



Criminal Justice Subcommittee

February 12, 2013

9:00 AM

404 HOB

Will W. Weatherford
Speaker

Matt Gaetz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, February 12, 2013 09:00 am
End Date and Time: Tuesday, February 12, 2013 11:00 am
Location: 404 HOB
Duration: 2.00 hrs



Consideration of the following bill(s):

HB 353 Corrections by Harrell
HB 361 Public Meetings/Criminal Justice Commissions by Kerner
HB 399 Florida College System Police Officers by Eagle
HB 407 Criminal Gang Prevention by Ingram
HB 489 Railroad Police Officers by Stone
HB 4019 Youth Custody Officers by Harrell

NOTICE FINALIZED on 02/05/2013 16:16 by hudson.jessica

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 353 Corrections
SPONSOR(S): Harrell
TIED BILLS: IDEN./SIM. **BILLS:**

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

SUMMARY ANALYSIS

Section 985.645, F.S., requires the Department of Juvenile Justice (DJJ) to adopt rules establishing a Protective Action Response policy (PAR) that governs the use of force by DJJ employees. Currently, the PAR requires DJJ to verbally intervene in response to resistance by a youth except where physical force is necessary to prevent physical harm to the youth, employee or another person; property damage; or the youth escaping or absconding from lawful supervision. While uncommon, there are instances in which a DJJ employee's actions go beyond the scope of the PAR or are not contemplated by the PAR.

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances in which a DJJ employee is alleged to have abused or neglected a youth in DJJ's custody. As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to charge a DJJ employee who is alleged to have abused or neglected a youth. One statute that could be used for such prosecutions is s. 827.03, F.S., the child abuse statute.

Section 827.03, F.S., establishes the crimes of child abuse, aggravated child abuse, and neglect of a child. For purposes of the child abuse statute, the term "child" means anyone 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 over 18 years old or older. Because the child abuse statute defines the term "child" to mean anyone under the age of 18 years, it cannot currently be used to prosecute a DJJ employee who abused or neglected a youth who was still in DJJ's custody, but who was 18 or older.

The bill amends s. 827.03, F.S., to create a new definition of the term a "child" that includes "any person detained in a detention facility or residential facility under chapter 985." This allows prosecutors to use the child abuse statute to prosecute a DJJ employee who abused or neglected a youth who was still in DJJ's custody but who was 18 or older.

Additionally, the bill repeals s. 945.74, F.S., which requires the Department of Corrections to implement inmate training program to the fullest extent feasible (inmate training programs are structured disciplinary training programs intended to instill self-discipline, improve work habits, and improve self-confidence for inmates).

To the extent that the bill increases the instances in which a person could be charged under the child abuse statute, it could have a negative prison bed impact on the Department of Corrections.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Corrections' Inmate Training Programs

Sections 945.71 - 945.74, F.S., relate to DOC inmate training programs. Inmate training programs are structured disciplinary training programs within DOC that are intended to instill self-discipline, improve work habits, and improve self-confidence for inmates.¹ Section 945.74, F.S., requires DOC to implement the inmate training program to the fullest extent feasible within the parameters of ss. 945.71-945.74, F.S.

Effect of the Bill

The bill repeals s. 945.74, F.S., requiring DOC to implement the inmate training program to the fullest extent feasible.

Abuse of Youth Committed to the Department of Juvenile Justice

Use of Force

Section 985.645, F.S., requires the Department of Juvenile Justice (DJJ) to adopt rules establishing a Protective Action Response policy (PAR) that governs the use of verbal and physical force by DJJ employees. Currently, the PAR requires DJJ to verbally intervene in response to resistance by a youth except where physical intervention techniques are necessary to prevent physical harm to the youth, employee or another person; property damage; or the youth escaping or absconding from lawful supervision.²

While uncommon, there are instances in which a DJJ employee's actions go beyond the scope of the PAR or are not contemplated by the PAR.³

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances in which a DJJ employee is alleged to have abused or neglected a youth in DJJ's custody (in contrast, the Department of Corrections [DOC] has a specific statute outlining what actions constitute abuse of an inmate in their custody).⁴ As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to charge a DJJ employee who is alleged to have abused or neglected a youth. One statute that could be used for such prosecutions is s. 827.03, F.S., the child abuse statute.

Child Abuse

Section 827.03, F.S., establishes the crimes of child abuse, aggravated child abuse, and neglect of a child. The statute defines child abuse as:

- Intentional infliction of physical or mental injury⁵ upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or

¹ Section 945.71, F.S.

² Rule 63H-1.003, F.A.C.

³ *Department of Juvenile Justice strengthens oversight*, <http://www.pnj.com/viewart/20130118/NEWS01/301180020/Department-of-Juvenile-Justice-strengthens-oversight> (last visited on February 2, 2013); *Boot Camp Death Caught on Tape*, <http://abcnews.go.com/2020/story?id=2751785&page=1> (last visited on February 2, 2013).

⁴ Section 944.35, F.S., outlines the circumstances in which a DOC employee is authorized to use physical force against an inmate and creates criminal offenses that apply to DOC employees who, with malicious intent, commit a battery upon an inmate or offender or who or inflicts cruel or inhuman treatment by neglect or otherwise. The statute also prohibits sexual misconduct between a DOC employee and an inmate.

⁵ Section 827.03(1)(d), F.S., defines "mental injury" as injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony.

- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.⁶

A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.⁷

Aggravated child abuse, a first degree felony,⁸ occurs when a person:

- Commits an aggravated battery on a child;
- Willfully tortures, maliciously⁹ punishes, or willfully and unlawfully cages a person; or
- Knowingly or willfully abuses a child and in doing so causes great bodily harm, permanent disability, or permanent disfigurement to the child.¹⁰

Child neglect is defined as:

- A caregiver's¹¹ failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
- A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.¹²

A person who willfully or by culpable negligence neglects a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.¹³ It is a second degree felony¹⁴ if such neglect causes great bodily harm, permanent disability, or permanent disfigurement.¹⁵

For purposes of the child abuse statute, the term "child" means anyone under the age of 18 years.¹⁶

Age of Youth Committed to DJJ

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 over 18 years old or older.¹⁷ For example, 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.¹⁸ Because the child abuse statute defines the term "child" to mean anyone under the age of 18 years, it cannot currently be used to prosecute a DJJ employee who abused or neglected a youth who was still in DJJ's custody, but who was 18 or older.

⁶ Section 827.03(1)(b), F.S.

⁷ Section 827.03(2)(c), F.S.

⁸ 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.

⁹ Section 827.03(1)(c), F.S., defines "maliciously" as wrongfully, intentionally, and without legal justification or excuse.

Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

¹⁰ Section 827.03(1)(a), F.S.

¹¹ Section 827.01(1), F.S., defines "caregiver" as a parent, adult household member, or other person responsible for a child's welfare.

¹² Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child. Section 827.03(1)(e), F.S.

¹³ 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.

¹⁴ 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.

¹⁵ Section 827.03(2)(b) and (d), F.S.

¹⁶ Section 827.01(2), F.S.

¹⁷ See generally, s. 985.0301, F.S.

¹⁸ Section 985.0301(5)(a), F.S.

Effect of the Bill

The bill amends the child abuse statute (s. 827.03, F.S.) to create a new definition of the term a "child" that includes "any person detained in a detention facility or residential facility under chapter 985." This allows prosecutors to use the child abuse statute to prosecute a DJJ employee who abused or neglected a youth who was still in DJJ's custody but who was 18 or older.

B. SECTION DIRECTORY:

Section 1. Amends s. 827.03, F.S., relating to abuse, aggravated abuse, and neglect of a child; penalties.

Section 2. Repeals s. 945.74, F.S., relating to implementation.

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

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 expands the definition of the term "child" within s. 827.03, F.S., to include any person detained in a detention facility or residential facility under ch. 985, F.S. To the extent that this increases the instances in which a person could be charged under the child abuse statute, 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 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:

Article III, Section 6, of the Florida Constitution, states that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” In determining whether an act violates the single subject rule, the Florida Supreme Court has examined whether the provisions of an act have a “natural or logical connection.”¹⁹

The bill, entitled “an act relating to corrections,” amends the child abuse statute to create a new definition of the term a “child” that includes “any person detained in a detention facility or residential facility under chapter 985,” and repeals the statute requiring DOC to implement the inmate training program to the fullest extent feasible. It could be argued that this bill violates Florida’s constitutional single subject requirement.

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. It does not appear that the child abuse statute is designed to prosecute DJJ employees who use force against a youth in DJJ’s custody. For example, the child abuse statute currently defines “child abuse” to include “intentional infliction of physical injury upon a child.” This means that a DJJ employee who lawfully uses physical force upon a child in accordance with the PAR and causes injury can be charged with child abuse. A better approach might involve creating a statute in ch. 985, F.S., that specifically addresses use of force situations that arise within the unique framework of DJJ detention facilities and commitment centers (similar to DOC’s statute described above).
2. Section 827.01(2), F.S., which applies to all of ch. 827, F.S., defines a child as “any person under the age of 18 years.” The bill amends s. 827.03, F.S., to create a new definition of the term a “child” that includes “any person detained in a detention facility or residential facility under chapter 985.” Having two definitions within the same chapter may cause confusion in applying the appropriate definition of “child.”
3. The bill repeals s. 945.74, F.S., which requires DOC to implement the inmate training program. It is unclear why the bill is repealing this statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁹ See, *State v. Thompson*, 750 So.2d 643, 647 (Fla. 1999); *Florida Dept. of Highway Safety and Motor Vehicles v. Critchfield*, 842 So.2d 782 (Fla.2003)(holding that section of chapter law involving assigning bad check debt to a private debt collector had no natural or logical connection to the law’s subject matter of driver’s licenses, operation of motor vehicles, and vehicle registrations).

