The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Storms, Chair
Senator Rich, Vice Chair

MEETING DATE: Wednesday, February 22, 2012
TIME: 3:30 —6:00 p.m.
PLACE: *James E. "Jim" King, Jr. Committee Room,* 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Rich, Vice Chair; Senators Detert, Dockery, Gibson, and Latvala

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 212** Criminal Justice / Oelrich (Similar CS/H 5)	Juvenile Offenders; Citing this act as the "Graham Compliance Act;" providing that a juvenile offender who was younger than 18 years of age at the time of commission of a nonhomicide offense and who is sentenced to life imprisonment is eligible for resentencing if the offender has been incarcerated for a minimum period; requiring an initial resentencing hearing to determine whether the juvenile offender has demonstrated maturity and reform for resentencing; providing criteria to determine maturity and reform; requiring a minimum term of probation for any juvenile offender resentenced by the court; providing consequences for probation violations; providing eligibility for a subsequent resentencing hearing after a specified period for juvenile offenders denied resentencing, etc. CJ 02/09/2012 CJ 02/09/2012 Fav/CS CF 02/22/2012 Fav/1 Amendment BC	Fav/1 Amendment (707054) Yeas 6 Nays 0
2	**CS/SB 282** Health Regulation / Wise (Compare H 279)	Health Care Transition/Adolescents and Young Adults/Special Health Care Needs; Establishing a program within the Division of Children's Medical Services Network in the Department of Health to oversee transitional services in this state using existing state plans in order to implement health care transition programs for adolescents and young adults who have special health care needs; specifying responsibilities of the program with respect to the oversight, implementation, and coordination of the program, etc. HR 02/09/2012 Fav/CS CF 02/22/2012 Favorable BC	Favorable Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 914** Oelrich (Similar CS/H 1023, Compare CS/H 935)	Suspension of Driver Licenses and Motor Vehicle Registrations; Revising provisions providing for an obligor who is delinquent in support payments to petition the circuit court to direct the Department of Highway Safety and Motor Vehicles to issue to the obligor a driver license restricted to business purposes only; requiring that the Department of Highway Safety and Motor Vehicles reinstate the driving privilege and allow registration of a motor vehicle of a person who has a delinquent support obligation or who has failed to comply with a subpoena, order to appear, order to show cause, or similar order, if the Title IV-D agency in IV-D cases, or the depository or the clerk of the court in non-IV-D cases, provides an affidavit to the department stating that the court has directed that the person be issued a license for driving privileges restricted to business purposes only, etc. CF 02/22/2012 Fav/CS TR BC	Fav/CS Yeas 5 Nays 0
4	**SB 1744** Latvala	Substance Abuse Treatment Services; Citing this act as "The Jennifer Act"; revising the filing fee for involuntary admissions proceedings for substance abuse treatment; providing for the distribution of proceeds from the fee; increasing the period allowed for assessment of a person following involuntary custody or admission to a hospital or other facility; specifying requirements for initial processing of inmates by the Department of Corrections for substance abuse needs; providing that, to the fullest extent practicable, inmates be given the choice between faith-based and nonfaith-based substance abuse programs, etc. CF 02/22/2012 Favorable CJ BC	Favorable Yeas 3 Nays 2
5	Discussion of potential interim projects		Discussed
6	Other Related Meeting Materials		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 212

INTRODUCER: Criminal Justice Committee and Senator Oelrich

SUBJECT: Juvenile Offenders

DATE: February 21, 2012 REVISED: 02/23/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Daniell	Farmer	CF	**Fav/1 amendment**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE….	X	Statement of Substantial Changes
B. AMENDMENTS……..		Technical amendments were recommended
	X	Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill provides that inmates who were sentenced to life imprisonment for a nonhomicide offense committed when they were younger than 18 years old are eligible for resentencing after serving at least 25 years of the sentence. The bill includes factors that must be considered in evaluating whether the inmate has been sufficiently rehabilitated in order to be resentenced and placed on probation.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

The Department of Corrections (DOC or department) reports that 198 inmates were sentenced to life imprisonment for nonhomicide offenses committed while the person was younger than 18 years of age.[1] This includes inmates who were sentenced for attempted murder.[2] Ninety-three of these inmates also had a homicide for which they were separately sentenced.[3]

[1] E-mail from the Dep't of Corrections to Senate professional staff (Feb. 7, 2012) (on file with the Senate Committee on Criminal Justice). The e-mail provided updated statistics from the DOC bill analysis on SB 212. *See* Dep't of Corrections, *2012 Bill Analysis, SB 212*, at 2 (on file with the Senate Committee on Children, Families, and Elder Affairs).

Most crimes committed by juveniles[4] are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juvenile offenders to be tried and handled as adults.[5] There are several ways that a juvenile can be tried as an adult. For example, the juvenile can voluntarily waive juvenile court jurisdiction, which would transfer and certify a juvenile's criminal case for trial as an adult.[6] In certain situations in which the juvenile is 14 years of age or older, the state attorney must request that the case be transferred.[7] Additionally, the state attorney can directly file an information that requests adult sanctions be imposed on the juvenile.[8] Finally, regardless of age, a grand jury indictment is required to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.[9]

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (Commission).[10] An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the Commission. Parolees are supervised by DOC probation officers.

