



Justice Appropriations Subcommittee

Meeting Packet

**March 13, 2013
9:00 a.m. – 11:00 a.m.
Morris Hall**



The Florida House of Representatives

APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Will Weatherford
Speaker

Charles McBurney
Chair

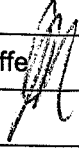
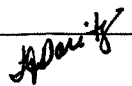
MEETING AGENDA

Morris Hall
March 13, 2013

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
 - CS/HB 353 – Juvenile Justice by Criminal Justice Subcommittee and Rep. Harrell
 - HB 407 – Criminal Gang Prevention by Rep. Ingram
 - CS/HB 489 – Railroad Police Officers by Criminal Justice Subcommittee and Rep. Stone
 - CS/HB 571 – Marshal of Supreme Court by Criminal Justice Subcommittee and Rep. Roberson, K
 - CS/HB 611 – False Reports to Law Enforcement Officers by Criminal Justice Subcommittee and Rep. Watson, C.
 - HB 685 – Parole Interview Dates for Certain Inmates by Rep. McBurney
- IV.** Closing Remarks
- V.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 353 Juvenile Justice
SPONSOR(S): Criminal Justice Subcommittee; Harrell
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.02, F.S., which outlines the legislative intent for the juvenile justice system, provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there are instances in which a Department of Juvenile Justice (DJJ) employee neglects a juvenile offender in the Department's custody, resulting in harm to the juvenile.

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances in which a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have to look outside of ch. 985, F.S., to prosecute a DJJ employee alleged to have neglected a youth.

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment by neglect.

The bill makes it a first degree misdemeanor for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender without causing great bodily harm, permanent disability, or permanent disfigurement. If the infliction does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.

The bill defines "neglect of a juvenile offender" as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

The bill also creates reporting requirements and provides criminal penalties for failing to comply with the reporting requirements.

The bill creates s. 985.702, F.S., which contains both misdemeanor and felony penalties. This could have a negative prison and jail bed impact.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Neglect of Youth Committed to the Department of Juvenile Justice

Section 985.02, F.S., which outlines the legislative intent for the juvenile justice system, provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there have been instances in which a Department of Juvenile Justice (DJJ) employee neglects a juvenile offender in DJJ's custody resulting in harm to the juvenile offender.¹

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances where a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to prosecute a DJJ employee alleged to have neglected a youth. One statute prosecutors have attempted to use for such prosecutions is s. 827.03, F.S., relating to criminal child neglect. However, the child neglect statute is not designed to prosecute neglect cases which arise within the unique framework of the juvenile justice environment, nor does it apply to youth in DJJ's custody who are 18 or older.²

Effect of the Bill

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment by neglect.

The bill makes it a first degree misdemeanor³ for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the infliction does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.⁴

The bill defines an "employee" as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with DJJ;⁵ and defines a "juvenile offender" as "any person of any age who is detained, or committed to the custody of, the department." "Neglect of a juvenile offender" is defined as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

¹ *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies*, http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php (last visited on February 18, 2013); *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, <http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/> (last visited on February 18, 2013).

² Chapter 827, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, there are instances which DJJ has custody of a person who is 18 years old or older. For example, s. 985.0301(5)(a), F.S., states DJJ must retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and may retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services.

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

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

⁵ This is the same definition as provided in s. 985.701(1)(a)1.b., F.S., relating to sexual misconduct by an employee.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., such determination constitutes sufficient cause under s. 110.227, F.S.,⁶ for dismissal from employment with DJJ, and prohibits the employee from being employed in any capacity in connection with the juvenile justice system.

The bill requires employees who witness the infliction of cruel or inhuman treatment against a juvenile offender to immediately report the incident to DJJ's incident hotline. The witness must also prepare an independent report specifically describing the nature of the incident, the location and time, and the persons involved. This report must be submitted to the witness's supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if there is probable cause to believe that a violation occurred, notify the state attorney in the circuit in which the incident occurred.

Any person who is required to prepare a report under this section who knowingly or willfully fails to file a report, or prevents another person from filing a report commits a first degree misdemeanor. In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor; and
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

Sexual Misconduct by an Employee

Section 985.701, F.S., makes it a second degree felony⁷ for a DJJ employee⁸ to engage in sexual misconduct⁹ with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

Effect of the Bill

The bill amends s. 985.701, F.S., relating to sexual misconduct, to define "juvenile offender" as "any person of any age who is detained, or committed to the custody of, the department." This mirrors the definition used in s. 985.702, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 985.702, F.S., relating to malicious infliction of cruel or inhuman treatment prohibited; reporting required; penalties.

Section 2. Amends s. 985.701, F.S., relating to sexual misconduct prohibited; reporting required; penalties.

Section 3. The bill is effective upon becoming a law.

⁶ Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

⁷ 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.

⁸ Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

⁹ Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

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 creates a new felony offense relating to malicious infliction of cruel or inhuman treatment by neglect. The bill also creates a new felony offense related to the reporting requirements in the bill. To the extent that DJJ employees are prosecuted for either of these new felony offenses, it could have a negative prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill creates a new misdemeanor offense relating malicious infliction of cruel or inhuman treatment. The bill also creates new misdemeanor offenses related to the reporting requirements in the bill. To the extent that DJJ employees are prosecuted for any of these new misdemeanor offenses, it could have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates s. 985.702, F.S., which prohibits a DJJ employee from committing malicious infliction of cruel or inhuman treatment by neglect on a juvenile offender.
- Defines the terms "employee," "juvenile offender," and "neglect of a juvenile offender;"
- Creates reporting requirements;
- Defines the term "juvenile offender" in s. 985.701, F.S.;
- Deletes section 2 of the original bill, which repealed s. 945.74, F.S., relating to Department of Corrections inmate training programs.

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

1 A bill to be entitled
 2 An act relating to juvenile justice; creating s.
 3 985.702, F.S.; providing definitions; providing for
 4 the imposition of criminal penalties against specified
 5 employees who inflict cruel or inhuman treatment upon
 6 juvenile offenders; providing enhanced penalties for
 7 such treatment that results in great bodily harm,
 8 permanent disability, or permanent disfigurement to a
 9 juvenile offender; specifying that such conduct
 10 constitutes sufficient cause for an employee's
 11 dismissal from employment; prohibiting such employee
 12 from future employment with the juvenile justice
 13 system; providing incident reporting requirements;
 14 prohibiting an employee who witnesses such an incident
 15 from knowingly or willfully failing to report;
 16 prohibiting false reporting, preventing another from
 17 reporting, or coercing another to alter testimony or
 18 reports; providing penalties; amending s. 985.701,
 19 F.S.; defining the term "juvenile offender" for
 20 purposes of prohibiting sexual misconduct with
 21 juvenile offenders; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 985.702, Florida Statutes, is created to
 26 read:

27 985.702 Malicious infliction of cruel or inhuman treatment
 28 prohibited; reporting required; penalties.-

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

30 (a) "Employee" means a paid staff member, volunteer, or
 31 intern who works in a department program or a program operated
 32 by a provider under a contract with the department.

33 (b) "Juvenile offender" means any person of any age who is
 34 detained, or committed to the custody of, the department.

35 (c) "Neglect of a juvenile offender" means:

36 1. An employee's failure or omission to provide a juvenile
 37 offender with the proper level of care, supervision, and
 38 services necessary to maintain the juvenile offender's physical
 39 and mental health, including, but not limited to, adequate food,
 40 nutrition, clothing, shelter, supervision, medicine, and medical
 41 services; or

42 2. An employee's failure to make a reasonable effort to
 43 protect a juvenile offender from abuse, neglect, or exploitation
 44 by another person.

45 (2) (a) Any employee who, with malicious intent, inflicts
 46 cruel or inhuman treatment by neglect or otherwise, without
 47 causing great bodily harm, permanent disability, or permanent
 48 disfigurement to a juvenile offender, commits a misdemeanor of
 49 the first degree, punishable as provided in s. 775.082 or s.
 50 775.083.

51 (b) Any employee who, with malicious intent, inflicts
 52 cruel or inhuman treatment by neglect or otherwise, and in so
 53 doing causes great bodily harm, permanent disability, or
 54 permanent disfigurement to a juvenile offender, commits a felony
 55 of the third degree, punishable as provided in s. 775.082, s.
 56 775.083, or s. 775.084.

57 (c) Notwithstanding prosecution, any violation of
58 paragraph (a) or paragraph (b), as determined by the Public
59 Employees Relations Commission, constitutes sufficient cause
60 under s. 110.227 for dismissal from employment with the
61 department, and such person may not again be employed in any
62 capacity in connection with the juvenile justice system.

63 (3) An employee who witnesses the infliction of cruel or
64 inhuman treatment committed against a juvenile offender shall
65 immediately report the incident to the department's incident
66 hotline and prepare, date, and sign an independent report that
67 specifically describes the nature of the incident, the location
68 and time of the incident, and the persons involved. The employee
69 shall deliver the report to the employee's supervisor or program
70 director, who must provide copies to the department's inspector
71 general and the circuit juvenile justice manager. The inspector
72 general shall immediately conduct an appropriate administrative
73 investigation, and, if there is probable cause to believe that a
74 violation of subsection (2) has occurred, the inspector general
75 shall notify the state attorney in the circuit in which the
76 incident occurred.

