allows collaboration in sharing of resources and coordination of efforts.

iv. Participant Motivation

1. The Judge will be one of the key motivational factors in convincing the participant to achieve rehabilitation. Less formal and more frequent court appearances will be scheduled to allow the Judge to motivate and monitor the participants.

v. Court Proceedings

1. The Judge will conduct court proceedings such that all participants benefit by observation of others as they progress (or fail to progress) in treatment and the Court takes appropriate action.

## **XI. ROLE OF THE VETERANS JUSTICE OUTREACH COORDINATOR**

a. Liaison between the Court and the Veterans Health Administration

- i.
- ii. The VJO Coordinator will utilize computer access to VA electronic medical records, enrollment, and scheduling menus in the courtroom.
- iii. The VJO Coordinator will assist in determining a Veteran's eligibility and enrollment status.
  1. The VJO Coordinator will be provided the names of each identified Veteran to complete an initial screening, and to assist in determining eligibility.
  2. For Veterans who have not previously enrolled in VA health care, the VJO will coordinate with Eligibility and Enrollment at the WPB VAMC to expedite determination of eligibility status and enroll these Veterans

to ensure timely access to health care services.

- iv. The VJO Coordinator will coordinate care for Veterans, ensuring that they are referred and scheduled for appropriate substance abuse, mental health, and medical appointments. Treatment plans will be established as deemed appropriate by the Veterans Treatment Court Judge and VJO Coordinator.
  1. The VJO Coordinator will also ensure that Veterans are connected with the most appropriate case management team, based on the individual Veteran's needs (e.g., OEF/OIF Program, Primary Care Social Work, etc.).
  2. The VJO Coordinator will make referrals to the Palm Beach County Veteran Service Organizations, West Palm Beach Department of Veterans Affairs or the Veterans Benefits Administration (VBA) to apply for applicable benefits or discharge upgrades as needed.
  3. While the referred Veteran from Palm Beach County Veterans Treatment Court is engaged in treatment, the VJO Coordinator will ensure that all requested and appropriate clinical documentation needed by the Palm Beach County Veterans Treatment Court is submitted and communicated per established timelines.

#### **XI. ROLE OF THE VETERANS TREATMENT COURT MENTOR PROGRAM**

- a. The Mission of the Peer Mentor Program is to ensure, to the best of the mentor's abilities, that no Veteran is left behind or forgotten. Peer Mentors work closely with Veteran participants of the Pam Beach County Veterans Treatment Court and offer them assistance, assess their needs, and help them solve their problems. Peer Mentors support the Veteran during readjustment to civilian life and assist the Veteran with navigating the Court, treatment, and the Department Veteran's Affairs system, while acting as a mentor, advocate, ally and role model.
- b. The Peer Mentor encourages, guides, and supports the Veteran participant as they progress through the court process. This includes listening to the concerns of the Veteran and making general suggestions, assisting the Veteran to determine their needs, and acting as a support for the Veteran, especially during this anxiety-provoking



time. The Peer Mentor's coaching, guidance, and support will demonstrate the special understanding that only another Veteran can provide.

c. Peer Mentor Requirements

- Be a United States military Veteran: Army, Marine Corp, Navy, Air Force, Coast Guard, or their respective Reserve or National Guard Branches.
- Be a good standing and law abiding citizen.
- Have genuine concern for veterans in the legal system.
- Adhere to all Palm Beach County Veterans Court policies and procedures.
- Commit to program participation for a minimum of six months.
- Attend court sessions as scheduled.
- Complete the screening process.
- Complete the required initial training.
- Participate in additional trainings throughout his/her time of service in the Court.
- Be ready to respond when needed in Court.

d. Peer Mentor Duties and Responsibilities

- Attend court sessions when scheduled.
- Participate in and lead mentoring sessions with Veterans when assigned by the Judge.
- Be supportive and understanding of the difficulties other Veterans are facing.
- Assist the Veterans as much as possible to resolve their concerns around the court procedures.
- Assist Veterans on how to access and navigate the Veteran's Affairs System
- Be supportive and helpful to other Peer Mentors.
- Work respectfully and professionally with the Veteran participant and other Peer Mentors.