With the implementation of the sentencing guidelines in October 1983, parole was abolished.[11] Accordingly, sentences imposed under the guidelines cannot result in a parole release. However, inmates serving sentences imposed for crimes committed prior to October 1, 1983, are still eligible for parole. Additionally, because the guidelines do not apply to capital felonies, sentences for certain capital felonies, under certain circumstances, committed after the guidelines went into effect retain parole eligibility.[12] Currently, there are 5,360 inmates who are eligible for parole consideration and approximately 439 persons on parole supervision.[13]

In January 2008, the Blueprint Commission of the Florida Department of Juvenile Justice released a report that included a recommendation that juveniles who received more than a 10

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[2] In *Manuel v. State*, 48 So. 3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.
[3] E-mail from the Dep't of Corrections, *supra* note 1.
[4] Section 985.03(6), F.S., defines a juvenile as "any unmarried person under the age of 18 who has not been emancipated by order of the court and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years."
[5] See Part X, ch. 985, F.S.
[6] Section 985.556(1), F.S.
[7] Section 985.556(2) and (3), F.S.
[8] Section 985.557, F.S.
[9] Section 985.56, F.S.
[10] The Commission has 121 employees and a $7.7 million budget. The Commission acts as a quasi-judicial body by conducting administrative proceedings and hearings, and eliciting testimony from witnesses and victims. Fla. Parole Comm'n, *Parole Commission Facts and Frequently Asked Questions*, https://fpc.state.fl.us/Facts.htm (last visited Feb. 15, 2012).
[11] Dep't of Corrections, *supra* note 1, at 1.
[12] *Id.*; *see also* Fla. Parole Comm'n, *Fiscal Note/Bill Analysis Request re: SB 92* (Sept. 13, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs) (Senate Bill 92 is substantially similar to SB 212).
[13] Fla. Parole Comm'n, *supra* note 12.

year adult prison sentence should be eligible for parole consideration.[14] In 2010, Florida TaxWatch also recommended that the "Legislature should allow juvenile offenders who have served 10 years of their sentence, were convicted of crimes other than capital murder, have no prior convictions, and have demonstrated exemplary behavior while serving their sentence to be eligible for parole."[15]

Clemency

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or part of the punishment for a crime.[16] The power of clemency is vested in the Governor pursuant to article IV, section 8 of the Florida Constitution. All inmates, including those who are not eligible for parole, can apply for clemency.

The Clemency Board is comprised of the governor and members of the Cabinet. The governor has discretion to deny clemency at any time for any reason and, with the approval of at least two members of the Cabinet, may grant clemency at any time and for any reason.[17] There are several types of clemency, including pardon, commutation of sentence, remission of fines and forfeitures, restoration of authority to possess firearms, restoration of civil rights, and restoration of alien status under Florida law.[18] The Rules of Executive Clemency provide that a person is not eligible for commutation of sentence until he or she has served at least one-third of the sentence imposed, or, if serving a minimum mandatory sentence, has completed at least one-half of the sentence.[19] However, the governor may waive these requirements in cases of extraordinary merit and compelling need.

The Commission provides investigatory and administrative support to the Clemency Board, but the clemency process is independent of the parole process.

Resentencing as a Result of the *Graham* Decision

In 2010, the United States Supreme Court held that it is unconstitutional for a minor who does not commit homicide to be sentenced to life imprisonment without the possibility of parole.[20] The Court stated:

> A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants . . some meaningful opportunity to obtain release based on

[14] Blueprint Comm'n, Fla. Dep't of Juvenile Justice, *Getting Smart About Juvenile Justice in Florida*, 36 (Jan. 2008), *available at* http://www.iamforkids.org/wp-content/uploads/2010/09/Recommendation_Report_Without_Appendices.pdf (last visited Feb. 15, 2012).
[15] Fla. TaxWatch, *Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force to Save More than $3 Billion*, 47 (March 2010), *available at* http://www.famm.org/Repository/Files/FL%20Tax%20Watch%20Report%2003.10.pdf (last visited Feb. 15, 2012).
[16] *See generally* BLACK'S LAW DICTIONARY 104 (2d pocket ed. 1996).
[17] Fla. Parole Comm'n, *Rules of Executive Clemency*, at 2, *available at* https://fpc.state.fl.us/PDFs/clemency_rules.pdf (last visited Feb. 15, 2012).
[18] *Id*. at 3-4.
[19] *Id*. at 9.
[20] *Graham v. Florida*, 130 S.Ct. 2011 (2010).

> demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. . . . The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.[21]

Because parole has been abolished in Florida, any recent sentence to life imprisonment is a sentence to life without parole. Therefore, the only alternative for a person sentenced to life imprisonment for release is through executive clemency. However, according to the *Graham* Court, executive clemency is a "remote possibility."[22] Accordingly, it appears that provisions for executive clemency do not satisfy the requirement that there be a "realistic opportunity to obtain release."[23]

In the absence of legislative or executive direction, some inmates who fall under the *Graham* decision have already petitioned for and received a resentencing hearing.[24] There appears to be no consolidated source for obtaining the results of these resentencing hearings. However, the results of some resentencing hearings are known from news reports. These include:

- An inmate sentenced to life for the 2005 rape of a young girl when he was 17 years old was resentenced to a split sentence of seven years in prison followed by 20 years of probation.[25]
- An inmate sentenced to four life sentences for armed robberies committed when he was 14 and 15 years old was resentenced to a term of 30 years.[26]
- An inmate sentenced to life for sexual battery with a weapon or force committed in 2008 when he was 14 was resentenced to a term of 65 years.[27]

III. Effect of Proposed Changes:

This bill, named the "Graham Compliance Act," creates an opportunity for a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense to be eligible for resentencing. A "juvenile offender" is defined as an offender who was younger than 18 years of age at the time