77 (4) (a) Any person who is required to prepare a report
78 under this section who knowingly or willfully fails to do so, or
79 who knowingly or willfully prevents another person from doing
80 so, commits a misdemeanor of the first degree, punishable as
81 provided in s. 775.082 or s. 775.083.

82 (b) Any person who knowingly or willfully submits
83 inaccurate, incomplete, or untruthful information with respect
84 to a report required under this section commits a misdemeanor of

85 | the first degree, punishable as provided in s. 775.082 or s.
86 | 775.083.

87 | (c) Any person who knowingly or willfully coerces or
88 | threatens any other person with the intent to alter testimony or
89 | a written report regarding an incident of the infliction of
90 | cruel or inhuman treatment commits a felony of the third degree,
91 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

92 | Section 2. Paragraph (a) of subsection (1) of section
93 | 985.701, Florida Statutes, is amended to read:

94 | 985.701 Sexual misconduct prohibited; reporting required;
95 | penalties.-

96 | (1)(a)1. As used in this subsection, the term:

97 | a. "Sexual misconduct" means fondling the genital area,
98 | groin, inner thighs, buttocks, or breasts of a person; the oral,
99 | anal, or vaginal penetration by or union with the sexual organ
100 | of another; or the anal or vaginal penetration of another by any
101 | other object. The term does not include an act done for a bona
102 | fide medical purpose or an internal search conducted in the
103 | lawful performance of duty by an employee of the department or
104 | an employee of a provider under contract with the department.

105 | b. "Employee" includes paid staff members, volunteers, and
106 | interns who work in a department program or a program operated
107 | by a provider under a contract.

108 | c. "Juvenile offender" means a person of any age who is
109 | detained or supervised by, or committed to the custody of, the
110 | department.

111 | 2. An employee who engages in sexual misconduct with a
112 | juvenile offender detained or supervised by, or committed to the

CS/HB 353

2013

113 custody of, the department commits a felony of the second
114 degree, punishable as provided in s. 775.082, s. 775.083, or s.
115 775.084. An employee may be found guilty of violating this
116 subsection without having committed the crime of sexual battery.

117 3. The consent of the juvenile offender to any act of
118 sexual misconduct is not a defense to prosecution under this
119 subsection.

120 4. This subsection does not apply to an employee of the
121 department, or an employee of a provider under contract with the
122 department, who:

123 a. Is legally married to a juvenile offender who is
124 detained or supervised by, or committed to the custody of, the
125 department.

126 b. Has no reason to believe that the person with whom the
127 employee engaged in sexual misconduct is a juvenile offender
128 detained or supervised by, or committed to the custody of, the
129 department.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 407 Criminal Gang Prevention
SPONSOR(S): Ingram
TIED BILLS: IDEN./SIM. **BILLS:** SB 788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>J. Darity</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill contains a variety of provisions relating to criminal gangs. Specifically, the bill:

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

The Criminal Justice Impact Conference (CJIC) met on February 27, 2013 and determined this bill may have an insignificant impact on state prison beds.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

School Safety Zones

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

- Requires public and private school principals to notify law enforcement to prohibit specified persons¹ from loitering in a school safety zone.²
- Prohibits specified persons³ from entering the premises or trespassing within a school safety zone or remaining on such premises or within such school safety zone one hour before the start of a school session until one hour after the conclusion of a school session.
- Prohibits specified persons⁴ from willfully failing to remove themselves from a school safety zone after a principal, who has a reasonable belief that the person will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests the person to leave the school safety zone.⁵

A violation of s. 810.0975(2), F.S., is currently a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.⁶

Effect of the Bill

The bill makes a violation of s. 810.0975(2), F.S., a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs). A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine.⁷

Causing, Encouraging, Soliciting, or Recruiting Criminal Gang Membership

Section 874.05, F.S., makes it a third degree felony⁸ for a person to intentionally cause, encourage, solicit, or recruit another person to become a criminal gang member⁹ where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 4 (22 sentencing points) of the offense severity ranking chart (ranking chart).¹⁰ Second or subsequent

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

² Section 810.0975(2)(a), F.S.

³ *Supra* note 1.

⁴ *Supra* note 1.

⁵ Section 810.0975(2)(c), F.S.

⁶ Sections 775.082 and 775.083, F.S.

⁷ *Id.*

⁸ 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.

⁹ Section 874.03(3), F.S., defines the term "criminal gang member" as a person who meets two or more of the following criteria: admits to criminal gang membership; is identified as a criminal gang member by a parent or guardian; is identified as a criminal gang member by a documented reliable informant; adopts the style of dress of a criminal gang; adopts the use of a hand sign identified as used by a criminal gang; has a tattoo identified as used by a criminal gang; associates with one or more known criminal gang members; is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information; is identified as a criminal gang member by physical evidence; has been observed in the company of one or more known criminal gang members four or more times; has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

¹⁰ Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record and other

violations of the statute are second degree felonies, ranked in Level 5 (28 sentencing points) of the ranking chart.¹¹

Effect of the Bill

The bill amends s. 874.05, F.S., to make it a second degree felony for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 5 of the ranking chart. The bill makes second or subsequent violations of this provision a first degree felony, ranked in Level 7 (56 sentencing points) of the ranking chart.¹²

The bill makes a conforming change in s. 435.04, F.S. (relating to background screening), correcting a reference to s. 874.05, F.S.

Jails – Inmate Gang Status

Section 951.23, F.S., contains a variety of provisions relating to county and municipal detention facilities (jails). For example, the statute requires county detention facilities to provide specified inmate data to the Department of Corrections, requires that jail model standards be developed, requires jails to contract for fire safety inspections, authorizes commissaries to be operated in jails and provides requirements for such operation, and provides criminal penalties for jail inmates who violate certain jail rules.¹³

Effect of the Bill

The bill amends s. 951.23, F.S., to authorize jails to designate an individual to be responsible for assessing whether each current inmate is a criminal gang member or associate using the criteria contained in s. 874.03, F.S., and to transmit information on inmates believed to be criminal gang members or associates to the arresting law enforcement agency.

Criminal Gang Offenses – Penalty Enhancements and Sentencing Multipliers

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

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

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

aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence.

¹¹ 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.

¹² 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.

¹³ Section 951.23, F.S.

As noted above, the criminal gang multiplier in the worksheet multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as prohibited under s. 874.04, F.S.* Section 874.04, F.S., requires the factfinder (i.e., the jury) to find that a defendant committed the offense for such purposes. This limits the instances in which the criminal gang multiplier can be used to those instances in which the jury has made the required finding. If the reference to s. 874.04, F.S., were removed from the multiplier, a *judge* could make the required finding so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.¹⁴

Effect of the Bill

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied with a finding by a *judge* that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

B. SECTION DIRECTORY:

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

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

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

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

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

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

Section 7. Provides an effective date of October 1, 2013.

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 (CJIC) met on February 27, 2013 and determined this bill may have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹⁴ See *Mathew v. State*, 837 So.2d 1167 (Fla. 4th DCA 2003)(holding that pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a jury must find that the facts necessary to impose a domestic violence multiplier exist beyond a reasonable doubt when the multiplier results in a sentence that exceeds the statutory maximum for the charged offense).

1. Revenues:

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

2. Expenditures:

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

The bill authorizes jails to designate an individual to be responsible for assessing whether each current inmate is a criminal gang member or associate. However, the provision is permissive, so any fiscal impact would be at the discretion of the county or municipal detention facility.

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 criminal gang prevention; amending
 s. 810.0975, F.S.; providing enhanced criminal
 penalties for certain trespassing offenses in school
 safety zones by a person convicted of certain gang-
 related offenses; amending s. 874.05, F.S.; providing
 enhanced criminal penalties for a person who
 intentionally causes, encourages, solicits, or
 recruits another person under a specified age to
 become a criminal gang member in certain
 circumstances; amending s. 951.23, F.S.; authorizing
 county and municipal detention facilities to designate
 an individual to be responsible for assessing whether
 each inmate is a criminal gang member or associate;
 providing duties of such individuals; amending ss.
 435.04 and 921.0022, F.S.; conforming cross-references
 and assigning offense severity rankings for violations
 of s. 874.05, F.S.; amending s. 921.0024, F.S.;
 revising the criteria for application of the
 sentencing multiplier for offenses related to criminal
 gangs; limiting application of the multiplier if
 application would result in the lowest permissible
 sentence exceeding the statutory maximum sentence;
 providing an effective date.

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

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

30 810.0975 School safety zones; definition; trespass
 31 prohibited; penalty.—

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

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

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

52 2.a. Except as provided in sub-subparagraph b., a ~~Any~~
 53 person who violates this subsection commits a misdemeanor of the
 54 second degree, punishable as provided in s. 775.082 or s.
 55 775.083.

56 b. A person who violates this subsection and who has been
 57 previously convicted of any offense contained in chapter 874
 58 commits a misdemeanor of the first degree, punishable as
 59 provided in s. 775.082 or s. 775.083.

60 (c) 1. Except as provided in subparagraph 2., a Any person
 61 who does not have legitimate business in the school safety zone
 62 or any other authorization, license, or invitation to enter or
 63 remain in the school safety zone who shall willfully fail to
 64 remove himself or herself from the school safety zone after the
 65 principal or designee, having a reasonable belief that he or she
 66 will commit a crime or is engaged in harassment or intimidation
 67 of students entering or leaving school property, requests him or
 68 her to leave the school safety zone commits a misdemeanor of the
 69 second degree, punishable as provided in s. 775.082 or s.
 70 775.083.