1                                   A bill to be entitled  
2           An act relating to military veterans convicted of  
3           criminal offenses; providing a short title; creating  
4           s. 921.00242, F.S.; providing that a person found to  
5           have committed a criminal offense who alleges that the  
6           offense resulted from posttraumatic stress disorder,  
7           traumatic brain injury, substance use disorder, or  
8           psychological problems stemming from service in a  
9           combat theater in the United States military may have  
10          a hearing on that issue before sentencing; providing  
11          that a defendant found to have committed an offense  
12          due to such causes and who is eligible for probation  
13          or community control may be placed in a treatment  
14          program in certain circumstances; providing for  
15          sentence credit for a defendant placed in treatment  
16          who would have otherwise been incarcerated; providing  
17          a preference for treatment programs that have  
18          histories of successfully treating such combat  
19          veterans; amending s. 948.08, F.S.; creating a  
20          pretrial veterans' treatment intervention program;  
21          providing requirements for a defendant to be  
22          voluntarily admitted to the pretrial program;  
23          providing certain exceptions to such admission;  
24          providing for the disposition of pending charges  
25          following a defendant's completion of the pretrial  
26          intervention program; providing for the charges to be  
27          expunged under certain circumstances; amending s.  
28          948.16, F.S.; creating a misdemeanor pretrial

29 veterans' treatment intervention program; providing  
 30 requirements for voluntary admission to the  
 31 misdemeanor pretrial program; providing for the  
 32 misdemeanor charges to be expunged under certain  
 33 circumstances; exempting treatment services provided  
 34 by the Department of Veterans' Affairs or the United  
 35 States Department of Veterans Affairs from certain  
 36 contract requirements; providing an effective date.

37

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

39

40 Section 1. This act may be cited as the "T. Patt Maney  
 41 Veterans' Treatment Intervention Act."

42 Section 2. Section 921.00242, Florida Statutes, is created  
 43 to read:

44 921.00242 Convicted military veterans; posttraumatic  
 45 stress disorder, traumatic brain injury, substance use disorder,  
 46 or psychological problems from service; treatment services.-

47 (1) If a circuit or county court finds that a defendant  
 48 has committed a criminal offense, the court must hold a  
 49 veterans' status hearing prior to sentencing if the defendant  
 50 has alleged that he or she committed the offense as a result of  
 51 posttraumatic stress disorder, traumatic brain injury, substance  
 52 use disorder, or psychological problems stemming from service in  
 53 a combat theater in the United States military.

54 (2) At a veterans' status hearing conducted as required by  
 55 subsection (1), the court shall determine whether the defendant  
 56 was a member of the military forces of the United States who

57 served in a combat theater and assess whether the defendant  
 58 suffers from posttraumatic stress disorder, traumatic brain  
 59 injury, substance use disorder, or psychological problems as a  
 60 result of that service. The defendant shall bear the burden of  
 61 proof at the hearing.

62 (3) If the court concludes that the defendant is a person  
 63 described in subsection (2) who is eligible for probation or  
 64 community control and the court places the defendant on county  
 65 or state probation or into community control, the court may  
 66 order the defendant into a local, state, federal, or private  
 67 nonprofit treatment program as a condition of probation or  
 68 community control if the defendant agrees to participate in the  
 69 program and the court determines that an appropriate treatment  
 70 program exists.

71 (4) A defendant who is placed on county or state probation  
 72 or into community control and committed to a residential  
 73 treatment program under this section shall earn sentence credits  
 74 for the actual time he or she serves in the residential  
 75 treatment program if the court makes a written finding that it  
 76 would otherwise have sentenced the defendant to incarceration  
 77 except for the fact that the defendant is a person described in  
 78 subsection (2).

79 (5) In making an order under this section to commit a  
 80 defendant to a treatment program, whenever possible the court  
 81 shall place the defendant in a treatment program that has a  
 82 history of successfully treating combat veterans who suffer from  
 83 posttraumatic stress disorder, traumatic brain injury, substance  
 84 use disorder, or psychological problems as a result of that

85 service. The court shall give preference to treatment programs  
 86 for which the veteran is eligible through the United States  
 87 Department of Veterans Affairs or the Department of Veterans'  
 88 Affairs.