1 A bill to be entitled
2 An act relating to corrections; amending s. 827.03,
3 F.S.; including any person detained in a detention
4 facility or residential facility under specified
5 juvenile justice provisions within provisions
6 prohibiting abuse, aggravated abuse, and neglect of a
7 child; repealing s. 945.74, F.S., relating to a
8 requirement that the Department of Corrections
9 implement a specified inmate training program;
10 providing an effective date.

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

13
14 Section 1. Paragraphs (b) through (e) of subsection (1) of
15 section 827.03, Florida Statutes, are redesignated as paragraphs
16 (c) through (f), respectively, and a new paragraph (b) is added
17 to that subsection, to read:

18 827.03 Abuse, aggravated abuse, and neglect of a child;
19 penalties.—

20 (1) DEFINITIONS.—As used in this section, the term:

21 (b) "Child" includes any person detained in a detention
22 facility or residential facility under chapter 985.

23 Section 2. Section 945.74, Florida Statutes, is repealed.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 353 (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 _____

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Harrell offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 985.702, Florida Statutes, is created to
8 read:

9 985.702 Malicious infliction of cruel or inhuman treatment
10 prohibited; reporting required; penalties.-

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

12 (a) "Employee" means paid staff members, volunteers, and
13 interns who work in a department program or a program operated
14 by a provider under a contract with the department.

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

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

18 1. An employee's failure or omission to provide a juvenile
19 offender with the proper level of care, supervision, and
20 services necessary to maintain the juvenile offender's physical

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 353 (2013)

Amendment No. 1

21 and mental health, including, but not limited to, adequate food,
22 nutrition, clothing, shelter, supervision, medicine, and medical
23 services; or

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

27 (2)(a) Any employee who, with malicious intent, inflicts
28 cruel or inhuman treatment by neglect or otherwise, without
29 causing great bodily harm, permanent disability, or permanent
30 disfigurement to a juvenile offender, commits a misdemeanor of
31 the first degree, punishable as provided in s. 775.082 or s.
32 775.083.

33 (b) Any employee who, with malicious intent, inflicts cruel
34 or inhuman treatment by neglect or otherwise, and in so doing
35 causes great bodily harm, permanent disability, or permanent
36 disfigurement to a juvenile offender, commits a felony of the
37 third degree, punishable as provided in s. 775.082, s. 775.083,
38 or s. 775.084.

39 (c) Notwithstanding prosecution, any violation of
40 paragraphs (a) or (b), as determined by the Public Employees
41 Relations Commission, constitutes sufficient cause under s.
42 110.227 for dismissal from employment with the department, and
43 such person may not again be employed in any capacity in
44 connection with the juvenile justice system.

45 (3) An employee who witnesses the infliction of cruel or
46 inhuman treatment committed against a juvenile offender shall
47 immediately report the incident to the department's incident
48 hotline, and prepare, date, and sign an independent report that

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 353 (2013)

Amendment No. 1

49 specifically describes the nature of the incident, the location
50 and time of the incident, and the persons involved. The employee
51 shall deliver the report to the employee's supervisor or program
52 director, who must provide copies to the department's inspector
53 general and the circuit juvenile justice manager. The inspector
54 general shall immediately conduct an appropriate administrative
55 investigation, and, if there is probable cause to believe that a
56 violation of subsection (2) has occurred, the inspector general
57 shall notify the state attorney in the circuit in which the
58 incident occurred.

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

64 (b) Any person who knowingly or willfully submits
65 inaccurate, incomplete, or untruthful information with respect
66 to a report required under this section commits a misdemeanor of
67 the first degree, punishable as provided in s. 775.082 or s.
68 775.083.

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

74 Section 2. Paragraph (a) of subsection (1) of section
75 985.701, Florida Statutes, is amended to read:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 353 (2013)

Amendment No. 1

76 985.701 Sexual misconduct prohibited; reporting required;
77 penalties.-

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

79 a. "Sexual misconduct" means fondling the genital area,
80 groin, inner thighs, buttocks, or breasts of a person; the oral,
81 anal, or vaginal penetration by or union with the sexual organ
82 of another; or the anal or vaginal penetration of another by any
83 other object. The term does not include an act done for a bona
84 fide medical purpose or an internal search conducted in the
85 lawful performance of duty by an employee of the department or
86 an employee of a provider under contract with the department.

87 b. "Employee" includes paid staff members, volunteers, and
88 interns who work in a department program or a program operated
89 by a provider under a contract.

90 c. "Juvenile offender" means any person of any age who is
91 detained or supervised by, or committed to the custody of, the
92 department.

93 2. An employee who engages in sexual misconduct with a
94 juvenile offender detained or supervised by, or committed to the
95 custody of, the department commits a felony of the second
96 degree, punishable as provided in s. 775.082, s. 775.083, or s.
97 775.084. An employee may be found guilty of violating this
98 subsection without having committed the crime of sexual battery.

99 3. The consent of the juvenile offender to any act of
100 sexual misconduct is not a defense to prosecution under this
101 subsection.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 353 (2013)

Amendment No. 1

102 4. This subsection does not apply to an employee of the
103 department, or an employee of a provider under contract with the
104 department, who:

105 a. Is legally married to a juvenile offender who is
106 detained or supervised by, or committed to the custody of, the
107 department.

108 b. Has no reason to believe that the person with whom the
109 employee engaged in sexual misconduct is a juvenile offender
110 detained or supervised by, or committed to the custody of, the
111 department.

112 Section 3. This act shall take effect upon becoming law.
113
114

115 -----

116 **T I T L E A M E N D M E N T**

117 Remove everything before the enacting clause and insert:
118

119 A bill to be entitled
120 An act relating to juvenile justice; creating s. 985.702, F.S.;
121 providing definitions; prohibiting employees from inflicting
122 cruel or inhuman treatment by neglect that does not result in
123 great bodily harm, permanent disability or permanent
124 disfigurement to a juvenile offender; prohibiting employees from
125 inflicting cruel or inhuman treatment by neglect resulting in
126 great bodily harm, permanent disability or permanent
127 disfigurement to a juvenile offender; providing criminal
128 penalties; creating reporting requirements; providing criminal

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 353 (2013)

Amendment No. 1

129 penalties; amending s. 985.701, F.S.; adding a definition of
130 "juvenile offender"; providing an effective date.

131

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 361 Public Meetings/Criminal Justice Commissions
SPONSOR(S): Kerner
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Additionally, all meetings of any public body of the executive branch or local government at which official acts are to be taken or at which public business of such body is to be discussed must be open and noticed to the public.

Currently, two counties in Florida have established "criminal justice commissions," each of which is comprised of members of both the public and private sector. The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments, including issues related to jail population and overcrowding, tracking crimes in the community, and matters of general policing.

Criminal justice commissions are currently subject to public records and public meetings requirements. Therefore, discussions that occur among public sector members of the commission, which involve matters that are being considered or may foreseeably come before the commission must be properly noticed and should be conducted as an open meeting.

The bill exempts from public records and public meeting requirements a state attorney, sheriff, public defender, clerk of the court, chief judge of a circuit court, or president of a police chiefs association who serve on a criminal justice commission.

The exemption applies to:

- A record that results from a communication between exempted persons about an issue that is "currently being considered by, or that may foreseeably come before" the commission; and
- That portion of a commission meeting at which exempted persons discuss a matter "currently being considered by, or that may foreseeably come before" the commission.

The bill repeals the exemptions on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides statements of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records and Open Meetings Laws

Florida Constitution

Article I, section 24(a) and (b) of the Florida Constitution sets forth the state's public policy regarding access to government records and meetings. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

Additionally, all meetings of any public body of the executive branch or local government at which official acts are to be taken or at which public business of such body is to be discussed must be open and noticed to the public.²

The Legislature, however, may provide by general law passed by two-thirds vote of each chamber for the exemption of records from the requirements of Article I, section 24 of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.³

Florida Statutes

Florida Statutes also address the public policy regarding access to government records and meetings through a variety of statutes. The statutes are collectively referred to as the Sunshine Law. All governmental entities in Florida, are subject to the requirements of the Sunshine Law unless specifically exempted, including elected and appointed boards or commissions.⁴ Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires all state, county, or municipal meetings to be open and noticed to the public.

The Open Government Sunset Review Act⁵ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁷

Currently, Florida Statutes contain a variety of public records exemptions that relate to criminal justice issues. Criminal justice related records that have been made exempt from s. 119.07, F.S., include:

¹ Article 1, Sec. 24(a), FLA. CONST.

² Article 1, Sec. 24(b), FLA. CONST.

³ Article 1, Sec. 24(c), FLA. CONST.

⁴ *City of Miami Beach v. Berns*, 245 So.2d 38 (Fla. 1971). The Court held that the intent of the Legislature was to "extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control." See also, *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So.3d 755, 762 (Fla. 2010); AGO 73-223; and *Government in the Sunshine Manual*, 2012.

⁵ Section 119.15, F.S.