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

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

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

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

83 874.05 Causing, encouraging, soliciting, or recruiting

84 criminal gang membership.-

85 (1) (a) Except as provided in paragraph (b) ~~subsection (2)~~,
 86 a person who intentionally causes, encourages, solicits, or
 87 recruits another person to become a criminal gang member where a
 88 condition of membership or continued membership is the
 89 commission of any crime commits a felony of the third degree,
 90 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

91 ~~(b) (2)~~ A person who commits a second or subsequent
 92 violation of this subsection commits a felony of the second
 93 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 94 775.084.

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

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

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

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

108 (11) GANG STATUS OF INMATES.-A county or municipal
 109 detention facility may designate an individual to be responsible
 110 for assessing whether each current inmate is a criminal gang
 111 member or associate using the criteria in s. 874.03. The

112 individual should at least once biweekly transmit information on
 113 inmates believed to be a criminal gang member or associate to
 114 the arresting law enforcement agency.

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

117 435.04 Level 2 screening standards.—

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

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

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

131 921.0022 Criminal Punishment Code; offense severity
 132 ranking chart.—

133 (3) OFFENSE SEVERITY RANKING CHART

134 (d) LEVEL 4

135

Florida Statute	Felony Degree	Description
316.1935 (3) (a)	2nd	Driving at high speed or with

136

HB 407

2013

wanton disregard for safety
 while fleeing or attempting to
 elude law enforcement officer
 who is in a patrol vehicle with
 siren and lights activated.

137

499.0051(1) 3rd Failure to maintain or deliver
 pedigree papers.

138

499.0051(2) 3rd Failure to authenticate
 pedigree papers.

139

499.0051(6) 2nd Knowing sale or delivery, or
 possession with intent to sell,
 contraband prescription drugs.

140

517.07(1) 3rd Failure to register securities.

141

517.12(1) 3rd Failure of dealer, associated
 person, or issuer of securities
 to register.

142

784.07(2)(b) 3rd Battery of law enforcement
 officer, firefighter, etc.

143

784.074(1)(c) 3rd Battery of sexually violent
 predators facility staff.

144

HB 407

2013

145	784.075	3rd	Battery on detention or commitment facility staff.
146	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
147	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
148	784.081(3)	3rd	Battery on specified official or employee.
149	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
150	784.083(3)	3rd	Battery on code inspector.
151	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
152	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
	787.04(2)	3rd	Take, entice, or remove child

HB 407

2013

			beyond state limits with criminal intent pending custody proceedings.
153	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
154	787.07	3rd	Human smuggling.
155	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
156	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
157	790.115(2)(c)	3rd	Possessing firearm on school property.
158	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
159	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied

HB 407

2013

structure; unarmed; no assault
or battery.

160

810.02(4)(b) 3rd Burglary, or attempted
burglary, of an unoccupied
conveyance; unarmed; no assault
or battery.

161

810.06 3rd Burglary; possession of tools.

162

810.08(2)(c) 3rd Trespass on property, armed
with firearm or dangerous
weapon.

163

812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000
or more but less than \$20,000.

164

812.014 3rd Grand theft, 3rd degree, a
(2)(c)4.-10. will, firearm, motor vehicle,
livestock, etc.

165

812.0195(2) 3rd Dealing in stolen property by
use of the Internet; property
stolen \$300 or more.

166

817.563(1) 3rd Sell or deliver substance other
than controlled substance
agreed upon, excluding s.

HB 407

2013

167			893.03(5) drugs.
	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
168			
	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
169			
	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
170			
	837.02(1)	3rd	Perjury in official proceedings.
171			
	837.021(1)	3rd	Make contradictory statements in official proceedings.
172			
	838.022	3rd	Official misconduct.
173			
	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
174			
	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.

HB 407

2013

175	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
176	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
177	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
178	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
179	874.05(1) <u>(a)</u>	3rd	Encouraging or recruiting another to join a criminal gang.
180	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
181	914.14(2)	3rd	Witnesses accepting bribes.

HB 407

2013

182

914.22(1) 3rd Force, threaten, etc., witness, victim, or informant.

183

914.23(2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

184

918.12 3rd Tampering with jurors.

185

934.215 3rd Use of two-way communications device to facilitate commission of a crime.

186

187 (e) LEVEL 5

188

Florida	Felony	
Statute	Degree	Description

189

316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
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190

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
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191

322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious
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HB 407

2013

192			bodily injury.
	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
193			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
194			
	379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
195			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
196			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
197			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
198			
	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of

HB 407

2013

avoiding or reducing workers' compensation premiums.

199

624.401(4)(b)2. 2nd Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

200

626.902(1)(c) 2nd Representing an unauthorized insurer; repeat offender.

201

790.01(2) 3rd Carrying a concealed firearm.

202

790.162 2nd Threat to throw or discharge destructive device.

203

790.163(1) 2nd False report of deadly explosive or weapon of mass destruction.

204

790.221(1) 2nd Possession of short-barreled shotgun or machine gun.

205

790.23 2nd Felons in possession of firearms, ammunition, or electronic weapons or devices.

206

800.04(6)(c) 3rd Lewd or lascivious conduct;

HB 407

2013

207			offender less than 18 years.
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
208			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
209			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
210			
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
211			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
212			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
213			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
214			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.

HB 407

2013

215	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
216	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
217	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
218	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
219	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly

HB 407

2013

220	827.071(4)	2nd	person or disabled adult. Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
221	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
222	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
223	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
224	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
225			

HB 407

2013

226	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
227	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
228	<u>874.05(1)(b)</u> 874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
229	<u>874.05(2)(a)</u>	<u>2nd</u>	<u>Encouraging or recruiting person under 13 to join a criminal gang.</u>
230	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs)

HB 407

2013

within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

231

893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

232

893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

233

893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d),

HB 407

2013

234 or (2) (a), (2) (b), or (2) (c) 4.
drugs) within 1,000 feet of
public housing facility.

893.13(4) (b) 2nd Deliver to minor cannabis (or
other s. 893.03(1) (c),
(2) (c) 1., (2) (c) 2., (2) (c) 3.,
(2) (c) 5., (2) (c) 6., (2) (c) 7.,
(2) (c) 8., (2) (c) 9., (3), or (4)
drugs).

235 893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

236
237 (g) LEVEL 7

238
Florida Felony
Statute Degree Description

239 316.027(1) (b) 1st Accident involving death,
failure to stop; leaving scene.

240 316.193(3) (c) 2. 3rd DUI resulting in serious bodily
injury.

241 316.1935(3) (b) 1st Causing serious bodily injury
or death to another person;

HB 407

2013

			driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
242	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
243	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
244	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
245	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
246	456.065(2)	3rd	Practicing a health care profession without a license.
247	456.065(2)	2nd	Practicing a health care profession without a license

HB 407

2013

			which results in serious bodily injury.
248	458.327(1)	3rd	Practicing medicine without a license.
249	459.013(1)	3rd	Practicing osteopathic medicine without a license.
250	460.411(1)	3rd	Practicing chiropractic medicine without a license.
251	461.012(1)	3rd	Practicing podiatric medicine without a license.
252	462.17	3rd	Practicing naturopathy without a license.
253	463.015(1)	3rd	Practicing optometry without a license.
254	464.016(1)	3rd	Practicing nursing without a license.
255	465.015(2)	3rd	Practicing pharmacy without a license.
256	466.026(1)	3rd	Practicing dentistry or dental

HB 407

2013

257	467.201	3rd	hygiene without a license.
258	468.366	3rd	Practicing midwifery without a license.
259	483.828 (1)	3rd	Delivering respiratory care services without a license.
260	483.901 (9)	3rd	Practicing as clinical laboratory personnel without a license.
261	484.013 (1) (c)	3rd	Practicing medical physics without a license.
262	484.053	3rd	Preparing or dispensing optical devices without a prescription.
263	494.0018 (2)	3rd	Dispensing hearing aids without a license.
264		1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

HB 407

2013

265	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
266	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
267	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
268	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
269	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or

HB 407

2013

270	782.051(3)	2nd	conceal a sexual predator. Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
271	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
272	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
273	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
274	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
275			

HB 407

2013

276	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
277	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
278	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
279	784.048(7)	3rd	Aggravated stalking; violation of court order.
280	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
281	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
282	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
283	784.081(1)	1st	Aggravated battery on specified official or employee.
	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

HB 407

2013

284	784.083(1)	1st	Aggravated battery on code inspector.
285	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
286	787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
287	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
288	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
289	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
290	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or

HB 407

2013

291	790.166(3)	2nd	<p>attempting to commit a felony.</p> <p>Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.</p>
292	790.166(4)	2nd	<p>Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.</p>
293	790.23	1st,PBL	<p>Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.</p>
294	794.08(4)	3rd	<p>Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.</p>
295	796.03	2nd	<p>Procuring any person under 16 years for prostitution.</p>
296	800.04(5)(c)1.	2nd	<p>Lewd or lascivious molestation; victim less than 12 years of</p>

HB 407

2013

age; offender less than 18
years.

297

800.04 (5) (c) 2. 2nd Lewd or lascivious molestation;
victim 12 years of age or older
but less than 16 years;
offender 18 years or older.

298

806.01 (2) 2nd Maliciously damage structure by
fire or explosive.

299

810.02 (3) (a) 2nd Burglary of occupied dwelling;
unarmed; no assault or battery.