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[21] *Id*. at 2030.
[22] *Id*. at 2027.
[23] *Id*. at 2034.
[24] *See Cunningham v. State*, 74 So. 3d 568 (Fla. 4th DCA 2011); *Garland v. State*, 70 So. 3d 609 (Fla. 1st DCA 2010).
[25] Tom Brennan, *Rapist who was serving life sentence will get second chance*, THE TAMPA TRIBUNE, Aug. 30, 2011, *available at* http://www2.tbo.com/news/breaking-news/2011/aug/30/3/rapist-who-was-serving-life-resentenced-to-seven-y-ar-254096/ (last visited Feb. 16, 2012).
[26] John Barry, *Man who served 11 years fails to persuade Hillsborough judge to set him free*, TAMPA BAY TIMES, Oct. 6, 2011, *available at* http://www.tampabay.com/news/courts/criminal/man-who-served-11-years-fails-to-persuade-hillsborough-judge-to-set-him/1195464 (last visited Feb. 16, 2012).
[27] Alexandra Zayas, *Teenage rapist Jose Walle resentenced to 65 years in prison*, TAMPA BAY TIMES, Nov. 18, 2010, *available at* http://www.tampabay.com/news/courts/criminal/teenage-rapist-jose-walle-re-sentenced-to-65-years-in-prison/1134862 (last visited Feb. 16, 2012).

the nonhomicide offense was committed. Consistent with the opinion in *Manuel v. State*,[28] "nonhomicide offense" is defined as an offense that did not result in the death of a human being.

A juvenile offender with a life sentence must be incarcerated for 25 years before becoming eligible for resentencing under the provisions of the bill. In addition, the offender must not have received an approved disciplinary report during the three years preceding the resentencing hearing.[29] If a juvenile offender meets these criteria, the Department of Corrections (DOC or department) must request that the court of original jurisdiction hold a resentencing hearing.

Nine of the 198 inmates who are serving a life sentence for committing a nonhomicide offense when they were younger than 18 years old have already served 25 years and one more has served 24 years. Six of those 10 inmates have not had an approved disciplinary report during the last three years.[30]

The court is required to consider a number of factors in deciding whether a juvenile offender has demonstrated maturity and reform and should be resentenced. These factors are:

- Whether the juvenile offender poses the same risk to society as at the time of original sentencing;
- The wishes of the victim or the opinions of the victim's next of kin, with specific direction that the absence of the victim or next of kin at the hearing may not be a factor in the decision;
- Whether the juvenile offender was a relatively minor participant[31] in the criminal offense or acted under extreme duress or domination of another person;
- Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense;
- Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected her or his behavior;
- Whether the juvenile offender, while in the custody of the department, has aided inmates suffering from catastrophic or terminal medical, mental, or physical conditions or has prevented risk or injury to staff, citizens, or other inmates;
- Whether the juvenile offender has successfully completed any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program;
- Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before she or he committed the offense;
- The results of any mental health assessment or evaluation of the juvenile offender;
- The facts and circumstances of the offense, including its severity; and

[28] 48 So. 3d 94 (Fla. 2d DCA 2010).
[29] A disciplinary report is a document that initiates the process of disciplining an inmate for a violation of Department of Correction (DOC or department) rules. Upon receiving a disciplinary report, the inmate must be afforded administrative due process before the report is approved. The inmate's due process rights include further investigation, a hearing to determine guilt or innocence and appropriate punishment, and final review by the warden or the regional director of institutions to approve, disapprove, or modify the result of the hearing. The department's rules concerning disciplinary reports and the inmate disciplinary process are found in chs. 33-601.301 – 33-601.314 of the Florida Administrative Code.
[30] E-mail from the Dep't of Corrections, *supra* note 1.
[31] The bill does not provide guidance as to what a "relatively minor participant" means.

- Any factor that the initial sentencing court may have taken into account in relation to all other listed considerations which may be relevant to the court's determination.

The resentencing court must determine whether the juvenile offender can reasonably be believed to be fit to reenter society. If so, the court must issue an order modifying the sentence and placing the juvenile offender on probation for a minimum of five years. If the offender violates probation, the court may revoke the probation and impose any sentence that might have originally been imposed. In addition, a juvenile offender whose probation is revoked after resentencing will no longer be eligible for resentencing consideration pursuant to the provisions of the bill.

The bill provides that a juvenile offender who is not resentenced is eligible for a resentencing hearing seven years after the date of the denial and every seven years thereafter. This seven year interval is consistent with reinterview intervals for inmates who are currently eligible for parole for similar offenses. The requirement that the juvenile offender be free of disciplinary reports for three years prior to the first resentencing hearing does not appear to apply to subsequent resentencing hearings.

The bill provides that it will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Retroactivity

The bill does not state whether it is intended to apply to sentences that were imposed for crimes that were committed prior to when it becomes law. A change in a statute is presumed to operate prospectively unless there is a clear showing that it is to be applied retroactively and its retroactive application is constitutionally permissible.[32]

There are indications that this bill is intended to apply to sentences that have already been imposed. The fact that the bill is to be cited as the "Graham Compliance Act" arguably

[32] *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999); *Bates v. State*, 750 So. 2d 6, 10 (Fla. 1999).

demonstrates legislative intent that the bill is to apply retroactively to provide a "meaningful opportunity for review" for offenders affected by the *Graham* decision. The bill applies to all offenders who were younger than 18 years of age at the time the nonhomicide offense was committed.

If it is determined that the bill is intended to be applied retroactively, the second step of the analysis is to determine whether retroactive application of the statute is constitutionally permissible. Article X, section 9 of the Florida Constitution (the "Savings Clause") provides that "repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This means that the criminal statutes in effect at the time an offense was committed apply to any prosecution or punishment for that offense.[33]

The Savings Clause prevents retroactive application of a statute that affects prosecution or punishment for a crime, but does not prohibit retroactive application of a statute that is procedural or remedial in nature. The aspect of the bill that provides for a resentencing hearing is procedural or remedial in nature. Therefore, it can be applied retroactively to the extent that it allows resentencing for a punishment that would have been permissible under the law in effect at the time the offense was committed. However, a Savings Clause analysis may not be required because it could be argued that the federal constitutional protection against cruel and unusual punishment outweighs the Florida Constitution's Savings Clause.

