Criminal Justice Subcommittee

January 23, 2013
8:30 AM
404 HOB

Will W. Weatherford
Speaker

Matt Gaetz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time:	Wednesday, January 23, 2013 08:30 am
End Date and Time:	Wednesday, January 23, 2013 11:00 am
Location:	404 HOB
Duration:	2.50 hrs

Consideration of the following bill(s):

HB 5 Open Parties by Pilon
HB 15 Protest Activities by Rooney

Presentation by the Office of the Attorney General on capital punishment appeals.

Discussion on Smart Justice issues.

NOTICE FINALIZED on 01/16/2013 16:07 by hudson.jessica

HB 5

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5 Open Parties
SPONSOR(S): Pilon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox	Cunningham
2) Business & Professional Regulation Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 856.015, F.S., makes it a second degree misdemeanor for a person who has control of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the consumption or the alcoholic beverage or drug.

The term "open house party" is defined as "a social gathering at a residence", and the term "residence" is defined as a "home, apartment, condominium, or other dwelling unit." The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

The bill amends 856.015, F.S., to broaden the scope of criminal liability to include open parties that are held on "property" and defines this term as "residence, vacant property, or open acreage with or without a structure."

The bill creates a new exception specifying that criminal penalties do not apply to the consumption of alcoholic beverages at a restaurant or bar where a parent or adult accompanying the minor allows consumption by the minor.

The bill expands the application of s. 856.015, F.S., to include vacant property and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the penalties of s. 856.015, F. S., the bill may have a negative jail bed impact on local governments.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 856.015, F.S., makes it a second degree misdemeanor[1] for a person[2] who has control[3] of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor[4] and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the consumption or the alcoholic beverage or drug.[5]

The term "open house party" is defined as "a social gathering at a residence," and the term "residence" is defined as a "home, apartment, condominium, or other dwelling unit."[6]

The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

There are other statutes currently in effect that relate to consumption or possession of alcohol by a minor. For example, s. 827.04, F.S., entitled "Contributing to the delinquency or dependency of a child", makes it a first degree misdemeanor for "a person to commit an act which causes or tends to cause, encourage, or contribute to a child becoming a delinquent or dependent child or a child in need of services." Case law related to this statute has held that providing alcohol or drugs to a minor would trigger criminal liability under this statute.[7]

Effect of the Bill

The bill amends s. 856.015, F.S., to broaden the scope of criminal liability to include open parties that are held on property other than a residence. Specifically, the bill prohibits a person who has control of a property to allow an open party to take place at such property if any alcoholic beverage or drug is possessed or consumed by a minor, and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the property; and
- The person fails to take reasonable steps to prevent the consumption or the alcoholic beverage or drug.

The bill defines the term "property" as a "residence, vacant property, or open acreage with or without a structure." The bill replaces references to "open house party" with "open party" and defines "open party" as "a social gathering at any property."

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[1] A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.
[2] Section 856.015(1), F.S., defines the term "person" as an individual 18 years of age or older.
[3] Section 856.015(1), F.S., defines the term "control" as the authority or ability to regulate, direct, or dominate.
[4] Section 856.015(1), F.S, defines the term "minor" as an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562.
[5] Second or subsequent violations of the statute are first degree misdemeanors. 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. It is also a first degree misdemeanor to if a violation causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party. Section 856.015(4) and (5), F.S.
[6] Section 856.015(1), F.S.
[7] See *Kito v. State*, 888 So.2d 114, (Fla. 4th DCA, 2004). While the evidence was insufficient to uphold the conviction in this case, the Court is clear that a conviction for contributing to the delinquency of a minor can be sustained for an adult who knowingly allows a minor in their presence to possess or consume alcohol and/or drugs.

The bill creates a new exception specifying that criminal penalties do not apply to the consumption of alcoholic beverages at a restaurant or bar where a parent or adult accompanying the minor allows consumption by the minor. The bill defines the term "adult" as "an individual legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

The penalties remain unchanged.

B. SECTION DIRECTORY:

Section 1. Amends s. 856.015, F.S., relating to open house parties.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   The bill expands the application of s. 856.015, F.S., to include vacant property and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the penalties of s. 856.015, F. S., the bill may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who have control of vacant property or open acreage with or without structures would now be subject to criminal penalties for violations of s. 856.015, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

1) Under (1)(h) "property" is defined as "residence, vacant property, or open acreage with or without a structure." This definition uses the term "property" within its definition of "property" which makes the definition unclear.
2) The new exception created by the bill provides that criminal penalties will not apply to use of alcoholic beverages at a restaurant or bar where a parent or adult accompanying minor allows the consumption. The definition of "property" that is provided in subsection (1) does not include a bar or restaurant, therefore, consumption that occurred at a bar or restaurant would not fall under the purview of s. 856.015, F.S., as drafted.
3) "Control" is defined as "the authority or ability to regulate, direct, or dominate." To date, this term has not been challenged as being vague. However, the bill expands the application of s. 856.015, F.S., to vacant property and open acreage with or without a structure. Proving that a person had "authority or ability to regulate or dominate" a vacant property or open acreage could be more challenging and provide an area ripe for litigation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to open parties; amending s. 856.015,
3 F.S.; revising definitions to apply the restrictions
4 formerly applicable to open house parties to all open
5 parties and not solely those parties occurring in a
6 residence; prohibiting a person from allowing an open
7 party to take place; providing criminal penalties;
8 revising an exemption; conforming provisions;
9 providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 856.015, Florida Statutes, is amended
14 to read:
15 856.015 Open ~~house~~ parties.—
16 (1) Definitions.—As used in this section:
17 (a) "Adult" means an individual legally permitted by
18 reason of age to possess alcoholic beverages pursuant to chapter
19 562.
20 (b) ~~(a)~~ "Alcoholic beverage" means distilled spirits and
21 any beverage containing 0.5 percent or more alcohol by volume.
22 The percentage of alcohol by volume shall be determined in
23 accordance with ~~the provisions of~~ s. 561.01(4)(b).
24 (c) ~~(b)~~ "Control" means the authority or ability to
25 regulate, direct, or dominate.
26 (d) ~~(c)~~ "Drug" means a controlled substance~~,~~ as ~~that term~~
27 ~~is~~ defined in ss. 893.02(4) and 893.03.
28 (e) ~~(d)~~ "Minor" means an individual not legally permitted

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

29 by reason of age to possess alcoholic beverages pursuant to
30 chapter 562.
31 (f)~~(e)~~ "Open ~~house~~ party" means a social gathering at any
32 property ~~a residence~~.
33 (g)~~(f)~~ "Person" means an individual 18 years of age or
34 older.
35 (h) "Property" means a residence, vacant property, or open
36 acreage with or without a structure.
37 (i)~~(g)~~ "Residence" means a home, apartment, condominium,
38 or other dwelling unit.
39 (2) A person having control of any property ~~residence~~ may
40 not allow an open ~~house~~ party to take place at the property
41 ~~residence~~ if any alcoholic beverage or drug is possessed or
42 consumed at the property ~~residence~~ by any minor where the person
43 knows that an alcoholic beverage or drug is in the possession of
44 or being consumed by a minor at the property ~~residence~~ and where
45 the person fails to take reasonable steps to prevent the
46 possession or consumption of the alcoholic beverage or drug.
47 (3) ~~The provisions of~~ This section does ~~shall~~ not apply to
48 the use of alcoholic beverages at legally protected religious
49 observances or activities or at a restaurant or bar where a
50 parent or adult accompanying a minor allows consumption by the
51 minor.
52 (4) Any person who violates ~~any of the provisions of~~
53 subsection (2) commits a misdemeanor of the second degree,
54 punishable as provided in s. 775.082 or s. 775.083. A person who
55 violates subsection (2) a second or subsequent time commits a
56 misdemeanor of the first degree, punishable as provided in s.