300

810.02 (3) (b) 2nd Burglary of unoccupied
dwelling; unarmed; no assault
or battery.

301

810.02 (3) (d) 2nd Burglary of occupied
conveyance; unarmed; no assault
or battery.

302

810.02 (3) (e) 2nd Burglary of authorized
emergency vehicle.

303

812.014 (2) (a) 1. 1st Property stolen, valued at
\$100,000 or more or a
semitrailer deployed by a law

HB 407

2013

			enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
304	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
305	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
306	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
307	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
308	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
309	812.131 (2) (a)	2nd	Robbery by sudden snatching.
310	812.133 (2) (b)	1st	Carjacking; no firearm, deadly

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HB 407

2013

311			weapon, or other weapon.
312	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
313	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
314	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
315	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
316	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is

HB 407

2013

valued at \$20,000 or more, but
less than \$100,000.

317

827.03(2)(b) 2nd Neglect of a child causing
great bodily harm, disability,
or disfigurement.

318

827.04(3) 3rd Impregnation of a child under
16 years of age by person 21
years of age or older.

319

837.05(2) 3rd Giving false information about
alleged capital felony to a law
enforcement officer.

320

838.015 2nd Bribery.

321

838.016 2nd Unlawful compensation or reward
for official behavior.

322

838.021(3)(a) 2nd Unlawful harm to a public
servant.

323

838.22 2nd Bid tampering.

324

847.0135(3) 3rd Solicitation of a child, via a
computer service, to commit an
unlawful sex act.

HB 407

2013

325
326
327
328
329
330

847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
<u>874.05(2)(b)</u>	<u>1st</u>	<u>Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.</u>
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

HB 407

2013

	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
331	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
332	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
333	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
334	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
335	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than

HB 407

2013

			200 grams.
336	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
337	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
338	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
339	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
340	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
341	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
342	893.1351(2)	2nd	Possession of place for

HB 407

2013

			trafficking in or manufacturing of controlled substance.
343	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
344	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
345	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
346	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
347	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
348	943.0435(13)	3rd	Failure to report or providing

HB 407

2013

349	943.0435 (14)	3rd	false information about a sexual offender; harbor or conceal a sexual offender.
350	944.607 (9)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
351	944.607 (10) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
352	944.607 (12)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
353	944.607 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
354	985.4815 (10)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

submit to the taking of a
digitized photograph.

355

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

356

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

357

358 Section 6. Paragraph (b) of subsection (1) of section
359 921.0024, Florida Statutes, is amended to read:

360 921.0024 Criminal Punishment Code; worksheet computations;
361 scoresheets.—

362 (1)

363 (b) WORKSHEET KEY:

364

365 Legal status points are assessed when any form of legal status
366 existed at the time the offender committed an offense before the
367 court for sentencing. Four (4) sentence points are assessed for
368 an offender's legal status.

369

370 Community sanction violation points are assessed when a
371 community sanction violation is before the court for sentencing.
372 Six (6) sentence points are assessed for each community sanction

HB 407

2013

373 violation and each successive community sanction violation,
374 unless any of the following apply:

375 1. If the community sanction violation includes a new
376 felony conviction before the sentencing court, twelve (12)
377 community sanction violation points are assessed for the
378 violation, and for each successive community sanction violation
379 involving a new felony conviction.

380 2. If the community sanction violation is committed by a
381 violent felony offender of special concern as defined in s.
382 948.06:

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

386 (I) The violation does not include a new felony
387 conviction; and

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

391 b. Twenty-four (24) community sanction violation points
392 are assessed for the violation and for each successive violation
393 of felony probation or community control where the violation
394 includes a new felony conviction.

395

396 Multiple counts of community sanction violations before the
397 sentencing court shall not be a basis for multiplying the
398 assessment of community sanction violation points.

399

400 Prior serious felony points: If the offender has a primary

HB 407

2013

401 offense or any additional offense ranked in level 8, level 9, or
 402 level 10, and one or more prior serious felonies, a single
 403 assessment of thirty (30) points shall be added. For purposes of
 404 this section, a prior serious felony is an offense in the
 405 offender's prior record that is ranked in level 8, level 9, or
 406 level 10 under s. 921.0022 or s. 921.0023 and for which the
 407 offender is serving a sentence of confinement, supervision, or
 408 other sanction or for which the offender's date of release from
 409 confinement, supervision, or other sanction, whichever is later,
 410 is within 3 years before the date the primary offense or any
 411 additional offense was committed.

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

424
 425 Possession of a firearm, semiautomatic firearm, or machine gun:
 426 If the offender is convicted of committing or attempting to
 427 commit any felony other than those enumerated in s. 775.087(2)
 428 while having in his or her possession: a firearm as defined in

HB 407

2013

429 s. 790.001(6), an additional eighteen (18) sentence points are
430 assessed; or if the offender is convicted of committing or
431 attempting to commit any felony other than those enumerated in
432 s. 775.087(3) while having in his or her possession a
433 semiautomatic firearm as defined in s. 775.087(3) or a machine
434 gun as defined in s. 790.001(9), an additional twenty-five (25)
435 sentence points are assessed.

436

437 Sentencing multipliers:

438

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

446

447 Law enforcement protection: If the primary offense is a
448 violation of the Law Enforcement Protection Act under s.
449 775.0823(2), (3), or (4), the subtotal sentence points are
450 multiplied by 2.5. If the primary offense is a violation of s.
451 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
452 are multiplied by 2.0. If the primary offense is a violation of
453 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
454 Protection Act under s. 775.0823(10) or (11), the subtotal
455 sentence points are multiplied by 1.5.

456

HB 407

2013

457 Grand theft of a motor vehicle: If the primary offense is grand
 458 theft of the third degree involving a motor vehicle and in the
 459 offender's prior record, there are three or more grand thefts of
 460 the third degree involving a motor vehicle, the subtotal
 461 sentence points are multiplied by 1.5.

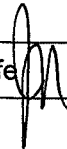
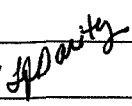
462
 463 Offense related to a criminal gang: If the offender is convicted
 464 of the primary offense and committed that offense for the
 465 purpose of benefiting, promoting, or furthering the interests of
 466 a criminal gang as defined in s. 874.03 ~~prohibited under s.~~
 467 ~~874.04~~, the subtotal sentence points are multiplied by 1.5. If
 468 applying the multiplier results in the lowest permissible
 469 sentence exceeding the statutory maximum sentence for the
 470 primary offense under chapter 775, the court may not apply the
 471 multiplier and must sentence the defendant to the statutory
 472 maximum sentence.

473
 474 Domestic violence in the presence of a child: If the offender is
 475 convicted of the primary offense and the primary offense is a
 476 crime of domestic violence, as defined in s. 741.28, which was
 477 committed in the presence of a child under 16 years of age who
 478 is a family or household member as defined in s. 741.28(3) with
 479 the victim or perpetrator, the subtotal sentence points are
 480 multiplied by 1.5.

481 Section 7. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 489 Railroad Police Officers
SPONSOR(S): Criminal Justice Subcommittee; Stone and others
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

The Criminal Justice Standards and Training Commission (CJSTC) establishes uniform minimum standards for the employment and training of law enforcement officers (LEOs). Currently, CJSTC certifies a person for employment as an LEO if:

- The person complies with s. 943.13(1)-(10), F.S.; and
- The employing agency complies with s. 943.133(2) and (3), F.S.

Section 943.10, F.S., defines the term "law enforcement officer" to include only those elected, appointed, or employed full time *by any municipality, the state, or any political subdivision of the state*. Similarly, the definition of the term "employing agency" only includes *agencies or units of government, municipalities, the state, or any political subdivision of the state* that has the authority to employ officers.

Section 354.01, F.S., authorizes the Governor to appoint "special officers," which are persons employed by railroads for the protection of the railroad's employees, passengers, freight, equipment, and properties. Special officers are required to meet the law enforcement qualifications and training requirements of s. 943.13(1)-(10), F.S., but they are not certified law enforcement officers because they do not work for an "employing agency." Railroads and common carriers that employ special officers are not considered employing agencies because they are not governmental entities.

The bill amends the definition of "law enforcement officer" in s. 943.10, F.S., to include special officers employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S. The definition of "employing agency" is amended to include a Class I or Class II railroad that employs special officers. As a result, special officers will be eligible for certification as law enforcement officers by CJSTC.

The bill also amends s. 784.07, F.S., which reclassifies assault and battery offenses committed against specified officers, to include railroad special officers employed by a Class I or Class II railroad and appointed by the Governor.

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

The bill will have an insignificant fiscal impact on FDLE. See Fiscal Section.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Officer Certification

Section 943.10, F.S., provides the following definitions:

- A "law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.
- An "employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a non-juvenile detention facility.

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). Currently, CJSTC certifies a person for employment as an LEO if:

- The person complies with s. 943.13(1)-(10), F.S.; and
- The employing agency complies with s. 943.133(2) and (3), F.S.^{1,2}

Section 943.13, F.S., requires every person employed or appointed as an LEO to:

- (1) Be at least 19 years of age;
- (2) Be a citizen of the United States;
- (3) Be a high school graduate or its "equivalent;"
- (4) Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;
- (5) Have documentation of his or her processed fingerprints on file with the employing agency or;
- (6) Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by CJSTC;
- (7) Have a good moral character as determined by a background investigation under procedures established by CJSTC;
- (8) Execute and submit to the employing agency an affidavit-of-applicant form, adopted by CJSTC, attesting to his or her compliance with subsections (1)-(7);
- (9) Complete a CJSTC-approved basic recruit training program for the applicable criminal justice discipline, unless exempt;
- (10) Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline; and
- (11) Comply with the continuing training or education requirements of s. 943.135, F.S.