⁶ *Id.*

⁷ *Id.*

- Active criminal intelligence information and active criminal investigative information;⁸
- Any information revealing surveillance techniques or procedures or personnel;⁹
- Any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in s. 252.34, F.S.;¹⁰
- Any information revealing the identity of a confidential informant or a confidential source;¹¹ and
- Specified information revealing the identity of crime victims.¹²

In regards to the public meetings exemptions, s. 286.0113, F.S., lists two exemptions which include any portion of a meeting:

- That would reveal a security system plan;¹³
- At which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation; or any portion of a team meeting at which negotiation strategies are discussed.¹⁴

Criminal Justice Commissions

Currently, two counties in Florida have established “criminal justice commissions.”¹⁵ Membership of these commissions is comprised of members of both the public¹⁶ and private sectors. These members collaborate to improve the criminal justice system in their community.¹⁷ The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments.¹⁸ Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.¹⁹

Because a criminal justice commission is an appointed commission that is not specifically exempted, they are currently covered under the Sunshine Law. Therefore, any records created by a commission and any meetings of a commission are subject to the Sunshine Law. Consequently, discussions that occur among certain public sector members of a commission, such as the sheriff, public defender, or state attorney, which involve matters that may foreseeably come before or are currently being considered by the commission, must be properly noticed and should be conducted as an open meeting in accordance with the Sunshine Law.²⁰ However, to the extent that these discussions relate to a criminal justice-related issue that is currently exempt (e.g., active criminal intelligence information), they do not fall within the scope of the Sunshine Law.²¹ Additionally, discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.²²

Effect of the Bill

⁸ The terms “active,” “criminal intelligence information,” and “criminal investigative information” are defined in s. 119.011(3), F.S.

⁹ Section 119.071(2)(d), F.S.

¹⁰ *Id.*

¹¹ Section 119.071(2)(f), F.S.

¹² *See, e.g.*, s. 119.071(2)(h) and (j), F.S.

¹³ Section 286.0113(1), F.S.

¹⁴ Section 286.0113(2)(b)1. and 2., F.S.

¹⁵ In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee staff). In 1988, Palm Beach County enacted Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee Staff).

¹⁶ *Id.* Public sector members include: the chief judge of the respective county; the county sheriff; members of the board of county commission; the state attorney; the public defender; the clerk of the circuit court; a representative from the police chief’s association; a representative from the Bureau of Alcohol, Tobacco; the police chief; a representative from Florida Department of Law Enforcement; and a representative from Florida Department of Corrections.

¹⁷ About the Criminal Justice Commission, <http://www.pbcgov.org/criminaljustice/aboutcjc/> (last visited on February 5, 2013).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ AGO 93-41.

²¹ *Id.*

²² *Id.*

The bill exempts the following public sector persons who serve on a criminal justice commission from public records and public meeting requirements:

- State Attorney;
- Sheriff;
- Public Defender;
- Clerk of the Court;
- Chief Judge of a Circuit Court; and
- President of a Police Chiefs Association.

The exemption applies to:

- A record that results from a communication between exempted persons about an issue that is "currently being considered by, or that may foreseeably come before" the commission; and
- That portion of a commission meeting at which exempted persons discuss a matter "currently being considered by, or that may foreseeably come before" the commission.

The bill provides repeals the exemptions on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides statements of public necessity as required by the State Constitution.²³

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section statute; relating to new public record and public meeting exemption for a record resulting from communications at a meeting of a duly constituted criminal justice commission; and portion of a meeting of duly constituted criminal justice commission.

Section 2. Provides a public necessity statement.

Section 3. 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 bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

²³ Article 1, Sec. 24(c), FLA. CONST.
STORAGE NAME: h0361.CRJS
DATE: 2/8/2013

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:

Overbreadth

Article I, Section 24 of the Florida Constitution, states that "every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf." When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible.²⁴ Statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.²⁵

The courts have addressed the issue of overbreadth as it relates to public records exemptions. In determining whether a statutory exemption is limited, that it is no broader than necessary to accomplish the stated purpose of the law, the courts look at both the scope and duration of the exemption.²⁶ For example, in *Halifax Hosp. Med. Ctr. v. News-Journal Corp.*, the Florida Supreme Court reviewed a statute that exempted from public record portions of a public hospital's board meetings which addressed strategic plans for marketing.²⁷ In ruling that the statute was too broad, the court held that:

- The statute itself did not contain a definition of "strategic plans" and did not provide justification for the breadth of the exemption.
- "Strategic plans obviously can cover a broad range of topics", and there was not a limiting or proper explanation of what was confidential within these strategic plans.
- The statute did not provide limitations upon what information was able to be discussed during the "closed portion" of the meeting.

The bill seems to broadly exempt all topics that would come before a criminal justice commission. Many topics discussed by a commission may not be topics that rise to the level of those needing to be exempted for purposes of public necessity. The absence of any limitation on the types of information that fall under the exemption raises a question as to whether this exemption is drafted in a manner that "is no broader than necessary to accomplish the state purpose." The bill's language is similar to the language of the statute discussed in the *Halifax Hosp. Med. Ctr.* case discussed above.

Public Necessity

Article I, Section 24(c) of the Florida Constitution, provides that a general law providing for a public records exemption "shall state with specificity the public necessity justifying the exemption." The public necessity statements in the bill do not list in articulable detail what information is being discussed and why that particular information is so sensitive that it rises to a level that should "override the strong public policy of open government and cannot be accomplished without the

²⁴ *Sult v. State*, 906 So.2d 1013 (Fla. 2005) (citations omitted).

²⁵ *Id.*

²⁶ *Halifax Hosp. Med. Ctr. v. News-Journal Corp.*, 701 So.2d 434, 436 (Fla. 5th DCA 1997) *aff'd*, 724 So.2d 567 (Fla. 1999). The Court held that a statute, exempting portions of a public hospital's board meetings which addressed strategic plans for marketing from the Public Records law, was too broad because it did not provide limitations upon what information was able to be discussed during the "closed portion" and did not contain a definition of "strategic plans" nor a justification for the breadth of the exemption.

²⁷ *Halifax Hosp. Med. Ctr. v. News-Journal Corp.*, 701 So.2d 434, 436 (Fla. Dist. Ct. App. 1997) *aff'd*, 724 So.2d 567 (Fla. 1999).

exemption.” As such, the public necessity statement included in this bill may not provide a purpose “sufficiently compelling to override the strong public policy of open government.”²⁸

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. There are numerous criminal justice related commissions. Because the bill does not define the term “criminal justice commission,” it is unclear what commissions the bill applies to.
2. The exemption in the bill only apply to certain public sector parties serving on a commission – not *all* off the members of the commission. By only listing certain parties, the bill creates a subclass of persons within which the statute applies.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁸ Section 119.15, F.S.
STORAGE NAME: h0361.CRJS
DATE: 2/8/2013

1 A bill to be entitled
 2 An act relating to public records and public meetings;
 3 providing an exemption from public records
 4 requirements for a record resulting from a
 5 communication between specified members of a duly
 6 constituted criminal justice commission pertaining to
 7 a matter that is currently being considered by, or
 8 that may foreseeably come before, the commission;
 9 providing an exemption from public meeting
 10 requirements for that portion of a meeting of a duly
 11 constituted criminal justice commission at which
 12 specified members of the commission discuss a matter
 13 currently being considered by, or which may
 14 foreseeably come before, the commission; providing a
 15 condition for the public meeting exemption; providing
 16 for future review and repeal of the exemptions;
 17 providing a statement of public necessity; providing
 18 an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Criminal justice commissions; public records
 23 exemption; public meetings exemption.-

24 (1) A record resulting from a communication between a
 25 state attorney, a sheriff, a public defender, a clerk of court,
 26 a chief judge of a circuit court, or a president of a police
 27 chiefs association pertaining to a matter that is currently
 28 being considered by, or that may foreseeably come before, a duly

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29 constituted criminal justice commission of which the state
30 attorney, sheriff, public defender, clerk of court, chief judge
31 of a circuit court, or president of a police chiefs association
32 is a member is exempt from s. 119.07(1), Florida Statutes, and
33 s. 24(a), Art. I of the State Constitution. This subsection is
34 subject to the Open Government Sunset Review Act in accordance
35 with s. 119.15, Florida Statutes, and shall stand repealed on
36 October 2, 2018, unless reviewed and saved from repeal through
37 reenactment by the Legislature.

38 (2) That portion of a meeting of a duly constituted
39 criminal justice commission at which a state attorney, a
40 sheriff, a public defender, a clerk of court, a chief judge of a
41 circuit court, or a president of a police chiefs association who
42 are members of the commission discuss a matter that is currently
43 being considered by, or that may foreseeably come before, the
44 criminal justice commission is exempt from s. 286.011, Florida
45 Statutes, and s. 24(b), Art. I of the State Constitution,
46 provided that at any public meeting of the criminal justice
47 commission at which such matter is being considered, the state
48 attorney, sheriff, public defender, clerk of court, chief judge
49 of the circuit court, or president of the police chiefs
50 association publicly discloses the fact that the matter has been
51 discussed. This subsection is subject to the Open Government
52 Sunset Review Act in accordance with s. 119.15, Florida
53 Statutes, and shall stand repealed on October 2, 2018, unless
54 reviewed and saved from repeal through reenactment by the
55 Legislature.