57 775.082 or s. 775.083.
58 (5) If a violation of subsection (2) causes or contributes
59 to causing serious bodily injury, as defined in s. 316.1933, or
60 death to the minor, or if the minor causes or contributes to
61 causing serious bodily injury or death to another as a result of
62 the minor's consumption of alcohol or drugs at the open ~~house~~
63 party, the violation is a misdemeanor of the first degree,
64 punishable as provided in s. 775.082 or s. 775.083.
65 Section 2. This act shall take effect October 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Pilon offered the following:
4
5 **Amendment**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 856.015, Florida Statutes, is amended
8 to read:
9 856.015 Open ~~house~~ parties.—
10 (1) Definitions.—As used in this section:
11 (a) "Alcoholic beverage" means distilled spirits and any
12 beverage containing 0.5 percent or more alcohol by volume. The
13 percentage of alcohol by volume shall be determined in
14 accordance with ~~the provisions of~~ s. 561.01(4)(b).
15 (b) "Control" means the authority or ability to regulate,
16 direct, or dominate.
17 (c) "Drug" means a controlled substance, as that term is
18 defined in ss. 893.02(4) and 893.03.
19 (d) "Minor" means an individual not legally permitted by
20 reason of age to possess alcoholic beverages pursuant to chapter

562.

(e) "Open ~~house~~ party" means a social gathering at any property ~~a residence~~.

(f) "Person" means an individual 18 years of age or older.

(g) "Property" means a residence, vacant structure, or open acreage with or without a structure.

(h) ~~(g)~~ "Residence" means a home, apartment, condominium, or other dwelling unit.

(2) A person having control of any property ~~residence~~ may not allow an open ~~house~~ party to take place at the property ~~residence~~ if any alcoholic beverage or drug is possessed or consumed at the property ~~residence~~ by any minor where the person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the property ~~residence~~ and where the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

(3) ~~The provisions of~~ This section does ~~shall~~ not apply to the use of alcoholic beverages at legally protected religious observances or activities or to the use of alcoholic beverages on property where a parent or legal guardian accompanying their minor child allows such use by their child.

(4) Any person who violates ~~any of the provisions of~~ subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates subsection (2) a second or subsequent time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If a violation of subsection (2) causes or contributes

49 to causing serious bodily injury, as defined in s. 316.1933, or
50 death to the minor, or if the minor causes or contributes to
51 causing serious bodily injury or death to another as a result of
52 the minor's consumption of alcohol or drugs at the open ~~house~~
53 party, the violation is a misdemeanor of the first degree,
54 punishable as provided in s. 775.082 or s. 775.083.
55 Section 2. This act shall take effect October 1, 2013.
56

HB 15

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 15 Protest Activities
SPONSOR(S): Rooney, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 118, SB 240, HB 185

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

SUMMARY ANALYSIS

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

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

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

- Within 500 feet of the property line of any location where a funeral, burial, or memorial service is being conducted,
- During or within 1 hour before or 1 hour after the conducting of the funeral, burial, or memorial service.

The bill defines "protest activities" as "any action, including picketing, that is undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service."

The distinction between s. 871.01, F.S., and the bill's provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly *and that does in fact significantly disturb the assembly.* The bill prohibits "any action…that is undertaken with the intent to interrupt or disturb" a funeral, burial, or memorial service under the specified conditions, regardless of whether those actions *do in fact cause* such a disturbance.

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

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

Section 877.03, F.S.

Section 877.03, F.S., relates to breach of the peace and disorderly conduct. The statute makes it a second degree misdemeanor[1] for a person to commit acts that:

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

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

Section 870.01, F.S.

Section 870.01, F.S., makes it a first degree misdemeanor[4] for a person to commit an affray. The statute also makes it a third degree felony[5] for a person to riot, or incite or encourage a riot. Although the terms "affray" and "riot" are not defined, the courts have upheld the statute against vagueness challenges.[6]

Section 870.02, F.S.

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

Section 871.01, F.S.

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

In 2006, in response to various groups creating public disturbances at high profile military funerals, subsection (2) was added to s. 871.01, F.S.[9] Section 871.01(2), F.S., makes it a first degree misdemeanor for a person to willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a "military funeral honors detail" as defined by 10 U.S.C. s.

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

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

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

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

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

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

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

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

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

1491. A military honors detail includes the presence of two uniformed members of the armed forces, the playing of Taps, the folding of the United States flag and its presentation to the family.[10]

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

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

Effect of the Bill

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

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

- Within 500 feet of the property line of any location,[12]
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place.

Definitions:

- The bill defines "protest activities" as "any action, including picketing, that is undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service."
- The bill defines the phrase "funeral, burial, or memorial service" as "any service offered or provided in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains or cremated human remains."

The distinction between s. 871.01, F.S., and the bill's provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly *and that does in fact significantly disturb the assembly.* The bill prohibits "any action...that is undertaken with the intent to interrupt or disturb" a funeral, burial, or memorial service under the specified conditions, regardless of whether those actions *do in fact cause* such a disturbance.

B. SECTION DIRECTORY:

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

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

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[10] 10 U.S.C. s. 1491.

[11] *S.H.B. v. State*, 355 So.2d 1176, 1178 (Fla. 1977) (finding "[t]hese elements are inherent in the statute as drafted.").

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The First Amendment of the U.S. Constitution

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

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

Snyder v. Phelps

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

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

[14] *See Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

[15] *Snyder v. Phelps*, 131 S.Ct. 1207, 1218 (2011) (emphasis added).

It is important to note that the *Snyder* case did not involve the Court reviewing the constitutionality of a state statute regulating picketing.[16] Rather, the Court addressed *whether the First Amendment was a defense to a state tort claim* for intentional infliction of emotional distress, which is a separate issue. Thus, when examining the constitutionality of a statute that regulates protest activities, it is important to examine whether the statute conforms to U.S. Supreme Court precedent.

Court Precedent

Content-Based vs. Content-Neutral Restrictions

It is a fundamental constitutional principle that debate, particularly on issues of public concern, should not be inhibited by the government.[17] Therefore, the most important question regarding the First Amendment issues of the bill is *whether the government is prohibiting speech based on disfavored content.*[18] Such "content-based" regulations are presumptively suspect and are subject to strict scrutiny by the court.[19]

The government *may* restrict speech through time, place, and manner regulations that are *justified without reference to the content of the speech.*[20]

The Eighth Circuit Court of Appeals has found both a city ordinance[21] and a state statute[22] prohibiting protest activities within a certain time and distance of a funeral content-neutral. Content neutral restrictions are subject to intermediate scrutiny by the court.[23] Under intermediate scrutiny, the court looks at the relationship, or "fit," between the *end* and the *means* of the statute. In other words, the restrictions of the statute must be *narrowly tailored* to achieve a *significant state interest.*[24] Additionally, the statute must leave open "ample alternative channels" for the restricted speech.[25]

- A *significant state interest* is grounded in the state's traditionally broad police powers.[26] Courts have found a state has a significant interest in protecting its citizens from disruption during events associated with a funeral or burial service,[27] and in public safety concerns resulting from disruptions of the public order.[28] Additionally, citizens have a recognized interest in avoiding unwanted speech, including in confrontational settings.[29]
- A statute is *narrowly tailored* to a significant state interest if it does not burden substantially more speech than necessary to achieve the state's goal.[30] To be narrowly tailored in this context, the statute does *not* have to be the least restrictive means available.[31]
- In the context of a statute regulating picketing in residential areas, the U.S. Supreme Court found there were *ample alternative channels* when: "Protestors have not been barred from the residential neighborhoods. They may enter such neighborhoods, alone or in groups, even