¹ Section 943.133, F.S., sets forth the general responsibilities and requirements of employing agencies, and specifies that an employing agency is responsible for the collection, verification, and maintenance of documentation establishing that an applicant complies with the requirements of s. 943.13, F.S.

² Section 943.1395(1), F.S.

The definition of the term “law enforcement officer” only includes those elected, appointed, or employed full time by any *municipality or the state or any political subdivision thereof*. As such, persons employed by private entities cannot be certified by CJSTC as “law enforcement officers.” Similarly, the definition of the term “employing agency” only includes *agencies or units of government or any municipality or the state or any political subdivision thereof* – it does not include *private entities*.

Railroads and Special Officers

According to the U.S. Surface Transportation Board (STB),³ railroads are classified based on their annual operating revenues. The Class to which a railroad belongs is determined by comparing its adjusted operating revenues for three consecutive years to the following scale:

- Class I - \$250 million or more;
- Class II - \$20 million or more;
- Class III - \$0 to \$20 million.⁴

Florida’s rail system is comprised of 2,786 miles of mainline track, which are primarily owned by 15 operating line-haul railroads and terminal or switching companies (81 miles are owned by the State).⁵ Florida’s rail system includes two Class I railroads,⁶ one Class II railroad,⁷ eleven Class III railroads,⁸ and one railroad specializing in switching and terminals^{9, 10}

Section 354.01, F.S., authorizes the appointment of “special officers,” which are persons employed by railroads and other common carriers for the protection of the carrier’s employees, passengers, freight, equipment, and properties. Appointments of special officers are made by the Governor, and applicants are required to meet the law enforcement qualifications and training requirements of s. 943.13(1)-(10), F.S.¹¹ Special officer arrest powers are generally limited in that they can arrest persons, on or off the railroad’s property, so long as the violation occurred on the property.¹²

Special officers are required to provide a \$5,000 surety bond to the Governor for the faithful performance of their duties, and may be removed by the Governor at any time.¹³ Special officers are paid by their employing carrier – not by the state or any county.¹⁴

While special officers are required to meet the minimum standards that apply to LEOs, they are not certified law enforcement officers because they do not work for an “employing agency.” Railroads and common carriers that employ special officers are not considered employing agencies because they are not governmental entities.

³ The STB was created in the ICC Termination Act of 1995 and is the successor agency to the Interstate Commerce Commission. The STB is an economic regulatory agency that Congress charged with resolving railroad rate and service disputes and reviewing proposed railroad mergers. The STB is decisionally independent, although it is administratively affiliated with the Department of Transportation, <http://www.stb.dot.gov/stb/about/overview.html> (last visited on February 14, 2013).

⁴ The following formula is used to adjust a railroad’s operating revenues to eliminate the effects of inflation: Current Year’s Revenues X (1991 Avg. Index / Current Year’s Avg. Index). The average index (deflator factor) is based on the annual average Railroad Freight Price Index for all commodities. *Frequently Asked Questions*, Surface Transportation Board, <http://www.stb.dot.gov/stb/faqs.html> (last visited on February 14, 2013).

⁵ *The Florida Rail System Plan: Investment Element*, December 2010, <http://www.dot.state.fl.us/rail/PlanDevel/Documents/FinalInvestmentElement/A-2010FLRailPlan-InvestmentElement.pdf> (last visited on February 14, 2013).

⁶ CSX Transportation and Norfolk Southern Corporation.

⁷ Florida East Coast Railway.

⁸ Alabama and Gulf Coast Railway AN Railway, Bay Line Railroad, First Coast Railroad, Florida West Coast Railroad, Florida Central Railroad, Florida Midland Railroad, Florida Northern Railroad, Georgia and Florida Railway, Seminole Gulf Railway, and South Central Florida Express.

⁹ Talleyrand Terminal.

¹⁰ *Supra* note 5.

¹¹ Section 354.01, F.S.

¹² *Id.*

¹³ Sections 354.03 and 354.05, F.S.

¹⁴ Section 354.04, F.S.

Assault and Battery Against Specified Officers

Section 784.07, F.S., reclassifies assault¹⁵ and battery¹⁶ offenses that are knowingly committed against the following persons while such persons are engaged in the lawful performance of their duties:

- Law enforcement officers;¹⁷
- Firefighters;¹⁸
- Emergency medical care providers;¹⁹
- Traffic accident investigation officers;
- Non-sworn law enforcement agency employees who are certified as an agency inspector;
- Blood alcohol analysts or breath test operators while such employees are uniformed and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- Law enforcement explorers;²⁰
- Traffic infraction enforcement officers;
- Parking enforcement specialists; and
- Licensed security officers or security officers employed by the board of trustees of a community college.

The statute reclassifies the assault and battery offenses as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor;
- In the case of battery, from a first degree misdemeanor to a third degree felony;
- In the case of aggravated assault, from a third degree felony to a second degree felony;²¹ and
- In the case of aggravated battery, from a second degree felony to a first degree felony.²²

Effect of the Bill

The bill amends the definition of “law enforcement officer” in s. 943.10, F.S., to specify that for purposes of ss. 943.085-943.255, F.S., only, the definition includes special officers employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S. Sections 943.085-943.255, F.S., relate to the training, certification, and discipline of law enforcement,

¹⁵ Section 784.011, F.S., defines “assault” as an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

¹⁶ Section 784.03, F.S., states that battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person.

¹⁷ Section 784.07(1)(d), F.S., defines the term “law enforcement officer” as a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505, F.S.; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or FDLE.

¹⁸ Section 784.07(1)(b), F.S., defines the term “firefighter” as any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

¹⁹ Section 784.07(1)(a), F.S., defines the term “emergency medical care provider” as an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties. The term also includes physicians, employees, agents, or volunteers of hospitals as defined in ch. 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital’s emergency department or the security thereof.

²⁰ Section 784.07(1)(c), F.S., defines the term “law enforcement explorer” as any person who is a current member of a law enforcement agency’s explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.

²¹ Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer must be sentenced to a minimum term of imprisonment of 3 years. Section 784.07(2)(c), F.S.

²² Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years. Section 784.07(2)(d), F.S.

correctional, and correctional probation officers. The bill also amends the definition of "employing agency" to specify that for purposes of ss. 943.085-943.255, F.S., only, the definition includes a Class I or Class II railroad that employs special officers pursuant to s. 354.01, F.S. As a result, special officers will be eligible for certification as LEOs by CJSTC.

The bill amends s. 354.01, F.S., to specify that:

- Special officers shall not be considered a "law enforcement officer" except for purposes of ss. 943.085-943.255, F.S.; and
- A Class I or II railroad shall not be considered an "employing agency" except for purposes of ss. 943.085-943.255, F.S.

The bill also requires special officers to meet the minimum standards contained in s. 943.13(1)-(11), F.S. (currently special officers only have to meet the requirements of (1)-(10)). Subsection (11) requires a person to comply with the continuing training or education requirements of s. 943.135, F.S.

The bill amends s. 784.07, F.S., to reclassify assault and battery offenses committed against railroad special officers. A "railroad special officer" is defined in s. 784.07, F.S., as a person employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 354.01, F.S., relating to appointment of special officers.

Section 2. Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 3. Amends s. 943.10, F.S., relating to definitions; ss. 943.085-943.255.

Section 4. Provides an effective date of July 1, 2013.

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 CJSTC, housed within FDLE, is the entity responsible for certifying LEOs. The bill makes railroad special officers eligible for certification as LEOs by CJSTC. This would have an insignificant impact on CJSTC.

FDLE reports that railroad special officers would be eligible to receive monies from the CJSTC Trust Fund for advanced and specialized training delivered by Florida's 40 criminal justice training centers. This would be a recurring cost of approximately \$1,800 per year (based on the current disbursement amount of \$67 per officer with an officer count of 27) beginning in FY 2013-2014 and continuing every year thereafter. This cost may increase or decrease depending on the availability of funds for disbursement to the training centers.²³

²³ FDLE Analysis of House Bill 489, February 7, 2013 (on file with Criminal Justice Subcommittee staff).
STORAGE NAME: h0489b.JUAS.DOCX
DATE: 2/22/2013

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill amends s. 784.07, F.S., to reclassify assault and battery offenses committed against railroad special officers employed by a Class I or Class II railroad and appointed by the Governor. In cases of assault, this would result in a second degree misdemeanor being reclassified as a first degree misdemeanor. This could have a negative jail bed impact. However, in cases of battery, the offense is reclassified from a first degree misdemeanor to a third degree felony. This could have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill makes Class I and II railroads "employing agencies" for purposes of ss. 943.085-943.255, F.S., and requires all railroad special officers (regardless of what Class of railroad they work for) to meet *all* of the minimum standards contained in s. 943.13, F.S. Railroad special officers who are employed by Class I or II railroads will also be required to be certified by CJSTC.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 943.12, F.S., authorizes CJSTC to "adopt rules for the administration of ss. 943.085-943.255 pursuant to chapter 120." To the extent this bill requires CJSTC to amend its existing rules, there does not appear to be a need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unknown whether Florida's Class III railroads currently have special officers. If so, it is unclear why only Class I and II special officers are added to the definition of LEO, since they would all have to meet the minimum requirements in s. 943.13, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2013, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment:

- Clarified that special officers and Class I and II railroads were included in the definitions of “law enforcement officer” and “employing agency” for purposes of ss. 943.085-943.255, F.S., only; and
- Amended s. 784.07, F.S., to reclassify assault and battery offenses committed against railroad special officers.