56 Section 2. (1) It is the finding of the Legislature that

57 | it is a public necessity that a record resulting from a
58 | communication between a state attorney, a sheriff, a public
59 | defender, a clerk of court, a chief judge of a circuit court, or
60 | a president of a police chiefs association pertaining to a
61 | matter that is currently being considered by, or that may
62 | foreseeably come before, a duly constituted criminal justice
63 | commission of which the state attorney, sheriff, public
64 | defender, clerk of court, chief judge of a circuit court, or
65 | president of a police chiefs association is a member be made
66 | exempt from public record requirements. In an effort to
67 | cultivate and enrich local, regional, and statewide criminal
68 | justice practice, policy, and program development, criminal
69 | justice commissions bring together criminal justice agencies and
70 | other related agencies in partnerships. Because effective crime
71 | prevention is best addressed through cooperative efforts that
72 | involve both the public and private sectors, examining issues
73 | that are not directed by any single criminal justice agency is
74 | of fundamental importance to the successful functioning of a
75 | criminal justice commission. In studying all aspects of federal,
76 | state, county, municipal, and private criminal justice and crime
77 | prevention systems in an attempt to provide guidance and
78 | assistance in the overall coordination of law enforcement and
79 | crime prevention efforts, a criminal justice commission draws on
80 | local, regional, state, and federal sources. A criminal justice
81 | commission by nature involves the discussion and examination of
82 | criminal investigative information that is generally of a
83 | sensitive nature. State attorneys, sheriffs, public defenders,
84 | clerks of court, judges, and representatives of police chiefs

85 associations need to be able to discuss such information freely.
86 The discussion of existing operational activities of coordinated
87 intergovernmental prevention, protection, and response
88 strategies aimed at combatting criminal enterprise, and the
89 development of future response strategies, requires discussion
90 of specific information related to the criminal activities being
91 addressed by the commission. Public discussion of these matters
92 would result in the sharing of data, methods, and operational
93 techniques that need to be exempt from public disclosure in
94 order to preserve their effectiveness.

95 (2) It is the finding of the Legislature that it is a
96 public necessity that the portion of a meeting of a duly
97 constituted criminal justice commission at which a state
98 attorney, a sheriff, a public defender, a clerk of court, a
99 chief judge of a circuit court, or a president of a police
100 chiefs association who are members of the commission discuss a
101 matter currently being considered by, or which may foreseeably
102 come before, the criminal justice commission be made exempt from
103 public meeting requirements. If the meetings at which exempt
104 information is discussed were open to the public, the purpose of
105 the exemption from public records requirements would be
106 defeated. The members of a criminal justice commission must be
107 able to hear and discuss exempt information freely in order to
108 make sound recommendations regarding strategies and activities
109 that are best suited to protect the welfare of the people of
110 this state. The ability to conduct meetings at which members can
111 freely discuss and fully understand the details of criminal
112 investigative information is critical to the ability of a

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113 | criminal justice commission to operate effectively.

114 | Section 3. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 361 (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 _____

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Kerner offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Criminal justice commissions; public meetings
8 exemption.-

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

10 (a) "Duly constituted criminal justice commission" means
11 an advisory commission created by municipal or county ordinance
12 whose membership is comprised of private and public sector
13 persons and whose purpose is to examine local criminal justice
14 issues.

15 (b) "Active" has the same meaning as provided in s.
16 119.011.

17 (c) "Criminal intelligence information" has the same
18 meaning as provided in s. 119.011.

19 (d) "Criminal investigative information" has the same
20 meaning as provided in s. 119.011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 361 (2013)

Amendment No. 1

21 (2) That portion of a meeting of a duly constituted
22 criminal justice commission at which members of the commission
23 discuss active criminal intelligence information or active
24 criminal investigative information that is currently being
25 considered by, or which may foreseeably come before, the
26 commission is exempt from s. 286.011, Florida Statutes, and s.
27 24(b), Art. I of the State Constitution, provided that at any
28 public meeting of the criminal justice commission at which such
29 matter is being considered, the commission members publicly
30 disclose the fact that the matter has been discussed.

31 (3) This section is subject to the Open Government Sunset
32 Review Act in accordance with s. 119.15, Florida Statutes, and
33 shall stand repealed on October 2, 2018, unless reviewed and
34 saved from repeal through reenactment by the Legislature.

35 Section 2. It is the finding of the Legislature that it is
36 a public necessity that the portion of a meeting of a duly
37 constituted criminal justice commission at which members of the
38 commission discuss active criminal intelligence information or
39 active criminal investigative information currently being
40 considered by, or which may foreseeably come before, the
41 criminal justice commission be made exempt from public meeting
42 requirements. If the meetings at which exempt information is
43 discussed were open to the public, the purpose of the exemption
44 from public records requirements found in chapter 119, Florida
45 Statutes, would be defeated. The members of a criminal justice
46 commission must be able to hear and discuss exempt information
47 freely in order to make sound recommendations regarding
48 strategies and activities that are best suited to protect the

Amendment No. 1

49 welfare of the people of this state. The ability to conduct
50 meetings at which members can freely discuss and fully
51 understand the details of active criminal intelligence
52 information and active criminal investigative information is
53 critical to the ability of a criminal justice commission to
54 operate effectively.

55 Section 3. This act shall take effect July 1, 2013.
56
57

58 -----
59 **T I T L E A M E N D M E N T**

60 Remove everything before the enacting clause and insert:

61 A bill to be entitled

62 An act relating to public meetings; providing definitions;
63 providing an exemption from public meeting requirements for that
64 portion of a meeting of a duly constituted criminal justice
65 commission at which specified members of the commission discuss
66 active criminal intelligence information or active criminal
67 investigative information currently being considered by, or
68 which may foreseeably come before, the commission; providing for
69 future review and repeal of the exemptions; providing a
70 statement of public necessity; providing an effective date.
71

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 399 Florida College System Police Officers
SPONSOR(S): Eagle
TIED BILLS: IDEN./SIM. BILLS: SB 454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>LTD</i>	Cunningham <i>sc</i>
2) Higher Education & Workforce Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The term "Florida College System institution" (FCSI) refers to Florida's tax-supported community and junior colleges. Currently, FCSIs and state universities are allowed to employ police officers.

Prior to 2009, FCSI and university police officers generally had the same arrest and traffic enforcement authority. This authority was limited to making arrests for violations of law that occurred on FCSI or university property, and enforcing traffic laws when traffic violations occurred on FCSI or university property.

In 2009, the legislature passed Senate Bill 554, which expanded the arrest and traffic enforcement authority for university police officers – the legislation did not apply to FCSI police officers.

The bill gives FCSI police officers the same authority to make arrests and enforce traffic violations as university police officers. Specifically, the bill amends s. 1012.88, F.S., to authorize FCSI police officers to:

- Make arrests for violations of state law or city or county ordinances that occur:
 - On any property or facility *or within 1,000 feet of any property of the officer's employing FCSI; or*
 - Within a specified jurisdictional area as agreed upon in a mutual aid agreement; and
- Make an off campus arrest for a violation committed on campus when hot pursuit begins on or within 1,000 feet of FCSI property.

The bill also amends s. 316.640, F.S., to authorize FCSI police officers to enforce traffic laws:

- When a violation occurs:
 - On or within 1,000 feet of any property or facility that is under the guidance, supervision, regulation, or control of the FCSI; or
 - Within a specified jurisdictional area as agreed upon in a mutual aid agreement; and
- Off campus, when hot pursuit originates on or within 1,000 feet of FCSI property, or in accordance with a mutual aid agreement.

The bill amends s. 23.1225, F.S., to specify that mutual aid agreements may authorize university police officers *and FCSI police officers* to enforce laws within a specified jurisdictional area.

The bill does not appear to have a fiscal impact on state or local governments.

The bill becomes effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida College System Institution Police and University Police

The term "Florida College System institution" (FCSI) refers to any of the 28 tax-supported community and junior colleges in the state of Florida.¹ Currently, FCSIs and state universities² are allowed to employ police officers.³ Each police officer of an FCSI or a state university is considered a law enforcement officer of the state and must meet the minimum standards established by ch. 943, F.S., and the Criminal Justice Standards and Training Commission.⁴

Section 1012.88, F.S., authorizes FCSI police officers to arrest any person for violations of state law or applicable county or city ordinances when the violation occurs on the property or facilities of the officer's employing FCSI, or on the property or facilities of a direct-support organization of such FCSI. FCSI police officers may also arrest a person off campus for a violation that occurred on campus if hot pursuit began on the property or facilities referenced above.⁵ In terms of traffic violations, s. 316.640, F.S., currently authorizes FCSI police officers to enforce traffic laws when such violations occur on any property or facility under the guidance, supervision, regulation, or control of an FCSI.⁶

Prior to 2009, university police officers generally had the same arrest and traffic enforcement authority as that currently given to FCSI police officers. However, in 2009, the legislature passed Senate Bill 554, expanding this authority.⁷ Currently, university police officers are authorized to:

- Make arrests for violations of state law or city or county ordinances that occur:
 - On or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of the state university, a direct-support organization of such university, or any other organization controlled by the state university; or
 - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.;
- Make an off campus arrest when hot pursuit begins on or within 1,000 feet of university property or facilities described above;
- Enforce all of the traffic laws of this state when violations occur:
 - On or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university; or

¹ The term includes all of the following public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institution: Brevard Community College; Broward College; College of Central Florida; Chipola College; Daytona State College; Edison State College; Florida State College at Jacksonville; Florida Keys Community College; Gulf Coast State College; Hillsborough Community College; Indian River State College; Florida Gateway College; Lake-Sumter Community College; State College of Florida, Manatee-Sarasota; Miami Dade College; North Florida Community College; Northwest Florida State College; Palm Beach State College; Pasco-Hernando Community College; Pensacola State College; Polk State College; St. Johns River State College; St. Petersburg College; Santa Fe College; Seminole State College of Florida; South Florida Community College; Tallahassee Community College; and Valencia College. Sections 1000.21(3) and 1004.66, F.S.

² The term "state university" includes the following institutions and any branch campuses, centers, or other affiliates of the institution: the University of Florida; Florida State University; Florida Agricultural and Mechanical University; the University of South Florida; Florida Atlantic University; the University of West Florida; the University of Central Florida; the University of North Florida; Florida International University; Florida Gulf Coast University; New College of Florida; and the Florida Polytechnic University. Section 1000.21(6), F.S.