The *Graham* Decision

According to the Florida Parole Commission (Commission), the proposed legislation may be challenged under the proposition that it does not give full effect to the *Graham* decision, which required a "meaningful opportunity" for release, because the bill requires that a juvenile offender to serve 25 years of his or her sentence before being eligible for resentencing.[34] Although the *Graham* Court stated that the "Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide" the Court also stated that "a State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." Also, in *Thomas v. State*, the court held that a sentence of concurrent terms of 50 years was not the functional equivalent of a life sentence for purposes of the Eighth Amendment.[35] Taking into account the holding in *Graham* and the fact that at least one court did not consider a 50 year sentence to violate the Eighth Amendment, it does not appear that a court would consider the 25 year minimum in the bill as denying an inmate a "meaningful opportunity" for release.

Equal Protection

Finally, this bill provides a juvenile offender who is sentenced to life imprisonment for a

[33] *See State v. Smiley*, 966 So. 2d 330 (Fla. 2007).
[34] Fla. Parole Comm'n, *supra* note 12.
[35] *Thomas v. State*, 2011 WL 6847814 (Fla. 1st DCA 2001).

nonhomicide offense an opportunity for resentencing. However, some juvenile offenders who commit nonhomicide offenses may not receive a life sentence, but rather a term-of-years sentence, such as 99 years or some other lengthy sentence. The First District Court of Appeal has stated that "at some point, a term-of-years sentence may become the functional equivalent of a life sentence."[36] If this happens, an argument could be made by a juvenile offender who receives a term-of-years sentence that is the functional equivalent to a life sentence, that he or she is similarly situated as an offender who receives a life sentence, which could implicate the equal protection clause.[37]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference reviewed the impact of House Bill 5, which is substantively similar to this bill, on the state prison population and determined that it would result in an insignificant savings.[38]

According to the Department of Corrections, nine of the 198 inmates who are serving a life sentence for committing a nonhomicide offense when they were younger than 18 years old have already served 25 years and one more has served 24 years. Six of those 10 inmates have not had an approved disciplinary report during the last three years.[39] The bill may have an impact on the court system, however, the impact should be minimal considering the number of inmates who would be eligible for resentencing under the requirements of the bill.

VI. Technical Deficiencies:

As mentioned in the "Other Constitutional Issues" section above, the bill does not specify whether it is intended to apply retroactively. The Legislature may wish to amend the bill to clarify whether it is to apply retroactively.

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[36] *Id*. at 2.

[37] The Equal Protection clause provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. See U.S. CONST. amend. XIV, s. 1 and FLA. CONST. art. I, s. 2. According to the Commission, in at least one case, a resentencing to a term-of-years sentence is being challenged as a violation of *Graham*, arguing that the term-of-years is the functional equivalent to a life without parole sentence. Fla. Parole Comm'n, *supra* note 12.

[38] Office of Economic and Demographic Research, *Criminal Justice Impact Conference, 2012 Legislature* (Feb. 9, 2012), *available at* http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm (follow "2012 Session Bills and Links to Backup Materials" hyperlink) (last visited Feb. 16, 2012).

[39] E-mail from the Dep't of Corrections, *supra* note 1.

On line 46, the bill requires the Department of Corrections to request the court to "hold a resentencing hearing for that *juvenile*." Because the bill requires the inmate to have served at least 25 years before being eligible for a resentencing hearing, the inmate will no longer be a "juvenile." For clarification and consistency, the Legislature may wish to amend the bill to use the term "juvenile offender" on line 46. Additionally, on line 88 of the bill, the term "offender" is used and, for consistency purposes, the Legislature may wish to amend the bill to use the term "juvenile offender."

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 9, 2012:
The committee substitute provides for a resentencing hearing by the sentencing court and potential release on probation rather than consideration for parole by the Parole Commission.

B. Amendments:

Barcode 707054 by Children, Families, and Elder Affairs on February 22, 2012:
Reduces the time period that a juvenile offender must serve before being eligible for a resentencing hearing from 25 years to 15 years.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

707054

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/22/2012	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Dockery) recommended the following:

1 **Senate Amendment**
2
3 Delete line 35
4 and insert:
5 resentencing under this section, she or he must have served 15

By the Committee on Criminal Justice; and Senator Oelrich

591-03214-12 2012212c1

A bill to be entitled

An act relating to juvenile offenders; providing a short title; providing definitions; providing that a juvenile offender who was younger than 18 years of age at the time of commission of a nonhomicide offense and who is sentenced to life imprisonment is eligible for resentencing if the offender has been incarcerated for a minimum period; requiring an initial resentencing hearing to determine whether the juvenile offender has demonstrated maturity and reform for resentencing; providing criteria to determine maturity and reform; requiring a minimum term of probation for any juvenile offender resentenced by the court; providing consequences for probation violations; providing eligibility for a subsequent resentencing hearing after a specified period for juvenile offenders denied resentencing; providing an effective date.

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

Section 1. This act may be cited as the "Graham Compliance Act."

Section 2. Juvenile offender resentencing.—

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

(a) "Juvenile offender" means an offender who was younger than 18 years of age at the time the nonhomicide offense was committed.

(b) "Nonhomicide offense" means an offense that did not result in the death of a human being.

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

591-03214-12 2012212c1

(2) Notwithstanding any other law to the contrary, a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible for resentencing as provided in this section.

(3) Before a juvenile offender may be eligible for resentencing under this section, she or he must have served 25 years of incarceration for the offense for which resentencing is sought. The initial resentencing hearing and any subsequent resentencing hearing may occur only if the juvenile offender has received no approved disciplinary reports for at least 3 years before the scheduled resentencing hearing.

(4) The Department of Corrections shall screen juvenile offenders committed to the department for their eligibility to participate in a resentencing hearing using the criteria in subsection (3). If a juvenile offender meets the eligibility requirements, the department shall request the court of original jurisdiction to hold a resentencing hearing for that juvenile.