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

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A bill to be entitled
 An act relating to railroad police officers; amending
 s. 354.01, F.S.; requiring special officers employed
 by a railroad or other common carrier to comply with
 specified continuing training or education
 requirements; providing that a special officer is not
 considered a "law enforcement officer" except for
 specified purposes; providing that a Class I or II
 railroad is not considered an "employing agency"
 except for specified purposes; amending s. 784.07,
 F.S.; defining the term "railroad special officer";
 providing for reclassification of certain offenses
 committed against a railroad special officer; amending
 s. 943.10, F.S.; including special officers employed
 by a railroad or other common carrier within the
 definition of "law enforcement officers" and including
 certain railroads within the definition of "employing
 agency," for purposes of specified provisions relating
 to law enforcement officer standards; providing an
 effective date.

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

Section 1. Section 354.01, Florida Statutes, is amended to
 read:

354.01 Appointment of special officers.—Upon the
 application of any railroad or other common carrier doing
 business in this state, the Governor shall appoint one or more

29 persons who have met the law enforcement qualifications and
30 training requirements of s. 943.13 ~~943.13(1)-(10)~~ as special
31 officers for the protection and safety of such carriers; their
32 passengers and employees; and the property of such carriers,
33 passengers, and employees. A special officer shall not be
34 considered a "law enforcement officer" except for purposes of
35 ss. 943.085-943.255. A Class I or Class II railroad shall not be
36 considered an "employing agency" except for purposes of ss.
37 943.085-943.255.

38 Section 2. Paragraph (f) is added to subsection (1) of
39 section 784.07, Florida Statutes, and subsection (2) of that
40 section is amended, to read:

41 784.07 Assault or battery of law enforcement officers,
42 firefighters, emergency medical care providers, public transit
43 employees or agents, or other specified officers;
44 reclassification of offenses; minimum sentences.—

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

46 (f) "Railroad special officer" means a person employed by
47 a Class I or Class II railroad and appointed by the Governor
48 pursuant to s. 354.01.

49 (2) Whenever any person is charged with knowingly
50 committing an assault or battery upon a law enforcement officer,
51 a firefighter, an emergency medical care provider, a railroad
52 special officer, a traffic accident investigation officer as
53 described in s. 316.640, a nonsworn law enforcement agency
54 employee who is certified as an agency inspector, a blood
55 alcohol analyst, or a breath test operator while such employee
56 is in uniform and engaged in processing, testing, evaluating,

57 | analyzing, or transporting a person who is detained or under
58 | arrest for DUI, a law enforcement explorer, a traffic infraction
59 | enforcement officer as described in s. 316.640, a parking
60 | enforcement specialist as defined in s. 316.640, a person
61 | licensed as a security officer as defined in s. 493.6101 and
62 | wearing a uniform that bears at least one patch or emblem that
63 | is visible at all times that clearly identifies the employing
64 | agency and that clearly identifies the person as a licensed
65 | security officer, or a security officer employed by the board of
66 | trustees of a community college, while the officer, firefighter,
67 | emergency medical care provider, railroad special officer,
68 | traffic accident investigation officer, traffic infraction
69 | enforcement officer, inspector, analyst, operator, law
70 | enforcement explorer, parking enforcement specialist, public
71 | transit employee or agent, or security officer is engaged in the
72 | lawful performance of his or her duties, the offense for which
73 | the person is charged shall be reclassified as follows:

74 | (a) In the case of assault, from a misdemeanor of the
75 | second degree to a misdemeanor of the first degree.

76 | (b) In the case of battery, from a misdemeanor of the
77 | first degree to a felony of the third degree.

78 | (c) In the case of aggravated assault, from a felony of
79 | the third degree to a felony of the second degree.

80 | Notwithstanding any other provision of law, any person convicted
81 | of aggravated assault upon a law enforcement officer shall be
82 | sentenced to a minimum term of imprisonment of 3 years.

83 | (d) In the case of aggravated battery, from a felony of
84 | the second degree to a felony of the first degree.

85 | Notwithstanding any other provision of law, any person convicted
 86 | of aggravated battery of a law enforcement officer shall be
 87 | sentenced to a minimum term of imprisonment of 5 years.

88 | Section 3. Subsections (1) and (4) of section 943.10,
 89 | Florida Statutes, are amended to read:

90 | 943.10 Definitions; ss. 943.085-943.255.—The following
 91 | words and phrases as used in ss. 943.085-943.255 are defined as
 92 | follows:

93 | (1) "Law enforcement officer" means any person who is
 94 | elected, appointed, or employed full time by any municipality or
 95 | the state or any political subdivision thereof; who is vested
 96 | with authority to bear arms and make arrests; and whose primary
 97 | responsibility is the prevention and detection of crime or the
 98 | enforcement of the penal, criminal, traffic, or highway laws of
 99 | the state. This definition includes all certified supervisory
 100 | and command personnel whose duties include, in whole or in part,
 101 | the supervision, training, guidance, and management
 102 | responsibilities of full-time law enforcement officers, part-
 103 | time law enforcement officers, or auxiliary law enforcement
 104 | officers but does not include support personnel employed by the
 105 | employing agency. For purposes of ss. 943.085-943.255 only, this
 106 | definition also includes special officers employed by a Class I
 107 | or Class II railroad and appointed by the Governor pursuant to
 108 | s. 354.01.

109 | (4) "Employing agency" means any agency or unit of
 110 | government or any municipality or the state or any political
 111 | subdivision thereof, or any agent thereof, which has
 112 | constitutional or statutory authority to employ or appoint

CS/HB 489

2013

113 persons as officers. The term also includes any private entity
114 which has contracted with the state or county for the operation
115 and maintenance of a nonjuvenile detention facility. For
116 purposes of ss. 943.085-943.255 only, the term also includes a
117 Class I or Class II railroad that employs special officers
118 pursuant to s. 354.01.

119 Section 4. This act shall take effect July 1, 2013.

Amendment No.

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: Justice Appropriations
2 Subcommittee
3 Representative Stone offered the following:

Amendment (with title amendment)

Remove line 37 and insert:

7 943.085-943.255. Notwithstanding s. 943.25(5), a Class I or
8 Class II railroad that employs special officers shall as a non-
9 public employing entity incur all costs associated with
10 certification and continuing education of the employed special
11 officers.

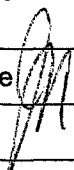
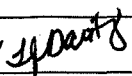
15 -----
16 **T I T L E A M E N D M E N T**

Remove line 10 and insert:

18 except for specified purposes; providing responsibility of
19 certain costs; amending s. 784.07,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 571 Marshal of Supreme Court
SPONSOR(S): Criminal Justice Subcommittee; Roberson and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Arguelles	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 25.271, F.S., specifies that the Marshal of the Florida Supreme Court (Court) is the conservator of the peace and authorizes the Marshal to apprehend, without a warrant, any person disturbing the peace without a warrant and deliver such person to an appropriate law enforcement officer. However, the Marshal's authority as conservator of the peace is limited to *the Court building or any building where the Court is sitting*.

Section 25.251, F.S., requires the Marshal and his or her assistants to successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission (CJSTC). Notably, the statute does not require the Marshal and his or her assistants to be certified officers (i.e., they do not have to meet *all* of the requirements in s. 943.13, F.S.).

The bill:

- Replaces the term "assistant" with the word "deputy;"
- Removes the language in s. 25.271, F.S., specifying that the Marshal and his or her assistants are conservators of the peace in the Court building, or in any building where the Court is sitting; and
- Creates a new subsection (3) in s. 25.251, F.S., specifying that the Marshal and his or her deputies are law enforcement officers with the authority to bear arms and make arrests in accordance with the laws of the state and in connection with the performance of their official duties for the Court.

As a result, the Marshal's jurisdiction will be statewide, and no longer limited to the Court building or buildings where the Court is sitting.

The bill also amends s. 25.251, F.S., to require the Marshal and his or her deputies to comply with the *all* of the requirements of s. 943.13, F.S., rather than the single requirement of successfully completing a CJSTC-approved basic training program. As a result, CJSTC will be required to certify the Marshal and his or her deputies as law enforcement officers.