[16] *Id.* ("Maryland's law, however, was not in effect at the time of the events at issue here, so we have no occasion to consider how it might apply to facts such as those before us, or whether it or other similar regulations are constitutional.").
[17] *Id.* at 1215 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).
[18] *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).
[19] *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994).
[20] See *Ward*, 491 U.S. at 791 (emphasis added; internal quotations omitted); *Snyder*, 131 S.Ct. at 1218.
[21] *Phelps-Roper v. City of Manchester, Mo.*, 658 F.3d 813, 816 (8th Cir. 2011).
[22] *Phelps-Roper v. Nixon*, 545 F.3d 685, 691 (8th Cir. 2008).
[23] *See Turner Broad.*, 512 U.S. at 642.
[24] *Ward*, 491 U.S. at 791.
[25] *Id.*
[26] *See Hill v. Colorado*, 530 U.S. 703, 715 (2000).
[27] *Phelps-Roper v. Taft*, 523 F.Supp.2d 612, 618 (N.D. Ohio 2007) aff'd in part sub nom. *Phelps-Roper v. Strickland*, 539 F.3d 356 (6th Cir. 2008).
[28] *Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. Dist. of Columbia*, 972 F.2d 365, 372 (D.C. Cir. 1992) (citing *Mosley*, 408 U.S. at 98).
[29] *Hill* at 716-17.
[30] *See Turner Broad.*, 512 U.S. at 662.
[31] *Id. See also Hill*, 530 U.S. at 726.

marching.... They may go door-to-door to proselytize their views. They may distribute literature in this manner ...or through the mails. They may contact residents by telephone, short of harassment."[32]

The bill limits the definition of "protest activities" as actions "undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service." The Sixth Circuit U.S. Court of Appeals found a statute was narrowly tailored that described protest activities as "any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service."[33] The court noted that the language limited "protest activities" to those *directed* at a particular funeral.[34] Furthermore, the Eighth Circuit U.S. Court of Appeals found that a statute that did *not* contain such language was likely *not* narrowly tailored for injunction purposes.[35]

The bill establishes a 500 foot fixed buffer zone around funeral locations. Buffer zones are potentially too broad and therefore not narrowly tailored, if they restrict too much protected speech. Criteria include the reference point that the buffer zone surrounds, and the size of the buffer zone itself. The nature of the bill's buffer zone likely conforms to U.S. Supreme Court precedent. A U.S. District Court in 2007 held an Ohio statute's 300 feet "fixed" buffer zone surrounding funeral locations constitutional, but held the "floating buffer zone" surrounding funeral *processions* unconstitutional because it was not narrowly tailored.[36] That holding conforms to a prior Supreme Court case addressing buffer zones.[37] Additionally, courts have found the *size* of the buffer zone itself to be context-specific.[38]

Finally, the bill addresses the competing interests of funeral protestors and funeral attendees in a specific location. It is therefore important to carefully define the nature of those interests. The First Amendment protects expressive conduct such as picketing, and affords the highest protection to speech based on matters of public concern, or "political speech."[39] On the other hand, citizens also have a recognized interest not to be forced to hear unwanted speech.[40] Protecting citizens from hearing unwanted speech is referred to as the "captive audience" doctrine.[41] To illustrate the point, there is a difference between someone holding a sign displaying an offensive message, where the burden falls on offended viewers to "avoid further bombardment of their sensibilities simply by averting their eyes,"[42] and forcing citizens to "undertake Herculean efforts to escape the cacophony of political protests."[43] The Court has held that in some cases, funeral attendees are not a "captive audience" to protest speech.[44] In other cases, courts have held that forcing a funeral attendee to choose between attending a funeral and hearing the unwanted protest communication effectively makes the attendees a "captive

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[32] *Frisby v. Schultz*, 487 U.S. 474, 484 (1988).
[33] *Phelps-Roper v. Strickland*, 539 F.3d 356, 368 (6th Cir. 2008).
[34] *Id.* (citing *Frisby v. Schultz*, 487 U.S. 474 (1988)).
[35] *Nixon*, 545 F.3d 685, 693 (finding statute likely not narrowly tailored "[b]ecause the Missouri statute does not contain any such [narrowing] provisions").
[36] *Phelps-Roper v. Taft*, 523 F.Supp.2d at 620 (N.D. Ohio 2007) ("statute not narrowly tailored, in that it burdens substantially more speech than necessary to serve the State of Ohio's interest protecting its citizens from disruption during the events associated with a funeral or burial service").
[37] *See Schenck v. Pro-Choice Network Of W. New York*, 519 U.S. 357, 377 (1997) (finding that injunction imposing floating buffer zones of 15 feet from people and vehicles entering and leaving clinics were not narrowly tailored).
[38] *See Madsen*, 512 U.S. at 772; *Strickland*, 539 F.3d at 368.
[39] *See Snyder*, 131 S.Ct. at 1215.
[40] *See Hill*, 530 U.S. at 716-17.
[41] *Snyder*, 131 S.Ct. at 1220.
[42] *Hill* at 716 (internal quotations omitted).
[43] *Id.* (quoting *Madsen*, 512 U.S. at 772-73).
[44] *Snyder*, 131 S.Ct. at 1220 (finding mourner was not a captive audience to protest speech when protestors stayed 1,000 feet away from the funeral location, mourner could only see the tops of the signs when driving to the funeral, and there was no indication that the picketing in any way interfered with the funeral service itself.").

audience."[45] The Court noted in *Snyder v. Phelps* that the captive audience doctrine has been applied "only sparingly."[46]

Overbreadth Doctrine of the First Amendment

Even if a statute legitimately prohibits some speech, if it also prohibits a substantial amount of protected speech in relation to its legitimate sweep it may be unconstitutionally overbroad.[47]

This overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court-- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid."[48] The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression.[49] Invalidation for overbreadth is "strong medicine that is not to be casually employed."[50] The overbreadth must be "real" and "substantial."[51]

A July 2010 Michigan case provides a relevant example of overbreadth. In that case, a Michigan couple was part of a vehicle funeral procession in their van. The van had for years openly displayed various messages critical of U.S. policy and President Bush. The couple was arrested and held in jail for 24 hours under Michigan's funeral protest law which made it illegal, in pertinent part, to engage in conduct that will "adversely affect" a funeral or funeral processional.[52] The U.S. District Court found that those parts of the statute were likely unconstitutional under the overbreadth doctrine of the First Amendment.[53]

Vagueness Doctrine of the Fourteenth Amendment

A statute is unconstitutional under the vagueness doctrine if an ordinary person of average intelligence would not be put on notice as to what conduct is prohibited by the statute. Additionally, vague statutes invite arbitrary and discriminatory enforcement.[54] It should be noted that when a statute is challenged as having a chilling effect on constitutionally protected speech due to vagueness, courts have held that a more stringent vagueness test should apply.[55]

The bill may be vulnerable to a vagueness challenge if a law enforcement officer would not understand what constitutes prohibited protest activity as it is defined. When considering this issue it should be noted that the Florida Supreme Court has upheld s. 871.01, F.S., against a vagueness challenge as to the meaning of the phrase "interrupt or disturb."[56] That phrase is used in the bill, although it should be noted that the bill would *not* require an actual disturbance to take place as in the Florida Supreme Court's definition in *S.H.B v. State.*

The bill may also be vulnerable to a vagueness challenge if an ordinary person of average intelligence would not understand what type of conduct would be deemed conduct "undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service."