(5) In determining whether a juvenile offender has demonstrated maturity and reform and whether she or he should be resentenced, the court conducting a resentencing hearing must consider all of the following:

(a) Whether the juvenile offender poses the same level of risk to society as at the time of initial sentencing.

(b) The wishes of the victim or the opinions of the victim's next of kin. The absence of the victim or victim's next of kin from the resentencing hearing may not be a factor in the court's determination under this section.

(c) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme

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

59 duress or domination of another person.
60 (d) Whether the juvenile offender has shown sincere and
61 sustained remorse for the criminal offense.
62 (e) Whether the juvenile offender's age, maturity, and
63 psychological development at the time of the offense affected
64 her or his behavior.
65 (f) Whether the juvenile offender, while in the custody of
66 the department, has aided inmates suffering from catastrophic or
67 terminal medical, mental, or physical conditions or has
68 prevented risk or injury to staff, citizens, or other inmates.
69 (g) Whether the juvenile offender has successfully
70 completed any General Educational Development or other
71 educational, technical, work, vocational, or self-rehabilitation
72 program.
73 (h) Whether the juvenile offender was a victim of sexual,
74 physical, or emotional abuse before she or he committed the
75 offense.
76 (i) The results of any mental health assessment, risk
77 assessment, or evaluation of the juvenile offender.
78 (j) The facts and circumstances of the offense for which
79 the life sentence was imposed, including the severity of the
80 offense.
81 (k) Any factor that the sentencing court may have taken
82 into account at the initial sentencing hearing in relation to
83 all other considerations listed in this section which may be
84 relevant to the court's determination.
85 (6) If the court determines at the resentencing hearing
86 that the juvenile offender can reasonably be believed to be fit
87 to reenter society, the court must issue an order modifying the

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

88 sentence imposed and placing the offender on probation for a
89 term of at least 5 years. If the juvenile offender violates the
90 conditions of her or his probation, the court may revoke
91 probation and impose any sentence that it might have originally
92 imposed and the juvenile offender is no longer eligible for a
93 resentencing hearing pursuant to this section.
94 (7) A juvenile offender who is not resentenced under this
95 section at the initial resentencing hearing is eligible for a
96 resentencing hearing 7 years after the date of the denial and
97 every 7 years thereafter.
98 Section 3. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator Ronda Storms, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: February 9, 2012

I respectfully request that **Senate Bill # 212**, relating to Parole for Juvenile Offenders, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Steve Oelrich

Senator Steve Oelrich
Florida Senate, District 14

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Senate Committee
Children and Families

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S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/22/12
Meeting Date

Topic: Sentencing for juvenile offenders
Bill Number: 212 *(if applicable)*
Name: Nancy Daniels
Amendment Barcode: *(if applicable)*
Job Title: Public Defender, 2nd Judicial Circuit
Address: Leon County Courthouse, 301 S. Monroe St
Street
Tallahassee, FL 32301
City *State* *Zip*
Phone: 850 606-1010
E-mail: nancydaniels@flpd2.com

Speaking: [✓] For [✓] Against [✓] Information

Representing: Florida Public Defender Association

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02-22-12
Meeting Date

Topic: JUVENILE OFFENDER
Bill Number: 212 *(if applicable)*
Name: SHANE SUMMERS
Amendment Barcode: *(if applicable)*
Job Title: CAPTAIN
Address: P.O. BOX 569
Street
ORLANDO FL 32120
City *State* *Zip*
Phone: 386-736-5961
E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing: FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/22/12
Meeting Date

Topic: Juvenile Offenders

Bill Number: 212 *(if applicable)*

Name: Sheila Hopkins

Amendment Barcode: _____ *(if applicable)*

Job Title: Associate Director

Address: 201 W. Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 205-6826

E-mail: shopkins@flacath.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: Fl. Catholic Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/22/11
Meeting Date

Topic: Juvenile Justice

Bill Number: SB 212 *(if applicable)*

Name: Earl Moreland

Amendment Barcode: _____ *(if applicable)*

Job Title: State Attorney 12th Circuit

Address: _____
Street

Sarasota
City *State* *Zip*

Phone: _____

E-mail: _____

Speaking: ☑ For ☐ Against ☐ Information

Representing: Florida Prosecutors Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/22
Meeting Date

Topic: Juvenile Offenders

Bill Number: SB 212 (if applicable)

Name: Reggie Garcia

Amendment Barcode: (if applicable)

Job Title: —

Address: PO Box 11069
Street

Tall 32302
City State Zip

Phone:

E-mail:

Speaking: ☐ For ☐ Against ☒ Information

Representing: Law Firm of Reginald R. Garcia, P.A.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-22-12
Meeting Date

Topic: Juvenile Offenders

Bill Number: 212 (if applicable)

Name: Frank Kruesmann

Amendment Barcode: (if applicable)

Job Title:

Address: 2901 Tk Bradford
Street

Tall FL
City State Zip

Phone: 576-5858

E-mail:

Speaking: ☒ For ☐ Against ☐ Information

Representing: Florida Sheriffs Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 282

INTRODUCER: Health Regulation Committee and Senators Wise and Storms

SUBJECT: Health Care Transition Programs

DATE: February 21, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Fav/CS**
2.	Preston	Farmer	CF	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill establishes a program called the Florida Health And Transition Services (FloridaHATS) in the Department of Health (DOH or department) Division of Children's Medical Services (CMS) Network to oversee health care transitional services in Florida for adolescents and young adults (individuals who are 12 to 26 years of age) with special health care needs. The bill assigns certain responsibilities to the program.

This bill creates one undesignated section of law.