89 Section 3. Present subsection (7) of section 948.08,  
 90 Florida Statutes, is renumbered as subsection (8), and a new  
 91 subsection (7) is added to that section, to read:

92 948.08 Pretrial intervention program.—

93 (7)(a) A person who is charged with a felony, other than a  
 94 felony listed in s. 948.06(8)(c), and identified as a member or  
 95 former member of the military forces of the United States who  
 96 served in a combat theater and who suffers from posttraumatic  
 97 stress disorder, traumatic brain injury, substance use disorder,  
 98 or psychological problems as a result of that service is  
 99 eligible for voluntary admission into a pretrial veterans'  
 100 treatment intervention program approved by the chief judge of  
 101 the circuit, upon motion of either party or the court's own  
 102 motion, except:

103 1. If a defendant was previously offered admission to a  
 104 pretrial veterans' treatment intervention program at any time  
 105 prior to trial and the defendant rejected that offer on the  
 106 record, the court may deny the defendant's admission to such a  
 107 program.

108 2. If a defendant previously entered a court-ordered  
 109 veterans' treatment program, the court may deny the defendant's  
 110 admission into the pretrial veterans' treatment program.

111 3. If the state attorney believes that the facts and  
 112 circumstances of the case suggest the defendant's involvement in

113 the selling of controlled substances, the court shall hold a  
 114 preadmission hearing. If the state attorney establishes, by a  
 115 preponderance of the evidence at such hearing, that the  
 116 defendant was involved in the selling of controlled substances,  
 117 the court shall deny the defendant's admission into a pretrial  
 118 intervention program.

119 (b) While enrolled in a pretrial intervention program  
 120 authorized by this subsection, the participant shall be subject  
 121 to a coordinated strategy developed by a veterans' treatment  
 122 intervention team. The coordinated strategy should be modeled  
 123 after the therapeutic jurisprudence principles and key  
 124 components in s. 397.334(4), with treatment specific to the  
 125 needs of veterans. The coordinated strategy may include a  
 126 protocol of sanctions that may be imposed upon the participant  
 127 for noncompliance with program rules. The protocol of sanctions  
 128 may include, but need not be limited to, placement in a  
 129 treatment program offered by a licensed service provider or in a  
 130 jail-based treatment program or serving a period of  
 131 incarceration within the time limits established for contempt of  
 132 court. The coordinated strategy must be provided in writing to  
 133 the participant before the participant agrees to enter into a  
 134 pretrial veterans' treatment intervention program or other  
 135 pretrial intervention program. Any person whose charges are  
 136 dismissed after successful completion of the pretrial veterans'  
 137 treatment intervention program, if otherwise eligible, may have  
 138 his or her arrest record and plea of nolo contendere to the  
 139 dismissed charges expunged under s. 943.0585.

140 (c) At the end of the pretrial intervention period, the

141 court shall consider the recommendation of the administrator  
 142 pursuant to subsection (5) and the recommendation of the state  
 143 attorney as to disposition of the pending charges. The court  
 144 shall determine, by written finding, whether the defendant has  
 145 successfully completed the pretrial intervention program. If the  
 146 court finds that the defendant has not successfully completed  
 147 the pretrial intervention program, the court may order the  
 148 person to continue in education and treatment, which may include  
 149 treatment programs offered by licensed service providers or  
 150 jail-based treatment programs, or order that the charges revert  
 151 to normal channels for prosecution. The court shall dismiss the  
 152 charges upon a finding that the defendant has successfully  
 153 completed the pretrial intervention program.

154 Section 4. Section 948.16, Florida Statutes, is amended to  
 155 read:

156 948.16 Misdemeanor pretrial substance abuse education and  
 157 treatment intervention program; misdemeanor pretrial veterans'  
 158 treatment intervention program.-

159 (1)(a) A person who is charged with a misdemeanor for  
 160 possession of a controlled substance or drug paraphernalia under  
 161 chapter 893, and who has not previously been convicted of a  
 162 felony nor been admitted to a pretrial program, is eligible for  
 163 voluntary admission into a misdemeanor pretrial substance abuse  
 164 education and treatment intervention program, including a  
 165 treatment-based drug court program established pursuant to s.  
 166 397.334, approved by the chief judge of the circuit, for a  
 167 period based on the program requirements and the treatment plan  
 168 for the offender, upon motion of either party or the court's own

169 motion, except, if the state attorney believes the facts and  
 170 circumstances of the case suggest the defendant is involved in  
 171 dealing and selling controlled substances, the court shall hold  
 172 a preadmission hearing. If the state attorney establishes, by a  
 173 preponderance of the evidence at such hearing, that the  
 174 defendant was involved in dealing or selling controlled  
 175 substances, the court shall deny the defendant's admission into  
 176 the pretrial intervention program.