According to the Office of the State Courts Administrator, the bill does not have a fiscal impact because it simply codifies the current hiring practice of the Court, which is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.). Citing the same rationale, the Florida Department of Law Enforcement reports that the bill does not have a fiscal impact on the department.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Supreme Court Marshal - Background

Article V, Section 3 of the Florida Constitution and s. 25.251, F.S., require the Florida Supreme Court (Court) to appoint a Marshal. The Marshal is the custodian of the building and grounds of the Court,¹ which includes responsibility for Court security; custodianship of all Court property, buildings, and grounds maintenance; and the administration of Court building facilities.² The Marshal is also responsible for ensuring the execution of all the Court's orders throughout the state.³

Florida Supreme Court Marshal – Training Requirements

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). Currently, CJSTC must certify a person for employment as a LEO if:

- The person complies with s. 943.13(1)-(10), F.S., which requires every person employed or appointed as a LEO to:
 - Be at least 19 years of age;
 - Be a citizen of the United States;
 - Be a high school graduate or its "equivalent;"
 - Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;
 - Have documentation of his or her fingerprints on file with the employing agency;
 - Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by CJSTC;
 - Have a good moral character as determined by a background investigation under procedures established by CJSTC;
 - Execute and submit to the employing agency an affidavit-of-applicant form, adopted by CJSTC, attesting to his or her compliance with s. 943.13(1)-(7), F.S.;
 - Complete a CJSTC-approved basic recruit training program for the applicable criminal justice discipline, unless exempt;
 - Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline; and
- The employing agency⁴ complies with s. 943.133(2) and (3), F.S.^{5,6}

In 2005, FDLE determined that the Court was an "employing agency" for purposes of ch. 943, F.S.⁷ However, s. 25.251, F.S., only requires the Marshal and his or her assistants to successfully complete a minimum standards training program approved by CJSTC - it does not require compliance with *all* of the

¹ Section 25.271(1), F.S.

² <http://www.floridasupremecourt.org/about/marshal.shtml> (last visited on February 26, 2013).

³ *Id.* Also see, s. 25.262, F.S.

⁴ Section 943.10, F.S., defines the term "employing agency" as any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility.

⁵ Section 943.1395(1), F.S.

⁶ Section 943.133, F.S., sets forth the general responsibilities and requirements of employing agencies and specifies that an employing agency is responsible for the collection, verification, and maintenance of documentation establishing that an applicant complies with the requirements of s. 943.13, F.S.

⁷ FDLE Legal Memorandum re: Florida Supreme Court Marshal and Assistants, June 30, 2005 (on file with the Criminal Justice Subcommittee).

criteria in s. 943.13, F.S. As such, unless the Marshal or his or her assistants voluntarily elect to comply with all of the requirements of s. 943.13, F.S., CJSTC would not be able to certify them.

According to the Office of the State Courts Administrator (OSCA), the current practice of the Court is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.).⁸ Currently, the Marshal's Office employs 11 certified officers, 5 individuals who are certified armed security officers,⁹ and 2 OPS certified officers.¹⁰

Effect of the Bill

The bill amends s. 25.251, F.S., to replace the term "assistant" with the word "deputy," and requires the Marshal and his or her deputies to comply with the *all* of the above-described requirements of s. 943.13, F.S. As a result, CJSTC will be required to certify such persons as law enforcement officers. These changes appear to codify the current hiring practices of the Marshal's Office.

Florida Supreme Court Marshal – Jurisdiction

In addition to being the custodian of the Court's building and grounds, s. 25.271, F.S., specifies that the Marshal is the conservator of the peace and authorizes the Marshal and his or her assistants to apprehend, without a warrant, any person disturbing the peace and deliver such person to an appropriate law enforcement officer. However, the Marshal's authority as conservator of the peace is limited to the Court building or any building where the Court is sitting.¹¹

According to OSCA, the Marshal and his or her assistants are often called upon to escort and provide security for justices at locations outside of the Court building and outside of places where the Court may be sitting. However, the Marshal's Office does not have jurisdiction at these locations because the statute limits the jurisdiction of the Marshal's Office to only the Court building or in buildings where the Court is sitting.

Effect of the Bill

The bill removes language in s. 25.271, F.S., specifying that the Marshal and his or her assistants are conservators of the peace in the Court building, or in any building where the Court is sitting.

The bill creates a new subsection (3) in s. 25.251, F.S., which specifies that the Marshal and his or her deputies are law enforcement officers as defined in s. 943.10, F.S., under the direction and control of the Court with full powers to bear arms and make arrests in accordance with the laws of the state. In connection with their official duties for the Court, the Marshal and his or her deputies may apprehend a person disturbing the peace without a warrant, and deliver such person to an appropriate law enforcement officer for further proceedings. The bill specifies that the Marshal and his or her deputies' duties may only be exercised in connection with the performance of their official duties for the Court.

B. SECTION DIRECTORY:

Section 1. Amends s. 25.251, F.S., relating to Marshal of Supreme Court; appointment; training.

Section 2. Amends s. 25.271, F.S., relating to Custody of Supreme Court Building and grounds.

Section 3. The bill is effective upon becoming a law.

⁸ *Revised Proposed Legislative Issue*, Supreme Court Marshal Requirements and Authority, January 16, 2013 (on file with Criminal Justice Subcommittee).

⁹ Chapter 493, F.S., provides requirements for the licensure of security officers.

¹⁰ *Revised Proposed Legislative Issue*, Supreme Court Marshal Requirements and Authority, January 16, 2013 (on file with Criminal Justice Subcommittee).

¹¹ Section 25.271(2), F.S.

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:

According to OSCA, the bill does not have a fiscal impact because it simply codifies the current hiring practice of the Court, which is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.). Citing the same rationale, FDLE reports that the bill does not have a fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the Marshal's law enforcement authority is limited to instances in which the Marshal is performing official duties for the Florida Supreme Court.

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

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A bill to be entitled
 An act relating to the marshal of the Supreme Court;
 amending s. 25.251, F.S.; revising terminology;
 requiring the marshal and his or her deputies to
 comply with specified requirements for law enforcement
 officers; specifying that the marshal and his or her
 deputies are law enforcement officers with full powers
 to bear arms and make arrests under certain
 conditions; limiting the use of those powers to the
 performance of official duties for the Supreme Court;
 amending s. 25.271, F.S.; deleting provisions relating
 to the marshal and his or her deputies being
 conservators of the peace; providing an effective
 date.

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

Section 1. Section 25.251, Florida Statutes, is amended to read:

25.251 Marshal of Supreme Court; appointment;
qualification; authority training.-

(1) The Supreme Court shall appoint a marshal who shall hold office during the pleasure of the court.

(2) The marshal and his or her deputies must comply with s. 943.13 relating to requirements for law enforcement officers in this state ~~assistants shall attend and successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission within the Department~~

29 ~~of Law Enforcement.~~

30 (3) The marshal and his or her deputies shall be law
 31 enforcement officers, as defined in s. 943.10(1), under the
 32 direction and control of the Supreme Court with full powers to
 33 bear arms and make arrests in accordance with the laws of this
 34 state. In performance of their official duties for the Supreme
 35 Court, they may apprehend without warrant a person disturbing
 36 the peace and deliver that person to the appropriate law
 37 enforcement officer of the municipality or county in which
 38 further proceedings may be held according to law. The powers
 39 granted in this subsection may be exercised only in furtherance
 40 of and in connection with the performance of official duties for
 41 the Supreme Court.

42 Section 2. Section 25.271, Florida Statutes, is amended to
 43 read:

44 25.271 Custody of Supreme Court Building and grounds.—

45 ~~(1)~~ The ~~said~~ marshal shall, under the direction of the
 46 Supreme Court, be custodian of the Supreme Court Building and
 47 grounds and shall keep the same clean, sanitary, and free of
 48 trespassers and marauders and shall maintain the same in good
 49 state of repair and cause the grounds to be beautified and
 50 preserved against depredations and trespasses.

51 ~~(2)~~ ~~The marshal and his or her assistants shall be~~
 52 ~~conservators of the peace in the Supreme Court Building, or in~~
 53 ~~any building in which the Supreme Court is sitting, and shall~~
 54 ~~apprehend without warrant any person disturbing the peace and~~
 55 ~~deliver that person to the appropriate law enforcement officer~~
 56 ~~of the municipality or county in which further proceedings may~~

CS/HB 571

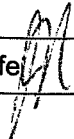
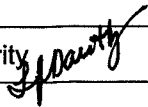
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57 | ~~be held according to law.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 611 False Reports to Law Enforcement Officers
SPONSOR(S): Criminal Justice Subcommittee; Watson, C.
TIED BILLS: IDEN./SIM. **BILLS:** SB 400

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 837.05(1), F.S., makes it a first degree misdemeanor, which is punishable by up to one year in county jail and a \$1,000 fine, for a person to knowingly give false information to a law enforcement officer concerning the alleged commission of any crime.

The bill amends s. 837.05(1), F.S., to make a second or subsequent violation a third degree felony if one of the following conditions is met:

- The information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by:
 - An audio recording or audio recording in a video of that information;
 - A written or recorded statement made by the person who gave that information; or
 - Another person who was present when that person gave that information to the officer and heard that information.
- The information the person gave to the law enforcement officer was communicated in writing.

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds. Because the bill makes second or subsequent violations of s. 837.05, F.S., a third degree felony if certain conditions are met, (currently a misdemeanor) it may have an insignificant positive local jail bed impact.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 837.05(1), F.S., makes it a first degree misdemeanor, which is punishable by up to one year in county jail and a \$1,000 fine,¹ for a person to knowingly give false information to any law enforcement concerning the alleged commission of any crime.²

Effect of the Bill

The bill amends s. 837.05(1), F.S., to make a second or subsequent violation a third degree felony³ if one of the following conditions is met:

- The information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by:
 - An audio recording or audio recording in a video of that information;
 - A written or recorded statement made by the person who gave that information; or
 - Another person who was present when that person gave that information to the officer and heard that information.
- The information the person gave to the law enforcement officer was communicated in writing.

B. SECTION DIRECTORY:

Section 1. Amends s. 837.05, F.S., relating to false reports to law enforcement authorities.