II. Present Situation:

Health Care Transition

It is only recently that children and youth with disabilities and complex health conditions have survived to adulthood in relatively large numbers. There has been growing recognition that health care transition is a critical aspect of successful entry of these youth to adulthood. Taking responsibility for one's own health care is part of growing up and becoming independent. Health care transition has been defined by at least one group of researchers as the purposeful planned

movement of adolescents and young adults with chronic physical and medical conditions from child-centered to adult-oriented health care systems.[1] Successful health care transition supports economic self-sufficiency, independence, and prevents school dropout and delinquency.[2]The challenges of transition to adulthood are especially difficult for adolescents and young adults with special health care needs. As a result there is increasing interest in services and supports for young people with disabilities and chronic health conditions that address all aspects of health and well-being.[3]

In 2006, the legislature provided a non-recurring appropriation of $300,000[4] to support a pilot program to develop transition services for adolescents and young adults with disabilities residing in Duval (Jacksonville), Baker, Clay, Nassau and St. Johns Counties. The resulting Jacksonville Health And Transition Services (JaxHATS) program serves teens and young adults, ages 16 to 26 with chronic medical or developmental problems.[5] In FY 2010-2011, JaxHATS recorded a total of 1,014 visits by 909 patients. The patients ranged in age from 14 through 25 years, although 67 percent were in the age group of 20 to 25 years old.[6]

Services provided by JaxHATS include primary care and care coordination up to age 26, as well as, referrals to adult medical homes, specialty physicians, and other transition-related services (e.g., education, employment, and independent living).[7] JaxHATS data indicate that patients who are well established within their program have significant decreases in reported emergency room visits and inpatient hospitalizations.[8] The CMS continues to contract with the University of Florida for a total of $100,000 per year to pay for a portion of the JaxHATS staffing and clinic expenses.[9]

Florida Health Care Transition Services Task Force for Youth and Young Adults with Disabilities

In 2008, the legislature required the DOH to create a statewide Health Care Transition Services Task Force for Youth and Young Adults with Disabilities.[10] The charge to the task force was to "assess the need for health care transition services for youth with disabilities, develop strategies

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[1] Blum, RW; Garell, D; Hodgman, CH; Jorissen, TW; Okinow, NA; Orr, DP; and Slap, GB. *Transition from Child-Centered to Adult Health-Care Systems for Adolescents with Chronic Conditions, A Position Paper of the Society for Adolescent Medicine*. Journal of Adolescent Health, 1993, Vol. 14, No. 7, p. 570-576. Found at: http://download.journals.elsevierhealth.com/pdfs/journals/1054-139X/PII1054139X9390143D.pdf. (Last visited on February 16, 2012).

[2] Florida Health Care Transition Services Task Force for Youth and Young Adults with Disabilities, *Report and Recommendations, Ensuring Successful Transition from Pediatric to Adult Health Care*, January 1, 2009. Found at: <http://www.floridahats.org/?page_id=587> (Last visited on February 9, 2012).

[3] *Supra* footnote 1.

[4] *See* proviso language in line item 623 of the General Appropriations Act for FY 2006-2007, Chapter 2006-25, L.O.F.

[5] JaxHATS, *Welcome to JaxHATS*. Found at: <http://jaxhats.ufl.edu/index.php> (Last visited on February 9, 2012).

[6] *See* Department of Health Bill Analysis, Economic Statement and Fiscal Note for SB 282, on file with the Senate Health Regulation Committee.

[7] *Id.*

[8] *Id*. Prior to enrollment in JaxHATS in 2005, patients averaged 0.90 ER visits per year. That figure decreased to 0.38 visits per patient after one year in the program, and has continued to a current average of 0.22. Similarly, the proportion of patients who are hospitalized annually has dropped from 44% prior to program enrollment in 2005, to a current figure of 16%.

[9] *Id*.

[10] Chapter 2008-211, L.O.F.

to ensure successful transition from the pediatric to the adult health care system, and identify existing and potential funding sources." The task force submitted its final report on December 30, 2008.[11] The report contained 16 recommendations, including a recommendation to "leverage CMS's infrastructure and federally mandated responsibility for health care transition planning to establish a state Office of Health Care Transition within CMS that guides, monitors, and supports local public/private transition coalitions . . ."

While the legislatively mandated task force dissolved on December 30, 2008, workgroup members continued with strategic plan development[12] based on findings and recommendations in the legislative report. In 2009, the program was officially named Florida Health And Transition Services, or FloridaHATS. Implementation activities outlined in the strategic plan have included the development of an insurance guide for young adults in Florida, an online training program for professionals, and regional health care transition coalitions (HillsboroughHATS and PanhandleHATS, in addition to JaxHATS). A strategic planning guide for regional coalitions was created to help communities in building local systems of care.[13]

Children's Medical Services

The CMS program in the DOH provides children with special health care needs a family-centered, comprehensive, and coordinated statewide managed system of care that links community-based health care with multidisciplinary, regional, and tertiary pediatric care. Children with special health care needs are those children under age 21 whose serious or chronic physical or developmental conditions require extensive preventive and maintenance care beyond that required by typically healthy children.[14]

The program provides services through two divisions, the Division of CMS Network and Related Programs and the Division of CMS Prevention and Intervention. The Division of CMS Network and Related Programs provides a continuum of early identification, screening, medical, developmental, and supporting services for eligible children with special health care needs. The CMS Division of Prevention and Intervention promotes the safety and well being of Florida's children by providing specialized services to children with special health care needs associated with child abuse and neglect.[15]

Services are provided through 22 CMS area offices, 15 Early Steps offices, and contracted programs located throughout the state. A team of trained nursing and social work professionals and support staff at each CMS area office coordinate primary and specialty care services with the family through their local medical community.[16]

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[11] *Supra* footnote 2.
[12] Florida Strategic Plan for Health Care Transition, 11/1/2010. Found at: <http://www.floridahats.org/wp-content/uploads/2010/03/OnePageVisual_11-1-10.pdf> (Last visited on February 9, 2012).
[13] FloridaHATS, *About FloridaHATS, Background*. Found at: <http://www.floridahats.org/?page_id=587> (Last visited on February 9, 2012).
[14] Children's Medical Services Network. Found at: http://www.cms-kids.com/families/health_services/cms_network_home.html. (Last visited on February 17, 2012.
[15] Children's Medical Services Network. Division of Prevention and Intervention. Found at: http://www.cms-kids.com/families/child_protection_safety/child_protection_safety.html. (Last visited on February 17, 2012.
[16] Children's Medical Services Network. Found at: http://www.cms-kids.com/families/health_services/cms_network_home.html. (Last visited on February 17, 2012.