177 (b) While enrolled in a pretrial intervention program  
 178 authorized by this section, the participant is subject to a  
 179 coordinated strategy developed by a drug court team under s.  
 180 397.334(4). The coordinated strategy may include a protocol of  
 181 sanctions that may be imposed upon the participant for  
 182 noncompliance with program rules. The protocol of sanctions may  
 183 include, but is not limited to, placement in a substance abuse  
 184 treatment program offered by a licensed service provider as  
 185 defined in s. 397.311 or in a jail-based treatment program or  
 186 serving a period of incarceration within the time limits  
 187 established for contempt of court. The coordinated strategy must  
 188 be provided in writing to the participant before the participant  
 189 agrees to enter into a pretrial treatment-based drug court  
 190 program or other pretrial intervention program. Any person whose  
 191 charges are dismissed after successful completion of the  
 192 treatment-based drug court program, if otherwise eligible, may  
 193 have his or her arrest record and plea of nolo contendere to the  
 194 dismissed charges expunged under s. 943.0585.

195 (2) (a) A member or former member of the military forces of  
 196 the United States who served in a combat theater and who suffers



197 from posttraumatic stress disorder, traumatic brain injury,  
 198 substance use disorder, or psychological problems as a result of  
 199 that service who is charged with a misdemeanor is eligible for  
 200 voluntary admission into a misdemeanor pretrial veterans'  
 201 treatment intervention program approved by the chief judge of  
 202 the circuit, for a period based on the program requirements and  
 203 the treatment plan for the offender, upon motion of either party  
 204 or the court's own motion. However, the court may deny the  
 205 defendant admission into a misdemeanor pretrial veterans'  
 206 treatment intervention program if the defendant has previously  
 207 entered a court-ordered veterans' treatment program.

208 (b) While enrolled in a pretrial intervention program  
 209 authorized by this section, the participant shall be subject to  
 210 a coordinated strategy developed by a veterans' treatment  
 211 intervention team. The coordinated strategy should be modeled  
 212 after the therapeutic jurisprudence principles and key  
 213 components in s. 397.334(4), with treatment specific to the  
 214 needs of veterans. The coordinated strategy may include a  
 215 protocol of sanctions that may be imposed upon the participant  
 216 for noncompliance with program rules. The protocol of sanctions  
 217 may include, but need not be limited to, placement in a  
 218 treatment program offered by a licensed service provider or in a  
 219 jail-based treatment program or serving a period of  
 220 incarceration within the time limits established for contempt of  
 221 court. The coordinated strategy must be provided in writing to  
 222 the participant before the participant agrees to enter into a  
 223 misdemeanor pretrial veterans' treatment intervention program or  
 224 other pretrial intervention program. Any person whose charges

225 are dismissed after successful completion of the misdemeanor  
 226 pretrial veterans' treatment intervention program, if otherwise  
 227 eligible, may have his or her arrest record and plea of nolo  
 228 contendere to the dismissed charges expunged under s. 943.0585.

229 (3)(2) At the end of the pretrial intervention period, the  
 230 court shall consider the recommendation of the treatment program  
 231 and the recommendation of the state attorney as to disposition  
 232 of the pending charges. The court shall determine, by written  
 233 finding, whether the defendant successfully completed the  
 234 pretrial intervention program. Notwithstanding the coordinated  
 235 strategy developed by a drug court team pursuant to s.  
 236 397.334(4) or by the veterans' treatment intervention team, if  
 237 the court finds that the defendant has not successfully  
 238 completed the pretrial intervention program, the court may order  
 239 the person to continue in education and treatment or return the  
 240 charges to the criminal docket for prosecution. The court shall  
 241 dismiss the charges upon finding that the defendant has  
 242 successfully completed the pretrial intervention program.

243 (4)(3) Any public or private entity providing a pretrial  
 244 substance abuse education and treatment program under this  
 245 section shall contract with the county or appropriate  
 246 governmental entity. The terms of the contract shall include,  
 247 but not be limited to, the requirements established for private  
 248 entities under s. 948.15(3). This requirement does not apply to  
 249 services provided by the Department of Veterans' Affairs or the  
 250 United States Department of Veterans Affairs.

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