[45] *See Phelps-Roper v. Strickland*, 539 F.3d 356, 362 (6th Cir. 2008); *McQueary v. Stumbo*, 453 F.Supp.2d 975, 992 (E.D. Ky. 2006). *But compare Phelps-Roper v. Nixon*, 545 F.3d 685 (8th Cir. 2008).
[46] *Snyder*, 131 S.Ct. at 1220.
[47] *United States v. Williams*, 553 U.S. 285, 292 (2008).
[48] *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).
[49] *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).
[50] *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).
[51] *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).
[52] Mich. Comp. Laws Ann. s. 750.167d.
[53] *Lowden v. County of Clare*, 709 F.Supp.2d 540, 563 (E.D. Mich. 2010) (finding "the interaction of the 500 foot buffer zone and the "adversely affects" language is particularly problematic given the broad scope of expressive activity restricted in such a large space").
[54] *Sult v. State*, 906 So.2d 1013 (Fla. 2005).
[55] *Village. Of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982).
[56] *See S.H.B. v. State*, 355 So.2d 1176, 1178 (Fla. 1977).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to protest activities; creating s.
3 871.015, F.S.; providing definitions; prohibiting
4 engaging in protest activities within a specified
5 distance of the property line of the location of a
6 funeral, burial, or memorial service; providing
7 criminal penalties; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 871.015, Florida Statutes, is created
12 to read:
13 871.015 Unlawful protests.—
14 (1) As used in this section, the term:
15 (a) "Funeral, burial, or memorial service" means any
16 service offered or provided in connection with the final
17 disposition, memorialization, interment, entombment, or
18 inurnment of human remains or cremated human remains.
19 (b) "Protest activities" means any action, including
20 picketing, that is undertaken with the intent to interrupt or
21 disturb a funeral, burial, or memorial service.
22 (2) A person may not knowingly engage in protest
23 activities or knowingly cause protest activities to occur within
24 500 feet of the property line of any residence, cemetery,
25 funeral home, house of worship, or other location during or
26 within 1 hour before or 1 hour after the conducting of a
27 funeral, burial, or memorial service at that place.
28 (3) A person who violates this section commits a

29 misdemeanor of the first degree, punishable as provided in s.
30 775.082 or s. 775.083.
31 Section 2. This act shall take effect October 1, 2013.

Death Penalty

Death Penalty Process

CURRENT LAW

Clemency
•Must be filed within one year after sentence is upheld. •Request for clemency usually resolved in 6 to 9 months.

Trial & Sentence	Direct Appeals	File	State Collateral Attack	Federal Collateral Attack	Repetitive State & Federal Appeals	Death Warrant Signed	Post Warrant Claims
•Death sentence imposed.	•Direct appeal to the Florida Supreme Court. •Petition for certiorari to the U.S. Supreme Court. •Post conviction Counsel appointed upon affirmance.	•Up to one year to file a state collateral attack.	•Public records collected. •Rule 3.850 motion for postconviction relief adjudicated in trial court. •Appeal of denial of rule 3.850 motion & state law petition for writ of Habeas Corpus brought before the Florida Supreme Court.	•Petition for writ of Habeas Corpus in Federal District Court. •Appeal of denial of petition for Writ of Habeas Corpus to Eleventh Circuit Court of Appeals in Atlanta. •Petition for Writ of Certiorari to U.S. Supreme Court.	•Claims which could have and should have been raised during the trial or on direct appeal. •Newly discovered evidence related to guilt, ineffective assistance of counsel, or withholding of evidence.		•Incompetence to be executed (insanity). •Challenges to the method of execution. •Newly discovered evidence related to guilt, ineffective assistance of counsel, or withholding of evidence.
1 to 2 Years	18 Months to 3 Years	1 Year	2 to 5 Years	18 Months to 3 Years	2 to 4 years		6 Months to 1 Year

FLORIDA DEATH ROW STATISTICS

- As of January 22, 2013, there were 406 inmates on death row in Florida.

Total White Males	241
Total Black Males	147
Total Other Males	13
Total White Females	1
Total Black Females	2
Total Other Females	2
1/22/2013 Total	406

- The average inmate spends 13.22 years on death row prior to execution, and 14.12 years between the time of the offense and execution.

- Of the 406 inmates on death row, 155 have been in custody for more than 20 years.

- California is the only state where inmates spend more time on death row.

- Since 2000, the average length of time on death row is 17.79 years.

Smart Justice

Whereas public safety is a fundamental responsibility of state government, and

Whereas there are over 33,000 projected releases from prison over the next year, and

Whereas, roughly 1/3 of these inmates will return to prison within the next three years, and

Whereas, the "revolving door" represents a substantial public safety and financial cost to Floridians, and

Whereas, research has demonstrated that certain services and programs provided to inmates who are nearing the end of their prison sentence reduce the probability of reoffending and future prison admissions, and

Whereas, reducing recidivism has a direct and beneficial effect on public safety and reduces the social and financial costs of criminal behavior in the state of Florida,

It is the intent of the Legislature to promote the development of evidence based practices by expanding the services available to inmates transitioning from incarceration to the community in order to enhance public safety, reduce victimization and reduce the cost of criminal behavior to state government and the society at large.

Section 1. Section 944.02, Florida Statutes is amended to read as follows:

944.02 Definitions.—The following words and phrases used in this chapter shall, unless the context clearly indicates otherwise, have the following meanings:
(1) "Commission" means the Parole Commission.
(2) "Correctional reentry treatment facility" shall mean a minimum custody state correctional facility established for the purpose of providing substance abuse, behavioral health, educational, vocational and other transitional services to state inmates who are within 36 months of release pursuant to s. 944.0281.
(2) "Correctional system" means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the Department of Corrections.
(3) "Department" means the Department of Corrections.
(4) "Elderly offender" means a prisoner age 50 or older in a state correctional institution or facility operated by the Department of Corrections or the Department of Management Services.
(5) "Lease-purchase agreement" means an installment sales contract which requires regular payments with an interest charge included and which provides that the lessee receive title to the property upon final payment.
(6) "Prisoner" means any person who is under civil or criminal arrest and in the lawful custody of any law enforcement official, or any person committed to or detained in any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the department pursuant to lawful authority.
(7) "Secretary" means the Secretary of Corrections.
(8) "State correctional institution" means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department.

Section 2. Section 944.024 Florida Statutes is amended to read as follows:

944.024 Adult intake and evaluation.—The state system of adult intake and evaluation shall include:
(1) The performance of pretrial investigation through a decentralized community-based procedure.
(2) Assistance in the evaluation of offenders for diversion from the criminal justice system or referral to residential or nonresidential programs.

(3) The provision of secure reentry services for pretrial detainees who are unable to comply with the conditions of release established by the court or who represent a serious threat to the community.
(4) The provision of diagnostic, evaluation, and classification services at the presentence stage to assist the court and the department in planning programs for rehabilitation of convicted offenders. This shall include the identification of offenders who are eligible for a correctional reentry treatment facility.
(5) The performance of postsentence intake by the department. Any physical facility established by the department for the intake and evaluation process prior to the offender's entry into the correctional system shall provide for specific office and work areas for the staff of the commission. The purpose of such a physical center shall be to combine in one place as many of the rehabilitation-related functions as possible, including pretrial and posttrial evaluation, parole and probation services, vocational rehabilitation services, family assistance services of the Department of Children and Family Services, and all other rehabilitative and correctional services dealing with the offender.