The CMS currently provides transition education and assistance through its existing care coordination and provider systems. However, once a young adult reaches age 21, these services are no longer available.

Title V of the Social Security Act

Since its inception in 1935, the Maternal and Child Health Services Block Grant (Title V of the Social Security Act) has provided a foundation for ensuring the health of America's mothers and children. Title V provides funding to state maternal and child health programs, which serve 35 million women and children in the United States.[17]

Title V block grants are provided to states to enable them, among other things, to provide and to promote family-centered, community-based, coordinated care (including care coordination services) for children with special health care needs and to facilitate the development of community-based systems of services for these children and their families. Care coordination means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.[18]

Every state and the District of Columbia have a Title V Program for Children with Special Health Care Needs that is funded, in part, through the Maternal and Child Health block grants. The CMS administers Florida's Title V Program for Children with Special Health Care Needs.

III. Effect of Proposed Changes:

The bill creates an undesignated section of law relating to health care transition programs and services for adolescents and young adults who have special health care needs.

The bill states that it is the intent of the Legislature to provide a strategic and comprehensive approach to the development and implementation of effective health care transition programs and services for adolescents and young adults who have special health care needs. The bill gives recognition to the plan developed by the Health Care Transition Services Task Force for Youth and Young Adults with Disabilities pursuant to chapter 2008-211, Laws of Florida.

The bill establishes a program called the Florida Health And Transition Services (FloridaHATS) in the Division of CMS Network of the DOH to oversee transitional services in Florida. This program will be responsible for:

- Developing and overseeing a planning and implementation process and the necessary guides for use by community providers and organizations in developing coordinated systems of services for adolescents and young adults who have special health care needs.

[17] U.S. Department of Health and Human Services. Health Resources and Services Administration. Maternal and Child Health. Found at: http://mchb.hrsa.gov/programs/titlevgrants/index.html. (Last visited on February 17, 2012).
[18] *See* 42 U.S.C. §701

- Developing and disseminating resource guides that outline the various public and private health care financing options, including commercial insurance, and the respective health care benefits.
- Coordinating with educational institutions, including medical centers, to identify and make available for health care providers existing training programs regarding the principles, objectives, and methods for the successful transition of adolescents and young adults who have special health care needs to adult health care providers.
- Maintaining and updating the FloridaHATS's website with web-based materials related to health care transition services.
- Collecting and disseminating information in specific clinical areas concerning evidence-based practices and best practices for providing health care transition services.
- Providing technical assistance to entities that are involved in the development and implementation of systems of services for adolescents and young adults who have special health care needs.
- Developing and disseminating quality improvement and evaluation components to other health care providers, which components must include a common or comparable set of performance measures for all entities that provide health care transition services.
- Establishing a network of experts in the fields of pediatric and adolescent medicine, adult medicine, and allied health to provide technical assistance and recommendations regarding best practices and policy guidance in health care transition.

The bill defines the term "adolescents and young adults who have special health care needs" as individuals who are 12 through 26 years of age; who have chronic physical, developmental, behavioral, or emotional conditions; and who require health care or related services of a type or amount beyond that which is generally required by adolescents or young adults. The effect of this provision is that CMS would be authorized to extend care coordination support for young adults who have special health care needs from the age of 21 through 26 years of age.

The effective date of the bill is July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Some of the activities assigned to the FloridaHATS program in the bill would appear to require funding, however, some of these activities have already been completed, or partially completed, with existing funding. The department proposes using existing funds to establish the oversight of FloridaHATS and does not expect any impact on state revenue. The bill authorizes oversight of transition services only, not the provision of medical services to young adults from age 21 through age 26.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 9, 2012:
The CS limits the activities of the DOH with regard to health care transition programs and services for adolescents and young adults who have special health care needs to overseeing transitional services, not providing clinical services. The CS also removes several activities assigned to the department in the original bill that had a fiscal impact.

B. Amendments:

None.

By the Committee on Health Regulation; and Senators Wise and Storms

588-03228-12 2012282c1

A bill to be entitled

An act relating to health care transition programs and services for adolescents and young adults who have special health care needs; providing legislative intent; establishing a program within the Division of Children's Medical Services Network in the Department of Health to oversee transitional services in this state using existing state plans in order to implement health care transition programs for adolescents and young adults who have special health care needs; specifying responsibilities of the program with respect to the oversight, implementation, and coordination of the program; providing an effective date.

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

Section 1. Legislative intent; health care transition programs and services for adolescents and young adults who have special health care needs.—

(1) It is the intent of the Legislature to provide a strategic and comprehensive approach to the development and implementation of effective health care transition programs and services for adolescents and young adults who have special health care needs. The Health Care Transition Services Task Force for Youth and Young Adults with Disabilities developed a statewide plan to promote the development of such health care transition services, in accordance with chapter 2008-211, Laws of Florida, and outlined the plan in its subsequent report.