³ Sections 1012.88 and 1012.97, F.S.

⁴ *Id.*

⁵ Section 1012.88(2), F.S.

⁶ Section 316.640(1)(a)c., F.S.

⁷ Ch. 2009-216, L.O.F.

- Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.; and
- Enforce traffic laws off campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.⁸

Due to the 2009 legislation, university police officers currently have greater authority to make arrests and enforce traffic violations than FCSI police officers.

Effect of the Bill

The bill gives FCSI police officers the same authority to make arrests and enforce traffic violations as university police officers. Specifically, the bill amends s. 1012.88, F.S., to authorize FCSI officers to:

- Make arrests for violations of state law or city or county ordinances that occur:
 - On or in any property or facility or *within 1,000 feet* of any property of the officer's employing FCSI, or on the property or facilities of a direct-support organization of such FCSI; or
 - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.; and
- Make an off campus arrest for a violation committed on campus when hot pursuit begins on or within 1,000 feet of the FCSI property or facilities described above.

The bill also amends s. 316.640, F.S., to authorize FCSI police officers to enforce traffic laws:

- When a violation occurs:
 - On or within 1,000 feet of any property or facility that is under the guidance, supervision, regulation, or control of the FCSI; or
 - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.; and
- Off campus, when hot pursuit originates on or within 1,000 feet of such property or facility, or in accordance with a mutual aid agreement.

Mutual Aid Agreements

Section 23.1225(1)(a), F.S., authorizes law enforcement agencies to enter into mutual aid agreements. The term is defined, in part, to mean, "a voluntary cooperation written agreement between two or more law enforcement agencies, which agreement permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines."⁹ The statute gives examples of the types of law enforcement activities that may be addressed in a voluntary cooperation written agreement.¹⁰ The 2009 legislation (referenced above) added the following example:

- "Authorizing *state university police officers* to enforce laws within a specified jurisdictional area as agreed upon in the voluntary cooperation written agreement."¹¹

Effect of the Bill

The bill amends s. 23.12259(1)(a), F.S., to add "Florida College System" officers to the example described above. As a result, voluntary cooperation written agreements may authorize both university police officers *and Florida College System officers* to enforce laws within a specified jurisdictional area.

B. SECTION DIRECTORY:

Section 1. Amends s. 23.1225, F.S., relating to mutual aid agreements.

Section 2. Amends s. 316.640, F.S., relating to enforcement.

Section 3. Amends s. 1012.88, F.S., relating to Florida College System institution police.

⁸ See Sections 1012.97(2) and 316.640(1)(a)1.b., F.S.

⁹ Section 23.1225, F.S.

¹⁰ Section 23.1225(1)(a), F.S.

¹¹ Ch. 2009-216, L.O.F.; section 23.1225(1)(a), F.S.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Section 1 and 2 of the bill use the term "Florida College System," which is not defined in statute, rather than the term "Florida College System institution."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to Florida College System police
 3 officers; amending s. 23.1225, F.S.; providing for
 4 mutual aid agreements involving Florida College System
 5 police officers; amending s. 316.640, F.S.; providing
 6 for enforcement of traffic laws in certain areas by
 7 Florida College System police officers; amending s.
 8 1012.88, F.S.; revising provisions relating to the
 9 jurisdictional authority of Florida College System
 10 police officers; providing an effective date.

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

13
 14 Section 1. Paragraph (a) of subsection (1) of section
 15 23.1225, Florida Statutes, is amended to read:

16 23.1225 Mutual aid agreements.—

17 (1) The term "mutual aid agreement," as used in this part,
 18 refers to one of the following types of agreement:

19 (a) A voluntary cooperation written agreement between two
 20 or more law enforcement agencies, which agreement permits
 21 voluntary cooperation and assistance of a routine law
 22 enforcement nature across jurisdictional lines. The agreement
 23 must specify the nature of the law enforcement assistance to be
 24 rendered, the agency or entity that shall bear any liability
 25 arising from acts undertaken under the agreement, the procedures
 26 for requesting and for authorizing assistance, the agency or
 27 entity that has command and supervisory responsibility, a time
 28 limit for the agreement, the amount of any compensation or

29 reimbursement to the assisting agency or entity, and any other
 30 terms and conditions necessary to give it effect. Examples of
 31 law enforcement activities that may be addressed in a voluntary
 32 cooperation written agreement include, but are not limited to,
 33 establishing a joint city-county task force on narcotics
 34 smuggling, authorizing school safety officers to enforce laws in
 35 an area within 1,000 feet of a school or school board property,
 36 authorizing state university police or Florida College System
 37 officers to enforce laws within a specified jurisdictional area
 38 as agreed upon in a ~~the~~ voluntary cooperation written agreement,
 39 or establishing a joint city-county traffic enforcement task
 40 force.

41 Section 2. Paragraph (a) of subsection (1) of section
 42 316.640, Florida Statutes, is amended to read:

43 316.640 Enforcement.—The enforcement of the traffic laws
 44 of this state is vested as follows:

45 (1) STATE.—

46 (a)1.a. The Division of Florida Highway Patrol of the
 47 Department of Highway Safety and Motor Vehicles; the Division of
 48 Law Enforcement of the Fish and Wildlife Conservation
 49 Commission; and the agents, inspectors, and officers of the
 50 Department of Law Enforcement each have authority to enforce all
 51 of the traffic laws of this state on all the streets and
 52 highways thereof and elsewhere throughout the state wherever the
 53 public has a right to travel by motor vehicle.

54 b. University police officers may enforce all of the
 55 traffic laws of this state when violations occur on or within
 56 1,000 feet of any property or facilities that are under the

57 | guidance, supervision, regulation, or control of a state
 58 | university, a direct-support organization of such state
 59 | university, or any other organization controlled by the state
 60 | university or a direct-support organization of the state
 61 | university, or when such violations occur within a specified
 62 | jurisdictional area as agreed upon in a mutual aid agreement
 63 | entered into with a law enforcement agency pursuant to s.
 64 | 23.1225(1). Traffic laws may also be enforced off-campus when
 65 | hot pursuit originates on or within 1,000 feet of any such
 66 | property or facilities, or as agreed upon in accordance with the
 67 | mutual aid agreement.

68 | c. Florida Community College System police officers may
 69 | enforce all the traffic laws of this state only when such
 70 | violations occur on or within 1,000 feet of any property or
 71 | facilities that are under the guidance, supervision, regulation,
 72 | or control of the Florida College System institution, or when
 73 | such violations occur within a specified jurisdictional area as
 74 | agreed upon in a mutual aid agreement entered into with a law
 75 | enforcement agency pursuant to s. 23.1225. Traffic laws may also
 76 | be enforced off-campus when hot pursuit originates on or within
 77 | 1,000 feet of any such property or facilities, or as agreed upon
 78 | in accordance with the mutual aid agreement ~~community college~~
 79 | ~~system.~~

80 | d. Police officers employed by an airport authority may
 81 | enforce all of the traffic laws of this state only when such
 82 | violations occur on any property or facilities that are owned or
 83 | operated by an airport authority.

84 | (I) An airport authority may employ as a parking

85 enforcement specialist any individual who successfully completes
 86 a training program established and approved by the Criminal
 87 Justice Standards and Training Commission for parking
 88 enforcement specialists but who does not otherwise meet the
 89 uniform minimum standards established by the commission for law
 90 enforcement officers or auxiliary or part-time officers under s.
 91 943.12. This sub-sub-subparagraph may not be construed to permit
 92 the carrying of firearms or other weapons, nor shall such
 93 parking enforcement specialist have arrest authority.

94 (II) A parking enforcement specialist employed by an
 95 airport authority may enforce all state, county, and municipal
 96 laws and ordinances governing parking only when such violations
 97 are on property or facilities owned or operated by the airport
 98 authority employing the specialist, by appropriate state,
 99 county, or municipal traffic citation.

100 e. The Office of Agricultural Law Enforcement of the
 101 Department of Agriculture and Consumer Services may enforce
 102 traffic laws of this state.

103 f. School safety officers may enforce all of the traffic
 104 laws of this state when such violations occur on or about any
 105 property or facilities that are under the guidance, supervision,
 106 regulation, or control of the district school board.

107 2. An agency of the state as described in subparagraph 1.
 108 is prohibited from establishing a traffic citation quota. A
 109 violation of this subparagraph is not subject to the penalties
 110 provided in chapter 318.

111 3. Any disciplinary action taken or performance evaluation
 112 conducted by an agency of the state as described in subparagraph

113 | 1. of a law enforcement officer's traffic enforcement activity
 114 | must be in accordance with written work-performance standards.
 115 | Such standards must be approved by the agency and any collective
 116 | bargaining unit representing such law enforcement officer. A
 117 | violation of this subparagraph is not subject to the penalties
 118 | provided in chapter 318.

119 | 4. The Division of the Florida Highway Patrol may employ
 120 | as a traffic accident investigation officer any individual who
 121 | successfully completes instruction in traffic accident
 122 | investigation and court presentation through the Selective
 123 | Traffic Enforcement Program as approved by the Criminal Justice
 124 | Standards and Training Commission and funded through the
 125 | National Highway Traffic Safety Administration or a similar
 126 | program approved by the commission, but who does not necessarily
 127 | meet the uniform minimum standards established by the commission
 128 | for law enforcement officers or auxiliary law enforcement
 129 | officers under chapter 943. Any such traffic accident
 130 | investigation officer who makes an investigation at the scene of
 131 | a traffic accident may issue traffic citations, based upon
 132 | personal investigation, when he or she has reasonable and
 133 | probable grounds to believe that a person who was involved in
 134 | the accident committed an offense under this chapter, chapter
 135 | 319, chapter 320, or chapter 322 in connection with the
 136 | accident. This subparagraph does not permit the officer to carry
 137 | firearms or other weapons, and such an officer does not have
 138 | authority to make arrests.