Section 3. Section 944.0280, Florida Statutes is created to read as follows:

Section 944.0280 Designation

Sections 944.0281 through 944.0288 may be cited as the "Correctional Reentry Treatment Act".

Section 4. Section 944.0281, Florida Statutes is created to read as follows:

944.0281 Correctional Reentry Treatment Facilities.

(1) Subject to available appropriations, the Department shall establish one or more correctional reentry treatment facilities to be operated by private providers who have experience providing substance abuse, behavioral health, educational, vocational and other transitional services to offenders.
(2) Correctional Reentry Treatment Facilities shall meet the standards for inmates who are classified as minimum custody.
(3) Private providers who operate Correctional Reentry Treatment Facilities may subcontract with the Department or other private providers for provision of security services and provision of professional services.
(4) Correctional Reentry Treatment Facilities shall provide space to Department staff necessary to perform ongoing classification services.

Section 5. Section 944.0282, Florida Statutes is created to read as follows:

944.0282 Correctional Reentry Treatment Facilities - Eligibility and target population.

(1) Eligibility for placement in a Correctional Reentry Treatment Facility is limited to inmates who are in the final 36 months of their expected prison commitment or offenders sentenced to 36 months or less and meet the following additional criteria:

(a) The offender has been determined by the department to be in need of services provided by the Correctional Reentry Treatment Facility.

(b) The offender has been classified as appropriate for minimum custody.

(c) The offender has been committed for a non-violent third degree felony or a second degree felony involving the purchase of a controlled substance.

(d) The offender is not the subject of an active injunction for domestic violence.

(e) The offender has never been convicted of any of the following offenses or a substantially similar offense in another jurisdiction:

1. a forcible felony as defined in s. 776.08, Florida Statutes;

2. an offense listed in s. 775.082(9)(a)1.4., Florida Statutes, without regard to prior incarceration or release;
3. an offense described in chapter 847, Florida Statutes, involving a minor or a depiction of a minor;
4. an offense described in chapter 827, Florida Statutes;
5. any offense described in s. 784.07, s. 784.074, s. 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085, Florida Statutes;
6. any offense involving the possession or use of a firearm or other weapon;
7. a capital felony or a felony of the first or second degree except as provided in paragraph (c).
8. any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, Florida Statutes.

(2) In addition to the eligibility criteria enumerated in subsection (1), it is the intent of the Legislature that offenders sentenced for drug related offenses or where substance abuse was a factor that led to commission of the offense be given priority consideration for placement in a correctional reentry treatment facility.

Section 6. Section 944.0283, Florida Statutes is created to read as follows:

944.0283 Correctional Reentry Treatment Facilities - Program requirements

Services provided to offenders placed in correctional reentry treatment facilities shall be based on inmate needs assessment.

(1) Correctional Reentry Treatment Facilities shall offer the following services as indicated by the individual inmate's needs assessment:

(a) Needs assessment including as indicated: psychosocial, educational, vocational, employability, social skills, and behavioral.

(b) Individualized service and treatment plans to be developed for each inmate based on the results of needs assessments conducted in paragraph (a) and other relevant information.

(c) Expedited intake and classification to be performed by Department staff in cooperation with the private provider operating the correctional reentry treatment facility. The department may rely upon information developed by private providers conducting inmate needs assessment as appropriate in performing the expedited intake and classification function.

(d) Educational instruction, including adult basic education and social skills training.

(e) Behavioral Health Services which shall include medical and psychological intervention, treatment, support services and prevention interventions to address diagnosed mental illnesses, substance use disorders and co-occurring disorders to promote individual recovery, improved health and functioning.

(f) Vocational and pre-vocational training .

(g) Behavioral services to include, as appropriate, victim awareness, anger management, and criminal thinking remediation.

(h) Basic life skills training which shall include but are not limited to family development and personal budgeting,

(i) Transitional services and development of skills necessary for successful re-entry.

(2) Inmates placed in Correctional Reentry Treatment Facilities may step down to a work release center if the inmate is otherwise eligible for work release.

(3) Priority consideration for selecting providers shall be given to Florida-based, non-profit organizations with direct experience in providing behavioral health and substance abuse treatment, vocational and work release, educational and other transitional reentry services to offenders in the state of Florida. Such

organizations may enter into agreements with qualified public or private organizations, including community colleges and vocational education schools, to provide security, education and other services.

Section 7. Section 944.0284, Florida Statutes is created to read as follows:

944.0284 Correctional Reentry Treatment Facilities - Admissions process

(1) Eligible offenders, as defined in s. 944.0282 may be admitted into a correctional reentry treatment facility upon recommendation of the sentencing court or upon determination by the department that an eligible inmate is appropriate for admission to a correctional reentry treatment facility subject to the provisions of subsection (3) and s. 944.0286. The department shall provide an expedited reception and classification process for offenders recommended by a court for admission into a correctional reentry treatment facility in order to verify eligibility and assess the appropriateness of admission to a correctional reentry treatment facility.
(2) An inmate determined to have medical, psychiatric or other needs which the correctional reentry facility is unable to meet or it is determined that the inmate is otherwise inappropriate for placement in a correctional reentry treatment facility shall not be admitted to a correctional reentry transition facility.
(3) If there are vacancies remaining after placement of offenders recommended by the courts, the department may admit other eligible inmates, as defined in s. 944.0282, to a correctional reentry treatment facility.
(4) Upon request of any court, the department shall provide information on the current and projected availability of beds in each correctional reentry treatment facility.

Section 8. Section 944.0285, Florida Statutes is created to read as follows:

944.0285 Correctional Reentry Treatment Facilities - Transfer

(1) The department shall transfer any inmate from a correctional reentry treatment facility in the following circumstances:
(a) The inmate is unable or unwilling to comply with program requirements.
(b) If the inmate develops serious medical or other conditions that the facility is not able to able to appropriately treat.
(c) If the inmate exhibits disruptive behaviors that either compromise the safety of staff or other inmates at the facility or creates disruptions that prevent other inmates from benefitting from the program
(d) If the department determines for any reason that continued placement would constitute a threat to public safety and/or safety within the facility.
(e) If the department determines for any reason that continued placement is not in the best interests of the inmate or for other inmates assigned to the facility.
(f) If the department determines that transfer is necessary to facility inmate population management.
(g) If the inmate is determined to be inappropriate for placement at a correctional reentry treatment facility during the expedited intake and classification process established pursuant to s. 944.-0283 and s. 944.0284.

Section 9. Section 944.0286, Florida Statutes is created to read as follows

944.0285 Correctional Reentry Treatment Facilities - Department to maintain waiting list in the event of insufficient bed capacity

In the event that there is greater demand for correctional reentry treatment facility beds than are available, the department shall maintain a waiting list. Priority for admission off of the waiting list to a correctional

reentry treatment center shall be first assigned to inmates that have been recommended by a court for admission to a correctional reentry treatment center. The department shall develop additional criteria to assign priority for placement off of the waiting list as vacancies occur. Such criteria shall utilize information generated through inmate assessments and include, but are not necessarily limited to, need for substance abuse and behavioral health treatment, probability of successful program completion, disciplinary record, acuity of need, and length of time spent on the waiting list. The waiting list shall be periodically updated and be available upon request to any court and providers under contract with the department to provide correctional reentry treatment facility services.

Section 10. Section 944.0287, Florida Statutes is created to read as follows:

Section 944.0287 Reporting requirements

The department shall track recidivism of offenders who have participated in correctional reentry treatment facilities. For purposes of this section, recidivism is defined as recommitment to prison within three years following release. The department shall include the data into the annual recidivism report which shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. In addition, the department may track such other data as it feels will be useful in future program evaluation. Data must be collected in a manner that allows for comparison of outcomes by facility.