Section 2. Provides an effective date of October 1, 2013.

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 met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill makes second or subsequent violations of s. 837.05, F.S., if certain conditions are met, a third degree felony rather than a first degree misdemeanor. This may have an insignificant positive jail bed impact on local governments.

¹ Sections 775.082 and 775.083, F.S.

² Section 837.05(2), F.S., makes it a third degree felony for anyone to give false information to a law enforcement officer concerning the alleged commission of a capital felony.

³ 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment makes second or subsequent violations of s. 837.05(1), F.S., a third degree felony if certain conditions are met.

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

1 A bill to be entitled
 2 An act relating to false reports to law enforcement
 3 officers; amending s. 837.05, F.S.; providing that it
 4 is a third degree felony to knowingly give false
 5 information to a law enforcement officer concerning
 6 the alleged commission of a crime if the defendant has
 7 previously been convicted of this offense and the
 8 information, if communicated orally, is corroborated
 9 in a specified manner, or was communicated in writing;
 10 providing an effective date.

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

13
 14 Section 1. Section 837.05, Florida Statutes, is amended to
 15 read:

16 837.05 False reports to law enforcement authorities.—

17 (1) (a) Except as provided in paragraph (b) or subsection
 18 (2), a person who ~~whoever~~ knowingly gives false information to a
 19 ~~any~~ law enforcement officer concerning the alleged commission of
 20 any crime, commits a misdemeanor of the first degree, punishable
 21 as provided in s. 775.082 or s. 775.083.

22 (b) A person who commits a violation of paragraph (a)
 23 commits a felony of the third degree, punishable as provided in
 24 s. 775.082, s. 775.083, or s. 775.084, if the person has
 25 previously been convicted of a violation of paragraph (a) and
 26 subparagraph 1. or 2. applies:

27 1. The information the person gave to the law enforcement
 28 officer was communicated orally and the officer's account of

29 that information is corroborated by:

30 a. An audio recording or audio recording in a video of
 31 that information;

32 b. A written or recorded statement made by the person who
 33 gave that information; or

34 c. Another person who was present when that person gave
 35 that information to the officer and heard that information.

36 2. The information the person gave to the law enforcement
 37 officer was communicated in writing.

38 (2) A person who ~~whoever~~ knowingly gives false information
 39 to a law enforcement officer concerning the alleged commission
 40 of a capital felony, commits a felony of the third degree,
 41 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

42 Section 2. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 685 Parole Interview Dates for Certain Inmates
SPONSOR(S): McBurney
TIED BILLS: IDEN./SIM. **BILLS:** SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>Jones Darity</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

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

- Murder;
- Attempted murder;
- Sexual battery; or
- Attempted sexual battery.

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

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

This bill will not have a fiscal impact on the commission in Fiscal Year 2013-2014; however the bill will have a minimal positive fiscal impact in subsequent years. See Fiscal Section. Additionally, on February 27, 2013 the Criminal Justice Impact Conference determined that this bill would not have a prison bed impact.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission.¹ Parolees are supervised by Correctional Probation Officers employed by the Department of Corrections (DOC). Parole is not available for most crimes that were committed on or after October 1, 1983.² There is no parole eligibility for any crime committed on or after October 1, 1995.

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

Subsequent interviews for review of the PPRD may be held every two or seven years depending on the offense the inmate was convicted of.⁷ Generally, inmates are re-interviewed every two years.⁸ However, s. 947.174(1)(b), F.S., provides for less frequent reviews if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate was convicted of: murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence previously provided under s. 775.082, F.S. In such cases, the subsequent interviews may be conducted every seven years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.^{9,10}

Subsequent interviews are limited to determining whether or not information has been gathered that might affect the PPRD.¹¹ DOC is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as an inmate's current progress reports, psychological reports, and disciplinary reports.¹²

After an interview is conducted the hearing examiner sends his or her report and recommendation to a panel of commissioners.¹³ The inmate's case is then added to the docket of the next available parole

¹ *Extended Interviews Detailed Analysis*, Florida Parole Commission, provided to House Committee Staff on February 18, 2013 (on file with the Criminal Justice Subcommittee).

² The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

³ Section 947.172, F.S.

⁴ Section 947.005(8), F.S.

⁵ Section 947.173(1), F.S.

⁶ Section 947.174, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ In addition, s. 947.16(4), F.S., provides that at the time of sentencing, a judge may enter an order to retain jurisdiction over an offender for review of a commission release order to grant parole. If the judge vacates the parole release order and denies the parole, the offender shall be re-interviewed by the commission every two or seven years as determined by the same criteria described in this cited paragraph.

¹¹ Section 947.174(1)(c), F.S.

¹² Section 947.174(3), F.S.

¹³ Rule 23-21.0052, F.A.C.

hearing where the commission will hear public testimony and make a final decision regarding the PPRD recommendation. Inmates are not permitted to attend parole hearings.¹⁴ At parole hearings, victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission.¹⁵

The hearing examiner conducts a final interview of the inmate within 90 days of the PPRD in order to set an effective parole release date and to establish a parole release plan.¹⁶ The commission is required to give notice to the sentencing court prior to this final interview.¹⁷ If the court objects to the offender's release, the objection can be an exceptional circumstance under s. 947.173, F.S., which authorizes the commission to cancel the final interview and reset the case for future review.¹⁸ If the court does not object and the final interview is held, the commission then holds a final public hearing at which it decides whether the inmate's parole release plan is satisfactory and whether to authorize the effective parole release date and enter a release order.¹⁹

Effect of the Bill

As noted above, the commission re-interviews parole eligible inmates to review the inmate's PPRD. Generally, inmates are re-interviewed every two years. However, s. 947.174(1)(b), F.S., provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., or the inmate was convicted of:

- Murder;
- Attempted murder;
- Sexual battery; or
- Attempted sexual battery.

The bill amends ss. 947.16, 947.174, and 947.1745, F.S., to increase the intervals between parole interview dates from two to seven years for inmates convicted of:

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

The bill reenacts s. 947.165, F.S., to incorporate the amendments to s. 947.1745, F.S.

B. SECTION DIRECTORY:

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

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

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

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

Section 5. Provides an effective date of July 1, 2013.

¹⁴ Rule 23-21.004, F.A.C.

¹⁵ The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings. Section 947.06, F.S.

¹⁶ Section 947.1745(1), F.S.

¹⁷ Section 947.1745(6), F.S.

¹⁸ *Id.*

¹⁹ Rule 23-21.015, F.A.C.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

This bill will not have a fiscal impact on the commission in Fiscal Year 2013-2014; however the bill will have a minimal positive fiscal impact in subsequent years. According to the commission, inmates would be informed of any changes to the law regarding subsequent interview dates at their next scheduled interview. They would be informed that, upon passage of this bill, the commission may set a subsequent interview within seven years rather than within two. The bill does not remove the inmate's limited due process rights or the mechanism for the inmate to request the commission to consider setting an earlier interview date which is currently in place.

This bill will have no effect on the current review dates that are presently set for parole eligible inmates. This bill would only affect those inmates whose review dates occur after the effective date of the bill. Therefore, the inmates' interview dates that fall between July 1, 2013 and June 30, 2015, would not be affected by the bill until after that interview when they are informed their next interview would be in seven years instead of two.

Last year, the commission staff reviewed extensively the 842 initial, extraordinary, and subsequent interviews from commission dockets from July 1, 2010 through June 30, 2011. Of the total cases docketed, 534 cases had already been given a seven year subsequent interview date; 264 cases were not affected because their review date was not addressed by the bill and remained within two years; and 44 cases could have been affected and could have had their next interview date set for seven years after being informed of the law change at their next two year review. According to the Commission, this eligible pool of inmates has not changed significantly since last year's analysis.

Therefore, based on that analysis, 44 cases may be affected by the bill in Fiscal Year 2015-2016 and could have their next interview date set within seven years instead of within two years. This equated to a total savings to the Commission of 166 hours annually (44 x 3.78 hours per case) or approximately 1/12 of an FTE for the FY 2011-2012 eligible pool of inmates.

It is reasonable to assume that in the subsequent years, the savings should compound as other eligible inmates review dates are changed from two to seven years, but the savings associated with the remaining eligible pool is also expected to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

On June 1, 1997, the Legislature changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years.²⁰ According to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.²¹

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

²⁰ Chapter 97-289, L.O.F.

²¹ *Tuff v. State*, 732 So.2d 461 (3rd DCA 1999).

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

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

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

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

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

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

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

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

- 60 | 1. Convicted of murder or attempted murder;
- 61 | 2. Convicted of sexual battery or attempted sexual
 62 | battery; ~~or~~
- 63 | 3. Convicted of kidnapping or attempted kidnapping;
- 64 | 4. Convicted of robbery, burglary of a dwelling, burglary
 65 | of a structure or conveyance, or breaking and entering, or the
 66 | attempt thereof of any of these crimes, in which a human being
 67 | is present and a sexual act is attempted or completed; or
- 68 | 5. ~~3.~~ Sentenced to a 25-year minimum mandatory sentence
 69 | previously provided in s. 775.082,

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

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

81 | 947.174 Subsequent interviews.—

82 | (1)

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

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

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

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

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

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

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

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

HB 685

2013

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

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

158 947.165 Objective parole guidelines.—

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

HB 685

2013

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

173 | Section 5. This act shall take effect July 1, 2013.