139 | Section 3. Subsection (2) of section 1012.88, Florida
 140 | Statutes, is amended to read:

141 1012.88 Florida College System institution police.-
 142 (2) Each Florida College System institution police officer
 143 is a law enforcement officer of the state and a conservator of
 144 the peace who has the authority to arrest, in accordance with
 145 the laws of this state, any person for a violation of state law
 146 or applicable county or municipal ordinance if that violation
 147 occurs on or in any property or facilities or within 1,000 feet
 148 of any property of the Florida College System institution by
 149 which he or she is employed or any property or facilities of a
 150 direct-support organization of such Florida College System
 151 institution or any other organization controlled by the Florida
 152 College System institution, or when such violations occur within
 153 a specified jurisdictional area as agreed upon in a mutual aid
 154 agreement entered into with a law enforcement agency pursuant to
 155 s. 23.1225. A Florida College System institution police officer
 156 may also arrest a person off campus for a violation committed on
 157 campus after a hot pursuit of that person that began on or
 158 within 1,000 feet of any such property or facilities. A Florida
 159 College System institution police officer may bear arms in the
 160 performance of his or her duties and carry out a search pursuant
 161 to a search warrant on the campus where he or she is employed.
 162 Florida College System institution police, upon request of the
 163 sheriff or local police authority, may serve subpoenas or other
 164 legal process and may make arrests of persons against whom
 165 arrest warrants have been issued or against whom charges have
 166 been made for violations of federal or state laws or county or
 167 municipal ordinances.
 168 Section 4. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 399 (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	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Eagle offered the following:

Amendment (with title amendment)

6 Remove lines 36-68 and insert:
7 authorizing state university police or Florida College System
8 institution officers to enforce laws within a specified
9 jurisdictional area as agreed upon in a the voluntary
10 cooperation written agreement, or establishing a joint city-
11 county traffic enforcement task force.

12 Section 2. Paragraph (a) of subsection (1) of section
13 316.640, Florida Statutes, is amended to read:

14 316.640 Enforcement.—The enforcement of the traffic laws
15 of this state is vested as follows:

16 (1) STATE.—

17 (a)1.a. The Division of Florida Highway Patrol of the
18 Department of Highway Safety and Motor Vehicles; the Division of
19 Law Enforcement of the Fish and Wildlife Conservation
20 Commission; and the agents, inspectors, and officers of the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 399 (2013)

Amendment No. 1

21 Department of Law Enforcement each have authority to enforce all
22 of the traffic laws of this state on all the streets and
23 highways thereof and elsewhere throughout the state wherever the
24 public has a right to travel by motor vehicle.

25 b. University police officers may enforce all of the
26 traffic laws of this state when violations occur on or within
27 1,000 feet of any property or facilities that are under the
28 guidance, supervision, regulation, or control of a state
29 university, a direct-support organization of such state
30 university, or any other organization controlled by the state
31 university or a direct-support organization of the state
32 university, or when such violations occur within a specified
33 jurisdictional area as agreed upon in a mutual aid agreement
34 entered into with a law enforcement agency pursuant to s.
35 23.1225(1). Traffic laws may also be enforced off-campus when
36 hot pursuit originates on or within 1,000 feet of any such
37 property or facilities, or as agreed upon in accordance with the
38 mutual aid agreement.

39 c. Florida Community College System institution police
40 officers may

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T I T L E A M E N D M E N T

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Remove line 4 and insert:

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mutual aid agreements involving Florida College System

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institution

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 407 Criminal Gang Prevention

SPONSOR(S): Ingram

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham <i>ju</i>	Cunningham <i>ju</i>
2) Justice Appropriations Subcommittee			
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 bill may have an insignificant negative prison bed impact on the Department of Corrections and a negative jail bed impact on local governments. See "fiscal section."

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 made 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) has not yet met to determine the prison bed impact of this bill. However, in 2012, CJIC determined that HB 1173, which was identical to this bill, would have an insignificant impact on state prison beds.

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).

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 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). This may have an insignificant negative jail bed impact on local governments.

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

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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	Felony	
Statute	Degree	Description

136 |

316.1935(3)(a)	2nd	Driving at high speed or with
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			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			

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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

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			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

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			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 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a 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.

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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.

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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.

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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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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

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			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;

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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.

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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

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220			person or disabled adult.
	827.071(4)	2nd	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			

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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)

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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),

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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 Statute	Felony 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;

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			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

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			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

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

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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

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270			conceal a sexual predator.
	782.051(3)	2nd	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			

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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.

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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

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

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			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

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			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

			weapon, or other weapon.
311	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
312	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
313	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
314	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.
315	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
316	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is

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			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.

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325

847.0135(4) 2nd Traveling to meet a minor to
commit an unlawful sex act.

326

872.06 2nd Abuse of a dead human body.

327

874.05(2)(b) 1st Encouraging or recruiting
person under 13 to join a
criminal gang; second or
subsequent offense.

328

874.10 1st,PBL Knowingly initiates, organizes,
plans, finances, directs,
manages, or supervises criminal
gang-related activity.

329

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.

330

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331	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.
332	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).
333	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
334	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
335	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than

			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

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			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

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

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

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

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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

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

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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 #: HB 489 Railroad Police Officers
SPONSOR(S): Stone
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
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 appointment of "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., and their 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.

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.

The bill amends the definition of "law enforcement officer" in s. 943.10, F.S., to include all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of officers employed pursuant to ch. 354, F.S. (railroad special officers). As drafted, a special officer would not be considered an LEO unless the special officer qualified as "supervisory or command personnel" whose duties includes those described above. The bill also amends the definition of "employing agency" in s. 943.10, F.S., to include Class I or Class II railroads.

The bill does not appear to have a fiscal impact on state or local governments.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Officers

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 nonjuvenile 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 8, 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 8, 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 8, 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 3.

¹¹ Section 354.01, F.S.

¹² *Id.*

¹³ Sections 354.03 and 354.05, F.S.

¹⁴ Section 354.04, F.S.

Effect of the Bill

The bill amends the definition of "law enforcement officer" in s. 943.10, F.S., to include all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of *officers employed pursuant to ch. 354, F.S.* (railroad special officers). As drafted, a special officer would not be considered an LEO unless the special officer qualified as "supervisory or command personnel" whose duties includes those described above.

The bill also amends the definition of "employing agency" in s. 943.10, F.S., to include agencies or units 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, *including Class I or Class II railroads*. The bill adds language to s. 354.01, F.S., specifying that a Class I or II railroad, as defined by the STB, is considered an "employing agency" for purposes of s. 943.10, F.S.

The bill 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.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 943.10, F.S., relating to definitions; ss. 943.085-943.255.

Section 3. 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. As drafted, the bill does not include railroad special officers in the definition of LEO contained in s. 943.10, F.S. Instead, the bill includes *all certified supervisory and command personnel* whose duties include the supervising, training, etc. of railroad special officers. As such, the bill does not appear to have any impact on FDLE.

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:

The bill makes private railroads and common carriers "employing agencies," and requires special officers to meet *all* of the minimum standards contained in s. 943.13, 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:

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:

1. As drafted, the bill does not include railroad special officers in the definition of LEO contained in s. 943.10, F.S. Instead, the bill includes all certified supervisory and command personnel whose duties include the supervising, training, etc. of railroad special officers.
2. The bill amends the definitions of "law enforcement officer" and "employing agency" in s. 943.10, F.S. Because these definitions are referenced in a multitude of places throughout the Florida Statutes, changing them will likely have substantial ramifications. For example, s. 768.28(9)(d), F.S., specifies that the employing agency of an LEO as defined in s. 943.10, F.S., is not liable for injury, death, or property damage effected or caused by a person fleeing from a law enforcement officer in a motor vehicle if:
 - The pursuit is conducted in a manner that does not involve conduct by the officer which is so reckless or wanting in care as to constitute disregard of human life, human rights, safety, or the property of another;
 - At the time the LEO initiates the pursuit, the officer reasonably believes that the person fleeing has committed a forcible felony as defined in s. 776.08, F.S.; and
 - The pursuit is conducted by the officer pursuant to a written policy governing high-speed pursuit adopted by the employing agency. The policy must contain specific procedures concerning the proper method to initiate and terminate high-speed pursuit. The law enforcement officer must have received instructional training from the employing agency on the written policy governing high-speed pursuit.

Other statutes that reference these definitions that may be impacted by the bill include statutes relating to special risk retirement, LEO salary incentive programs, LEO death benefits, special disability benefits, the ability to administer oaths, and restrictions on life or health insurers. Statutes enhancing penalties for crimes committed against LEOs would also be impacted.

3. It is unknown whether 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

1 A bill to be entitled
 2 An act relating to railroad police officers; amending
 3 s. 354.01, F.S.; requiring special officers employed
 4 by a railroad or other common carrier to comply with
 5 specified continuing training or education
 6 requirements; providing that certain railroads are
 7 employing agencies under specified provisions;
 8 amending s. 943.10, F.S.; including special officers
 9 employed by a railroad or other common carrier within
 10 the definition of "law enforcement officers" and
 11 including certain railroads within the definition of
 12 "employing agency," for purposes of specified
 13 provisions relating to law enforcement officer
 14 standards; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 354.01, Florida Statutes, is amended to
 19 read:

20 354.01 Appointment of special officers.—Upon the
 21 application of any railroad or other common carrier doing
 22 business in this state, the Governor shall appoint one or more
 23 persons who have met the law enforcement qualifications and
 24 training requirements of s. 943.13 ~~943.13(1)-(10)~~ as special
 25 officers for the protection and safety of such carriers; their
 26 passengers and employees; and the property of such carriers,
 27 passengers, and employees. A Class I or Class II railroad, as
 28 defined by the United States Surface Transportation Board, shall

29 be considered an employing agency pursuant to s. 943.10(4).