Section 11. Section 944.0288, Florida Statutes is created to read as follows:

944.0288 Correctional Reentry Treatment Facilities - No rights conferred or created

Nothing in this Chapter creates or confers any right to any offender to placement in a correctional reentry treatment facility. An offender does not have a cause of action against the department, a court, the state attorney, or a victim related to placement at a correctional reentry treatment facility.

Section 12. Paragraph (6)(c) is added to section 945.091, Florida Statutes to read as follows:

945.091 Extension of the limits of confinement; restitution by employed inmates; payment for government-issued photo identification card and necessary documents.—

(1) The department may adopt rules permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe that the inmate will honor his or her trust by authorizing the inmate, under prescribed conditions and following investigation and approval by the secretary, or the secretary's designee, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

(a) Visit, for a specified period, a specifically designated place or places:

1. For the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released;

2. To otherwise aid in the rehabilitation of the inmate and his or her successful transition into the community; or

3. For another compelling reason consistent with the public interest, and return to the same or another institution or facility designated by the Department of Corrections.

(b) Work at paid employment, participate in an education or a training program, or voluntarily serve a public or nonprofit agency or faith-based service group in the community, while continuing as an inmate of the institution or facility in which the inmate is confined, except during the hours of his or her employment, education, training, or service and traveling thereto and therefrom. An inmate may travel to and from his or her place of employment, education, or training only by means of walking, bicycling, or using public transportation or transportation that is provided by a family member or employer. Contingent

upon specific appropriations, the department may transport an inmate in a state-owned vehicle if the inmate is unable to obtain other means of travel to his or her place of employment, education, or training.
1. An inmate may participate in paid employment only during the last 36 months of his or her confinement, unless sooner requested by the Parole Commission or the Control Release Authority.
2. While working at paid employment and residing in the facility, an inmate may apply for placement at a contracted substance abuse transition housing program. The transition assistance specialist shall inform the inmate of program availability and assess the inmate's need and suitability for transition housing assistance. If an inmate is approved for placement, the specialist shall assist the inmate. If an inmate requests and is approved for placement in a contracted faith-based substance abuse transition housing program, the specialist must consult with the chaplain prior to such placement. The department shall ensure that an inmate's faith orientation, or lack thereof, will not be considered in determining admission to a faith-based program and that the program does not attempt to convert an inmate toward a particular faith or religious preference.
(c) Participate in a residential or nonresidential rehabilitative program operated by a public or private nonprofit agency, including faith-based service groups, with which the department has contracted for the treatment of such inmate. The provisions of ss. 216.311 and 287.057 shall apply to all contracts between the department and any private entity providing such services. The department shall require such agency to provide appropriate supervision of inmates participating in such program. The department is authorized to terminate any inmate's participation in the program if such inmate fails to demonstrate satisfactory progress in the program as established by departmental rules.
(2) Each inmate who demonstrates college-level aptitudes by satisfactory evidence of successful completion of college-level academic coursework may be provided the opportunity to participate in college-level academic programs which may be offered at community colleges or universities. The inmate is personally responsible for the payment of all student fees incurred.
(3) The department may adopt regulations as to the eligibility of inmates for the extension of confinement, the disbursement of any earnings of these inmates, or the entering into of agreements between itself and any city or county or federal agency for the housing of these inmates in a local place of confinement. However, no person convicted of sexual battery pursuant to s. 794.011 is eligible for any extension of the limits of confinement under this section.
(4) The willful failure of an inmate to remain within the extended limits of his or her confinement or to return within the time prescribed to the place of confinement designated by the department shall be deemed as an escape from the custody of the department and shall be punishable as prescribed by law.
(5) The provisions of this section shall not be deemed to authorize any inmate who has been convicted of any murder, manslaughter, sexual battery, robbery, arson, aggravated assault, aggravated battery, kidnapping, escape, breaking and entering with intent to commit a felony, or aircraft piracy, or any attempt to commit the aforementioned crimes, to attend any classes at any state community college or any university which is a part of the State University System.
(6)(a) The department shall require inmates working at paid employment as provided in paragraph (1)(b) to use a portion of the employment proceeds to provide restitution to the aggrieved party for the damage or loss caused by the offense of the inmate, in an amount to be determined by the department, unless the department finds clear and compelling reasons not to order such restitution. If restitution or partial restitution is not ordered, the department shall state on the record in detail the reasons therefor.
(b) An offender who is required to provide restitution or reparation may petition the circuit court to amend the amount of restitution or reparation required or to revise the schedule of repayment established by the department or the Parole Commission.
(c) The department shall require inmates working at paid employment as provided in paragraph (1)(b) to use a portion of the employment proceeds equal to the amount of the voucher provided for a government-issued photo identification card pursuant to s. 945.2155 plus the actual cost charged by the issuer of any other necessary document required to obtain the identification card. The inmate must agree to allow for the use of employment proceeds as required herein as a condition of being allowed to work at paid employment. All such proceeds collected shall be deposited into the General Revenue Fund.

(7) The department shall document and account for all forms for disciplinary reports for inmates placed on extended limits of confinement, which shall include, but not be limited to, all violations of rules of conduct, the rule or rules violated, the nature of punishment administered, the authority ordering such punishment, and the duration of time during which the inmate was subjected to confinement.
(8)(a) The department is authorized to levy fines only through disciplinary reports and only against inmates placed on extended limits of confinement. Major and minor infractions and their respective punishments for inmates placed on extended limits of confinement shall be defined by the rules of the department, provided that any fine shall not exceed $50 for each infraction deemed to be minor and $100 for each infraction deemed to be major. Such fines shall be deposited in the General Revenue Fund, and a receipt shall be given to the inmate.
(b) When the chief correctional officer determines that a fine would be an appropriate punishment for a violation of the rules of the department, both the determination of guilt and the amount of the fine shall be determined by the disciplinary committee pursuant to the method prescribed in s. 944.28(2)(c).
(c) The department shall develop rules defining the policies and procedures for the administering of such fines.

Section 13. Section 945.2155, Florida Statutes is created to read as follows:

945.2155 Inmate Identification Cards - Department to assist inmates in obtaining necessary documents and provide assistance upon release

The department shall determine whether each inmate has the necessary documentation in order to receive a government-issued photo identification card. In instances where the inmate does not possess the necessary documentation, the department shall, pursuant to agreement with the Bureau of Vital Statistics and other entities as necessary, obtain a birth certificate, a social security card and any other necessary documents on behalf of the inmate. Upon release, the department shall provide these documents to the inmate, a voucher equal to the actual cost charged by the card issuer which may only be exchanged for a government-issued photo identification card, and detailed instructions on how to obtain the card.

Section 14.

The department is authorized to adopt rules pursuant to 120.536(1) and 120.540 to implement the provisions of this act.

Section 15.

This act shall take effect on July 1, 2013.

Blue Sheet Here

1 A bill to be entitled
2 An act relating to inmate reentry; defining the terms
3 "department," "nonviolent offender," and "program";
4 directing the Department of Corrections to develop and
5 administer a reentry treatment program for nonviolent
6 offenders which is intended to divert nonviolent
7 offenders from long periods of incarceration;
8 requiring that the program include intensive substance
9 abuse treatment and rehabilitative programming;
10 authorizing a judge to recommend an offender
11 participate in the program; providing criteria for a
12 judge's recommendation; directing the department to
13 screen offenders for eligibility criteria; providing
14 eligibility criteria; requiring the department to
15 select eligible offenders for the program based on
16 specified considerations; directing the department to
17 notify the nonviolent offender's sentencing court to
18 obtain approval before the nonviolent offender is
19 placed into the reentry program; requiring the
20 sentencing court to notify the department of the
21 court's decision to approve or disapprove the
22 requested placement within a specified period;
23 requiring the nonviolent offender to undergo an
24 education assessment and a full substance abuse
25 assessment if admitted into the reentry program;
26 requiring the offender to be enrolled in an adult
27 education program in specified circumstances;
28 requiring that assessments of vocational skills and

29 future career education be provided to the offender;
30 requiring that certain reevaluation be made
31 periodically; providing that the nonviolent offender
32 is subject to the disciplinary rules of the
33 department; specifying the reasons for which the
34 offender may be terminated from the reentry program;
35 requiring that the department submit a report to the
36 sentencing court at least 30 days before the
37 nonviolent offender is scheduled to complete the
38 reentry program; setting forth the issues to be
39 addressed in the report; providing a court may
40 schedule a hearing to consider any modifications to an
41 imposed sentence; requiring the sentencing court to
42 issue an order modifying the sentence imposed and
43 placing the nonviolent offender on drug offender
44 probation if the nonviolent offender's performance is
45 satisfactory; authorizing the court to revoke
46 probation and impose the original sentence in
47 specified circumstances; authorizing the court to
48 require the offender to complete a postadjudicatory
49 drug court program in specified circumstances;
50 directing the department to implement the reentry
51 program using available resources; requiring the
52 department to submit an annual report to the Speaker
53 of the Florida House of Representatives detailing the
54 extent of implementation of the reentry program,
55 specifying information to be provided and outlining
56 future goals and recommendations; authorizing the

57 department to enter into contracts with qualified
58 individuals, agencies, or corporations for services
59 for the reentry program; authorizing the department to
60 impose administrative or protective confinement as
61 necessary; authorizing the department to establish a
62 system of incentives within the reentry program which
63 the department may use to promote participation in
64 rehabilitative programs and the orderly operation of
65 institutions and facilities; providing that the
66 section does not create a right to placement in the
67 reentry program or any right to placement or early
68 release under supervision of any type; providing that
69 the section does not create a cause of action related
70 to the program; providing that specified provisions
71 are not severable; directing the department to develop
72 a system for tracking recidivism, including, but not
73 limited to, rearrests and recommitment of nonviolent
74 offenders who successfully complete the reentry
75 program, and to report on recidivism in its annual
76 report of the program; directing the department to
77 adopt rules; creating s. 945.093, Florida Statutes,
78 prohibiting the department from operating or
79 contracting with a private entity to operate a work-
80 release center if the sheriff in the county in which
81 the center is located objects to such operation;
82 requiring the department to terminate all contracts
83 with a private entity operating a work-release center
84 if an inmate participating in that entity's work-

85 release program is arrested for specified offenses;
86 requiring a private entity who has contracted with the
87 department to operate a work-release center to track
88 recidivism rates and submit an annual report;
89 providing an effective date.
90
91 Be It Enacted by the Legislature of the State of Florida:
92
93 Section 1. Reentry treatment program.—
94 (1) As used in this section, the term:
95 (a) "Department" means the Department of Corrections.
96 (b) "Nonviolent offender" means a person:
97 1. Whose primary offense is a felony of the third degree;
98 2. Who has never been convicted of a forcible felony as
99 defined in s. 776.08;
100 3. Who has never been convicted of an offense described in
101 ch. 827;
102 4. Who has never been convicted of any felony offense
103 involving the possession or use of a firearm;
104 5. Who has never been convicted of a capital felony or a
105 felony of the first or second degree;
106 6. Who has never been convicted of any offense that
107 requires a person to register as a sexual offender pursuant to
108 s. 943.0435;
109 7. Who has never been convicted of a felony violation of s.
110 806.13;
111 8. Who has never been a respondent on a permanent
112 injunction for protection against domestic violence, repeat

113 violence, sexual violence, or dating violence;
114 9. Who is not the parent or legal guardian of a child that
115 has ever been adjudicated dependent under ch. 39;
116 10. Who has never been found in contempt of court for
117 failure to pay child support;
118 11. Who has never had their driver license suspended; and
119 12. Who has never been adjudicated incompetent to proceed
120 or found not guilty by reason of insanity.
121 (c) "Program" means the reentry treatment program.
122 (2)(a) The department shall develop and administer a
123 reentry treatment program for nonviolent offenders. The program
124 must include prison-based substance abuse treatment, general
125 education development and adult basic education courses,
126 vocational training, training in decisionmaking and personal
127 development, and other rehabilitation programs.
128 (b) The reentry treatment program is intended to divert
129 nonviolent offenders from long periods of incarceration when a
130 reduced period of incarceration supplemented by participation in
131 intensive substance abuse treatment and rehabilitative
132 programming could produce the same deterrent effect, protect the
133 public, rehabilitate the offender, and reduce recidivism.
134 (c) A reentry treatment program may be operated in a
135 secure area in or adjacent to an adult institution.
136 (3) A judge, at sentencing, may recommend that an offender
137 participate in the reentry treatment program if the offender is
138 a nonviolent offender and upon considering any facts the court
139 considers relevant, including, but not limited to, any other
140 evidence of unlawful conduct or the use of violence by the

141 offender; the offender's family ties, length of residence in the
142 community, employment history, education level, military
143 service, acts of public service, and mental condition; input
144 from any victim; the offender's need for substance abuse
145 treatment; and the likelihood that the offender will engage
146 again in a criminal course of conduct. A judge may not recommend
147 that an offender participate in the reentry treatment program if
148 the state attorney or the arresting law enforcement agency
149 objects to such participation.
150 (4) The department shall screen offenders committed to the
151 department for eligibility criteria to participate in the
152 reentry treatment program. The department shall not screen
153 offenders that have not served at least fifty percent of their
154 sentence in a state correctional facility. In order to be
155 eligible:
156 (a) The offender's sentencing judge must have recommended,
157 at the time of sentencing, that the offender participate in the
158 program;
159 (b) The offender may not have received any disciplinary
160 reports within the previous 12 months; and
161 (c) The offender must have served at least one-half of his
162 or her original sentence.
163 (5) The department shall select eligible offenders for the
164 reentry treatment program. When selecting participants for the
165 program, the department shall be guided in its selection by its
166 evaluation of the following considerations:
167 (a) The offender's history of disciplinary reports;
168 (b) The offender's criminal history;

169 (c) The severity of the offender's addiction;
170 (d) The offender's history of criminal behavior related to
171 substance abuse;
172 (e) Whether the offender has participated or requested to
173 participate in any General Educational Development or other
174 educational, technical, work, vocational, or self-rehabilitation
175 program;
176 (f) The offender's physical and mental health;
177 (g) The results of any risk assessment of the offender;
178 (h) The outcome of all past participation of the offender
179 in substance abuse treatment programs;
180 (i) The possible rehabilitative benefits that substance
181 abuse treatment, educational programming, vocational training,
182 and other rehabilitative programming might have on the offender;
183 and
184 (j) The likelihood that participation in the program will
185 protect the public, produce the same deterrent effect, and
186 prevent or delay recidivism to an equal or greater extent than
187 completion of the sentence previously imposed.
188 (6)(a) If an offender is eligible, is selected by the
189 department based on the considerations in subsection (5), agrees
190 to participate, and space is available, the department may
191 request the sentencing court to approve the offender's
192 participation in the reentry treatment program. The request
193 shall be made in writing and shall include a brief summation of
194 the department's evaluation under subsection (5) and documents
195 or other information upon which the evaluation is based. All
196 documents may be delivered to the sentencing court