30 Section 2. Subsections (1) and (4) of section 943.10,
 31 Florida Statutes, are amended to read:

32 943.10 Definitions; ss. 943.085-943.255.—The following
 33 words and phrases as used in ss. 943.085-943.255 are defined as
 34 follows:

35 (1) "Law enforcement officer" means any person who is
 36 elected, appointed, or employed full time by any municipality or
 37 the state or any political subdivision thereof; who is vested
 38 with authority to bear arms and make arrests; and whose primary
 39 responsibility is the prevention and detection of crime or the
 40 enforcement of the penal, criminal, traffic, or highway laws of
 41 the state. This definition includes all certified supervisory
 42 and command personnel whose duties include, in whole or in part,
 43 the supervision, training, guidance, and management
 44 responsibilities of full-time law enforcement officers, part-
 45 time law enforcement officers, ~~or~~ auxiliary law enforcement
 46 officers, or officers employed pursuant to chapter 354, but does
 47 not include support personnel employed by the employing agency.

48 (4) "Employing agency" means any agency or unit of
 49 government or any municipality or the state or any political
 50 subdivision thereof, or any agent thereof, which has
 51 constitutional or statutory authority to employ or appoint
 52 persons as officers, including Class I or Class II railroads
 53 described in s. 354.01. The term also includes any private
 54 entity which has contracted with the state or county for the
 55 operation and maintenance of a nonjuvenile detention facility.

56 Section 3. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 489 (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	_____	

Committee/Subcommittee hearing bill: Criminal Justice Subcommittee

Representative Stone offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 489 (2013)

Amendment No. 1

21 Section 2. Section 784.07, Florida Statutes, is amended to
22 read:

23 784.07 Assault or battery of law enforcement officers,
24 firefighters, emergency medical care providers, public transit
25 employees or agents, or other specified officers;
26 reclassification of offenses; minimum sentences.-

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

28 (a) "Emergency medical care provider" means an ambulance
29 driver, emergency medical technician, paramedic, registered
30 nurse, physician as defined in s. 401.23, medical director as
31 defined in s. 401.23, or any person authorized by an emergency
32 medical service licensed under chapter 401 who is engaged in the
33 performance of his or her duties. The term "emergency medical
34 care provider" also includes physicians, employees, agents, or
35 volunteers of hospitals as defined in chapter 395, who are
36 employed, under contract, or otherwise authorized by a hospital
37 to perform duties directly associated with the care and
38 treatment rendered by the hospital's emergency department or the
39 security thereof.

40 (b) "Firefighter" means any person employed by any public
41 employer of this state whose duty it is to extinguish fires; to
42 protect life or property; or to enforce municipal, county, and
43 state fire prevention codes, as well as any law pertaining to
44 the prevention and control of fires.

45 (c) "Law enforcement explorer" means any person who is a
46 current member of a law enforcement agency's explorer program
47 and who is performing functions other than those required to be
48 performed by sworn law enforcement officers on behalf of a law

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 489 (2013)

Amendment No. 1

49 enforcement agency while under the direct physical supervision
50 of a sworn officer of that agency and wearing a uniform that
51 bears at least one patch that clearly identifies the law
52 enforcement agency that he or she represents.

53 (d) "Law enforcement officer" includes a law enforcement
54 officer, a correctional officer, a correctional probation
55 officer, a part-time law enforcement officer, a part-time
56 correctional officer, an auxiliary law enforcement officer, and
57 an auxiliary correctional officer, as those terms are
58 respectively defined in s. 943.10, and any county probation
59 officer; an employee or agent of the Department of Corrections
60 who supervises or provides services to inmates; an officer of
61 the Parole Commission; a federal law enforcement officer as
62 defined in s. 901.1505; and law enforcement personnel of the
63 Fish and Wildlife Conservation Commission or the Department of
64 Law Enforcement.

65 (e) "Public transit employees or agents" means bus
66 operators, train operators, revenue collectors, security
67 personnel, equipment maintenance personnel, or field
68 supervisors, who are employees or agents of a transit agency as
69 described in s. 812.015(1)(1).

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

73 (2) Whenever any person is charged with knowingly
74 committing an assault or battery upon a law enforcement officer,
75 a firefighter, an emergency medical care provider, a railroad
76 special officer, a traffic accident investigation officer as

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77 described in s. 316.640, a nonsworn law enforcement agency
78 employee who is certified as an agency inspector, a blood
79 alcohol analyst, or a breath test operator while such employee
80 is in uniform and engaged in processing, testing, evaluating,
81 analyzing, or transporting a person who is detained or under
82 arrest for DUI, a law enforcement explorer, a traffic infraction
83 enforcement officer as described in s. 316.640, a parking
84 enforcement specialist as defined in s. 316.640, a person
85 licensed as a security officer as defined in s. 493.6101 and
86 wearing a uniform that bears at least one patch or emblem that
87 is visible at all times that clearly identifies the employing
88 agency and that clearly identifies the person as a licensed
89 security officer, or a security officer employed by the board of
90 trustees of a community college, while the officer, firefighter,
91 emergency medical care provider, railroad special officer,
92 traffic accident investigation officer, traffic infraction
93 enforcement officer, inspector, analyst, operator, law
94 enforcement explorer, parking enforcement specialist, public
95 transit employee or agent, or security officer is engaged in the
96 lawful performance of his or her duties, the offense for which
97 the person is charged shall be reclassified as follows:

98 (a) In the case of assault, from a misdemeanor of the
99 second degree to a misdemeanor of the first degree.

100 (b) In the case of battery, from a misdemeanor of the
101 first degree to a felony of the third degree.

102 (c) In the case of aggravated assault, from a felony of
103 the third degree to a felony of the second degree.

104 Notwithstanding any other provision of law, any person convicted

COMMITTEE/SUBCOMMITTEE AMENDMENT

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105 of aggravated assault upon a law enforcement officer shall be
106 sentenced to a minimum term of imprisonment of 3 years.

107 (d) In the case of aggravated battery, from a felony of
108 the second degree to a felony of the first degree.

109 Notwithstanding any other provision of law, any person convicted
110 of aggravated battery of a law enforcement officer shall be
111 sentenced to a minimum term of imprisonment of 5 years.

112 (3) Any person who is convicted of a battery under
113 paragraph (2)(b) and, during the commission of the offense, such
114 person possessed:

115 (a) A "firearm" or "destructive device" as those terms are
116 defined in s. 790.001, shall be sentenced to a minimum term of
117 imprisonment of 3 years.

118 (b) A semiautomatic firearm and its high-capacity
119 detachable box magazine, as defined in s. 775.087(3), or a
120 machine gun as defined in s. 790.001, shall be sentenced to a
121 minimum term of imprisonment of 8 years.

122
123 Notwithstanding s. 948.01, adjudication of guilt or imposition
124 of sentence shall not be suspended, deferred, or withheld, and
125 the defendant is not eligible for statutory gain-time under s.
126 944.275 or any form of discretionary early release, other than
127 pardon or executive clemency, or conditional medical release
128 under s. 947.149, prior to serving the minimum sentence.

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

131 943.10 Definitions; ss. 943.085-943.255.—The following
132 words and phrases as used in ss. 943.085-943.255 are defined as

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 489 (2013)

Amendment No. 1

133 follows:

134 (1) "Law enforcement officer" means any person who is
135 elected, appointed, or employed full time by any municipality or
136 the state or any political subdivision thereof; who is vested
137 with authority to bear arms and make arrests; and whose primary
138 responsibility is the prevention and detection of crime or the
139 enforcement of the penal, criminal, traffic, or highway laws of
140 the state. This definition includes all certified supervisory
141 and command personnel whose duties include, in whole or in part,
142 the supervision, training, guidance, and management
143 responsibilities of full-time law enforcement officers, part-
144 time law enforcement officers, or auxiliary law enforcement
145 officers but does not include support personnel employed by the
146 employing agency. For purposes of ss. 943.085-943.255 only, this
147 definition also includes special officers employed by a Class I
148 or Class II railroad and appointed by the Governor pursuant to
149 s. 354.01.

150 (4) "Employing agency" means any agency or unit of
151 government or any municipality or the state or any political
152 subdivision thereof, or any agent thereof, which has
153 constitutional or statutory authority to employ or appoint
154 persons as officers. The term also includes any private entity
155 which has contracted with the state or county for the operation
156 and maintenance of a nonjuvenile detention facility. For
157 purposes of ss. 943.085-943.255 only, the term also includes a
158 Class I or Class II railroad that employs special officers
159 pursuant to s. 354.01.

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

Amendment No. 1

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

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 purposes of ss. 943.085-943.255; providing that a Class I or II railroad is not considered an "employing agency" except for purposes of ss. 943.085-943.255; 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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4019 Youth Custody Officers
SPONSOR(S): Harrell
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>HC</i>	Cunningham <i>su</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.105, F.S., creates a position called "youth custody officer" within the Department of Juvenile Justice (DJJ). Youth custody officers, which are designated as "special risk class" members for purposes of the Florida Retirement System, are responsible for taking a youth into custody if the officer has probable cause to believe that the youth has:

- Violated conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.

DJJ reports that it eliminated youth custody officer positions in July, 2010, due to budget cuts, and that the duties of youth custody officers were either distributed among existing employees or were no longer performed by DJJ.