197 electronically.
198 (b) When approving a nonviolent offender for participation
199 in the reentry treatment program, the sentencing court may
200 consider any facts the court considers relevant, including, but
201 not limited to, the criteria listed in subsection (5); the
202 original sentencing report and any evidence admitted in a
203 previous sentencing proceeding; any other evidence of unlawful
204 conduct or the use of violence by the offender; the offender's
205 family ties, length of residence in the community, employment
206 history, and mental condition; input from the state attorney and
207 any victims; and the likelihood that the offender will engage
208 again in a criminal course of conduct.
209 (d) The sentencing court shall notify the department in
210 writing of the court's decision to approve or disapprove the
211 requested placement of the offender in the program no later than
212 30 days after the court receives the department's request. If
213 the court approves, the notification shall list the factors upon
214 which the court relied in approving the placement.
215 (7)(a) After the nonviolent offender is admitted into the
216 reentry treatment program, he or she shall undergo a full
217 substance abuse assessment to determine his or her substance
218 abuse treatment needs. The offender shall also have an
219 educational assessment, which shall be accomplished using the
220 Test of Adult Basic Education or any other testing instrument
221 approved by the Department of Education. Each offender who has
222 not obtained a high school diploma shall be enrolled in an adult
223 education program designed to aid the offender in improving his
224 or her academic skills and earn a high school diploma. Further

225 assessments of the offender's vocational skills and future
226 career education shall be provided to the offender as needed. A
227 periodic reevaluation shall be made in order to assess the
228 progress of each offender.
229 (b) The nonviolent offender shall serve at least six months
230 in the reentry treatment program. The offender may not count any
231 portion of his or her sentence served before placement in the
232 program as progress toward program completion.
233 (8)(a) If a nonviolent offender in the reentry treatment
234 program becomes unmanageable, the department may revoke the
235 offender's gain-time and place the offender in disciplinary
236 confinement in accordance with department rule. Except as
237 provided in paragraph (b), the offender shall be readmitted to
238 the program after completing the ordered discipline. Any period
239 of time during which the offender is unable to participate in
240 the program shall be excluded from the specified time
241 requirements in the reentry treatment program.
242 (b) The Department shall terminate an offender from the
243 reentry treatment program if the offender commits a violent act.
244 The department may terminate an offender from the program if:
245 1. The offender commits or threatens to commit a violent
246 act;
247 2. The department determines that the offender is unable
248 to participate in the program due to the offender's medical
249 condition;
250 3. The offender's sentence is modified or expires;
251 4. The department reassigns the offender's classification
252 status; or

253 5. The department determines that removing the offender
254 from the program is in the best interest of the offender or the
255 security of the institution.
256 (9)(a) The department shall submit a report to the
257 sentencing court at least 30 days before the nonviolent offender
258 is scheduled to complete the reentry treatment program. The
259 report must describe the offender's performance in the program
260 and whether the performance is satisfactory. Notwithstanding the
261 eligibility criteria contained in s. 948.20, if the offender's
262 performance is satisfactory to the department and the court, the
263 court shall issue an order modifying the sentence imposed and
264 placing the offender on drug offender probation, as described in
265 s. 948.20(2), subject to the department's certification of the
266 offender's successful completion of the remainder of the
267 program. The term of drug offender probation must not be less
268 than the remainder of time that the offender would have served
269 in prison, but for participating in the program. A condition of
270 drug offender probation may include electronic monitoring or
271 placement in a community residential or nonresidential licensed
272 substance abuse treatment facility under the jurisdiction of the
273 department or the Department of Children and Family Services or
274 any public or private entity providing such services. The order
275 shall include findings that the offender's performance is
276 satisfactory, that the requirements for resentencing under this
277 section are satisfied, and that the public safety will not be
278 compromised. If the nonviolent offender violates the conditions
279 of drug offender probation, the court may revoke probation and
280 impose any sentence that it might have originally imposed. No

281 offender may be released from the custody of the department
282 under this section except pursuant to a judicial order modifying
283 his or her sentence.
284 (b) If an offender being released pursuant to paragraph
285 (a) intends to reside in a county that has established a
286 postadjudicatory drug court program as described in s. 397.334,
287 the sentencing court may require the offender to successfully
288 complete the postadjudicatory drug court program as a condition
289 of drug offender probation. The original sentencing court shall
290 relinquish jurisdiction of the offender's case to the
291 postadjudicatory drug court program until the offender is no
292 longer active in the program, the case is returned to the
293 sentencing court due to the offender's termination from the
294 postadjudicatory drug court program for failure to comply with
295 the terms thereof, or the offender's sentence is completed. If
296 transferred to a postadjudicatory drug court program, the
297 offender shall comply with all conditions and orders of such
298 program.
299 (10) The department shall implement the reentry treatment
300 program to the fullest extent feasible within available
301 resources.
302 (11) The department shall submit an annual report to the
303 Speaker of the Florida House of Representatives detailing the
304 extent of implementation of the reentry treatment program; the
305 number of participants selected, approved, and who have
306 successfully completed the program; a brief description of each
307 participant’s sentence modification; and a brief description of
308 the subsequent criminal history, if any, of each participant

309 following any modification of sentence under this section. The
310 report shall include the name of the sentencing judge in
311 instances in which a program participant has reoffended after
312 participating in the program.
313 (12) The department may enter into performance-based
314 contracts with qualified individuals, agencies, or corporations
315 for the provision of any or all of the services for the reentry
316 treatment program.
317 (13) A nonviolent offender in the reentry treatment
318 program is subject to rules of conduct established by the
319 department and may have sanctions imposed, including loss of
320 privileges, restrictions, disciplinary confinement, and
321 alteration of release plans in keeping with the nature and
322 gravity of the violation. Administrative or protective
323 confinement, as necessary, may be imposed.
324 (14) This section does not create or confer any right to
325 any inmate to placement in the reentry treatment program or any
326 right to placement or early release under supervision of any
327 type.
328 (15) The department may establish a system of incentives
329 within the reentry treatment program which the department may
330 use to promote participation in rehabilitative programs and the
331 orderly operation of institutions and facilities.
332 (16) The department shall develop a system for tracking
333 recidivism, including, but not limited to, rearrests and
334 recommitment of offenders who successfully complete the reentry
335 treatment program, and shall report the recidivism rate in its
336 annual report of the program.

337 (17) The department shall adopt rules pursuant to ss.
338 120.536(1) and 120.54, Florida Statutes, as are necessary to
339 administer the reentry treatment program.
340 Section 2. Section 945.093, Florida Statutes, is created
341 to read:
342 945.093 Privately operated work-release centers;
343 contractual requirements.—
344 (1) The department may not contract with a private entity
345 to operate a work-release center if the sheriff in the county in
346 which the center is located objects to the operation of such
347 work-release center. Such objection must be made in writing and
348 submitted to the Secretary of the department.
349 (2) The department must terminate all contracts with a
350 private entity operating a work-release center if an inmate
351 participating in that entity's work-release program is arrested
352 for any a forcible felony, as defined in s. 776.08. The
353 department may not contract with such entity for a period of
354 five years.
355 (3) The department must track recidivism rates of work-
356 release inmates who are released from a privately operated work-
357 release center, and shall report the recidivism rate annually to
358 the Speaker of the Florida House of Representatives. The
359 department must terminate all contracts with a private entity
360 operating a work-release center if the three-year average of the
361 center's recidivism rate exceeds thirty percent.
362 Section 3. This act shall take effect July 1, 2013.