The bill repeals s. 985.105, F.S., creating the youth custody officer position. The bill also amends s. 121.0515, F.S., to remove references to youth custody officers as a position that is designated as a special risk class member.

DJJ reports that the bill will not have any fiscal impact on the department.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 985.105, F.S., creates a position called "youth custody officer" within the Department of Juvenile Justice (DJJ). Youth custody officers are responsible for taking a youth into custody if the officer has probable cause to believe that the youth has:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.¹

Youth custody officers must meet the minimum qualifications for employment or appointment, be certified under ch. 943, F.S., and comply with the requirements for continued employment required by s. 943.135, F.S.² Additionally, s. 121.0515, F.S., designates youth custody officers as "special risk class" members for purposes of the Florida Retirement System.³

DJJ reports that it eliminated youth custody officer positions in July, 2010, due to budget cuts.⁴ The duties of youth custody officers were either distributed among existing employees or were no longer performed by DJJ.⁵

Effect of Bill

The bill repeals s. 985.105, F.S., creating the youth custody officer position. The bill also amends s. 121.0515, F.S., to remove references to youth custody officers as a position that is designated as a special risk class member.

B. SECTION DIRECTORY:

Section 1. Repeals s. 985.105, F.S., relating to youth custody officer.

Section 2. Amends s. 121.0515, F.S., relating to special risk class.

Section 3. 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.

¹ A youth custody officer is required to inform appropriate local law enforcement agencies of anyone taken into custody pursuant to s. 985.105, F.S. Section 985.105(3), F.S.

² Section 985.105(2), F.S.

³ Section 121.0515, F.S., creates a "special risk class" of state employees for purposes of the Florida Retirement System that earn more retirement credit per year of service. This increased credit is in recognition that they may be unable to "enjoy the full career and retirement benefits enjoyed by other membership classes" as a result of the physically demanding and high risk functions required by their jobs.

⁴ Department of Juvenile Justice, 2013 Agency Proposal. On file with Criminal Justice Subcommittee staff.

⁵ *Id.*

2. Expenditures:

According to DJJ, youth custody officers were eliminated from DJJ's budget in 2010, and their duties were redistributed among existing employees. DJJ reports that the bill will not have any fiscal impact on the department.⁶

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 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

⁶ *Id.*

29 (f)~~(g)~~ Effective July 1, 2008, the member must be employed
 30 by the Department of Law Enforcement in the crime laboratory or
 31 by the Division of State Fire Marshal in the forensic laboratory
 32 and meet the special criteria set forth in paragraph (3) (h)
 33 ~~(3) (i)~~.

34 (g)~~(h)~~ Effective July 1, 2008, the member must be employed
 35 by a local government law enforcement agency or medical
 36 examiner's office and meet the special criteria set forth in
 37 paragraph (3) (i) ~~(3) (j)~~.

38 (h)~~(i)~~ Effective August 1, 2008, "special risk member"
 39 includes any member who meets the special criteria for continued
 40 membership set forth in paragraph (3) (j) ~~(3) (k)~~.

41 (3) CRITERIA.—A member, to be designated as a special risk
 42 member, must meet the following criteria:

43 ~~(g) Effective July 1, 2001, the member must be employed as~~
 44 ~~a youth custody officer and be certified, or required to be~~
 45 ~~certified, in compliance with s. 943.1395. In addition, the~~
 46 ~~member's primary duties and responsibilities must be the~~
 47 ~~supervised custody, surveillance, control, investigation,~~
 48 ~~apprehension, arrest, and counseling of assigned juveniles~~
 49 ~~within the community;~~

50 (j)~~(k)~~ The member must have already qualified for and be
 51 actively participating in special risk membership under
 52 paragraph (a), paragraph (b), or paragraph (c), must have
 53 suffered a qualifying injury as defined in this paragraph, must
 54 not be receiving disability retirement benefits as provided in
 55 s. 121.091(4), and must satisfy the requirements of this
 56 paragraph.

57 1. The ability to qualify for the class of membership
 58 defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed
 59 medical physicians, one of whom is a primary treating physician
 60 of the member, certify the existence of the physical injury and
 61 medical condition that constitute a qualifying injury as defined
 62 in this paragraph and that the member has reached maximum
 63 medical improvement after August 1, 2008. The certifications
 64 from the licensed medical physicians must include, at a minimum,
 65 that the injury to the special risk member has resulted in a
 66 physical loss, or loss of use, of at least two of the following:
 67 left arm, right arm, left leg, or right leg; and:

68 a. That this physical loss or loss of use is total and
 69 permanent, except in the event that the loss of use is due to a
 70 physical injury to the member's brain, in which event the loss
 71 of use is permanent with at least 75 percent loss of motor
 72 function with respect to each arm or leg affected.

73 b. That this physical loss or loss of use renders the
 74 member physically unable to perform the essential job functions
 75 of his or her special risk position.

76 c. That, notwithstanding this physical loss or loss of
 77 use, the individual is able to perform the essential job
 78 functions required by the member's new position, as provided in
 79 subparagraph 3.

80 d. That use of artificial limbs is either not possible or
 81 does not alter the member's ability to perform the essential job
 82 functions of the member's position.

83 e. That the physical loss or loss of use is a direct
 84 result of a physical injury and not a result of any mental,

85 | psychological, or emotional injury.

86 | 2. For the purposes of this paragraph, "qualifying injury"
 87 | means an injury sustained in the line of duty, as certified by
 88 | the member's employing agency, by a special risk member that
 89 | does not result in total and permanent disability as defined in
 90 | s. 121.091(4)(b). An injury is a qualifying injury if the injury
 91 | is a physical injury to the member's physical body resulting in
 92 | a physical loss, or loss of use, of at least two of the
 93 | following: left arm, right arm, left leg, or right leg.
 94 | Notwithstanding any other provision of this section, an injury
 95 | that would otherwise qualify as a qualifying injury is not
 96 | considered a qualifying injury if and when the member ceases
 97 | employment with the employer for whom he or she was providing
 98 | special risk services on the date the injury occurred.

99 | 3. The new position, as described in sub-subparagraph
 100 | 1.c., that is required for qualification as a special risk
 101 | member under this paragraph is not required to be a position
 102 | with essential job functions that entitle an individual to
 103 | special risk membership. Whether a new position as described in
 104 | sub-subparagraph 1.c. exists and is available to the special
 105 | risk member is a decision to be made solely by the employer in
 106 | accordance with its hiring practices and applicable law.

107 | 4. This paragraph does not grant or create additional
 108 | rights for any individual to continued employment or to be hired
 109 | or rehired by his or her employer that are not already provided
 110 | within the Florida Statutes, the State Constitution, the
 111 | Americans with Disabilities Act, if applicable, or any other
 112 | applicable state or federal law.

113 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

114 (b) Any member who is a special risk member on July 1,
 115 2008, and who became eligible to participate under paragraph
 116 (3)(g) ~~(3)(h)~~ but fails to meet the criteria for Special Risk
 117 Class membership established by paragraph (3)(h) ~~(3)(i)~~ or
 118 paragraph (3)(i) ~~(3)(j)~~ shall have his or her special risk
 119 designation removed and thereafter shall be a Regular Class
 120 member and earn only Regular Class membership credit. The
 121 department may review the special risk designation of members to
 122 determine whether or not those members continue to meet the
 123 criteria for Special Risk Class membership.

124 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

125 (d) Notwithstanding any other provision of this
 126 subsection, this subsection does not apply to any special risk
 127 member who qualifies for continued membership pursuant to
 128 paragraph (3)(j) ~~(3)(k)~~.

129 (10) CREDIT FOR UPGRADED SERVICE.—

130 (c) Any member of the Special Risk Class who has earned
 131 creditable service through June 30, 2008, in another membership
 132 class of the Florida Retirement System in a position with the
 133 Department of Law Enforcement or the Division of State Fire
 134 Marshal and became covered by the Special Risk Class as
 135 described in paragraph (3)(h) ~~(3)(i)~~, or with a local government
 136 law enforcement agency or medical examiner's office and became
 137 covered by the Special Risk Class as described in paragraph
 138 (3)(i) ~~(3)(j)~~, which service is within the purview of the
 139 Special Risk Class, and is employed in such position on or after
 140 July 1, 2008, may purchase additional retirement credit to

141 | upgrade such service to Special Risk Class service, to the
 142 | extent of the percentages of the member's average final
 143 | compensation provided in s. 121.091(1)(a)2. The cost for such
 144 | credit must be an amount representing the actuarial accrued
 145 | liability for the difference in accrual value during the
 146 | affected period of service. The cost shall be calculated using
 147 | the discount rate and other relevant actuarial assumptions that
 148 | were used to value the Florida Retirement System Pension Plan
 149 | liabilities in the most recent actuarial valuation. The division
 150 | shall ensure that the transfer sum is prepared using a formula
 151 | and methodology certified by an enrolled actuary. The cost must
 152 | be paid immediately upon notification by the division. The local
 153 | government employer may purchase the upgraded service credit on
 154 | behalf of the member if the member has been employed by that
 155 | employer for at least 3 years.

156 | Section 3. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 4019 (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	_____	

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Harrell offered the following:

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

6 Between lines 10 and 11, insert:

7 Section 1. Section 945.75, Florida Statutes, is repealed.

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

14 Remove line 2 and insert:

15 An act relating to juvenile justice; repealing s. 945.75, F.S.;
16 deleting a requirement that the Department of Corrections and
17 counties develop programs under which a judge may order
18 juveniles who have committed delinquent acts to tour
19 correctional facilities; repealing