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

588-03228-12 2012282c1

(2) A program called the Florida Health And Transition Services (FloridaHATS) is established within the Division of Children's Medical Services Network to oversee transitional services in this state using existing state plans in order to implement effective transition services for adolescents and young adults who have special health care needs. As used in this section, the term "adolescents and young adults who have special health care needs" means individuals who are 12 through 26 years of age; who have chronic physical, developmental, behavioral, or emotional conditions; and who require health care or related services of a type or amount beyond that which is generally required by adolescents or young adults. FloridaHATS shall be responsible for:

(a) Developing and overseeing a planning and implementation process and the necessary guides for use by community providers and organizations in developing coordinated systems of services for adolescents and young adults who have special health care needs.

(b) Developing and disseminating resource guides that outline the various public and private health care financing options, including commercial insurance, and the respective health care benefits.

(c) Coordinating with educational institutions, including medical centers, to identify and make available for health care providers existing training programs regarding the principles, objectives, and methods for the successful transition of adolescents and young adults who have special health care needs to adult health care providers.

(d) Maintaining and updating the FloridaHATS's website with

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

59 web-based materials related to health care transition services
60 which can be used by adolescents and young adults who have
61 special health care needs and their families, providers, and
62 others involved in health care transition.
63 (e) Collecting and disseminating information in specific
64 clinical areas concerning evidence-based practices and best
65 practices for providing health care transition services for
66 adolescents and young adults who have special health care needs.
67 (f) Providing technical assistance to communities,
68 providers, and organizations that are involved in the
69 development and implementation of systems of services for
70 adolescents and young adults who have special health care needs.
71 (g) Developing and disseminating quality improvement and
72 evaluation components to other health care providers. The
73 quality improvement and evaluation components must include a
74 common or comparable set of performance measures for all
75 entities that provide health care transition services for
76 adolescents and young adults who have special health care needs.
77 (h) Establishing a network of experts in the fields of
78 pediatric and adolescent medicine, adult medicine, and allied
79 health to provide technical assistance and recommendations
80 regarding best practices and policy guidance in health care
81 transition.
82 Section 2. This act shall take effect July 1, 2012.

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

The Florida Senate

Committee Agenda Request

RECEIVED
FEB 1 2012
Senate Committee
Children and Families

To: Senator Ronda Storms, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: February 12, 2012

I respectfully request that **Senate Bill #282**, relating to Health Care Transition/Adolescents and Young Adults/Special Health Care Needs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Stephen Wise

Senator Stephen R. Wise
Florida Senate, District 5

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-22-12
Meeting Date

Topic: Health Care Transition SB 282

Bill Number: CS/SB 282 *(if applicable)*

Name: Margaret J. Hooper MSW

Amendment Barcode: *(if applicable)*

Job Title: Public Policy Coordinator

Address: 124 Marriott Drive #203
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-921-7263

E-mail: ~~Margaret J.H~~ MargaretH@FDDC.org

Speaking: [x] For [ ] Against [ ] Information

Representing:

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 22nd
Meeting Date

Topic: Health Care transitions

Bill Number: SB 282 *(if applicable)*

Name: Mindy Haas

Amendment Barcode: *(if applicable)*

Job Title: Vice President Florida PTA

Address: 1747 Orlando Central Pkwy
Street

Orlando Florida 32809
City *State* *Zip*

Phone: 800-373-5782

E-mail: regions council@flpta.org

Speaking: [x] For [ ] Against [ ] Information

Representing: FLORIDA PTA

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 914

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Oelrich

SUBJECT: Suspension of Driver Licenses and Motor Vehicle Registrations

DATE: February 23, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Fav/CS**
2.			TR	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill amends Florida law relating to the suspension of driver's licenses and motor vehicle registration. The bill provides that a court must find that an obligor has the present ability to pay before approving a schedule of payment as a condition for an obligor to obtain a license for driving privileges restricted to business purposes only. Also, a court can only direct the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's license if the obligor fails to comply with the schedule of payment *and* if the obligor has the present ability to pay. If a person's driver's license and registration have been suspended, the person may petition for relief in order to obtain a license restricted to business purposes only.

Additionally, the bill directs the DHSMV to reinstate the driving privilege – for business purposes only – and allow registration of a motor vehicle of an obligor if the DHSMV receives an electronic notification stating that a court has ordered the reinstatement of the license because the obligor has agreed to a schedule of payment on child support arrearages and to maintain support obligations.

This bill amends the following sections of the Florida Statutes: 61.13016, 322.058, and 409.256.

II. Present Situation:

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR or department) since 1994. A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act.[1] The department provides services under the federally required program in 65 counties and through contracts in two counties.[2]

Child support orders are enforced by DOR, as well as the receipt and disbursement of collections. In 2009, over $1.41 billion was collected and distributed, with 98 percent of collections distributed within 24 hours. Of all parents in the DOR caseload, fewer than 30 percent pay their full child support obligation on a monthly basis. In addition, DOR initiated enforcement actions on 92 percent of the support collections eventually received.[3]

The department has several methods for trying to collect past due child support. One method available to DOR is to suspend the obligor's driver's license.[4] Pursuant to s. 61.13016, F.S., a person (the obligor) who is 15 days delinquent in paying child support may have his or her driver's license suspended after notice and an opportunity for a hearing in circuit court. The obligor may avoid suspension by paying the full amount of the delinquency, entering into a written agreement to pay the past due amount,[5] or filing a petition in circuit court to contest suspension.[6] Although not provided for in statute, DOR also allows an obligor to begin paying a delinquent support order by income deduction in order to avoid license suspension. According to DOR, income deduction is the most reliable way to obtain child support payments.[7]

If an obligor timely files a petition with the circuit court, the court has the discretion to direct the issuance of a driver's license that is restricted to business purposes only. A driving privilege "restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church or medical purposes.[8] The court may only issue the restricted license if the obligor agrees to a schedule for payment on any arrearages and to maintain current child support obligations.[9] If the obligor fails to comply with the schedule of payment, the court shall direct the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's driver's license.

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[1] *See* s. 61.046(9), F.S.
[2] Miami-Dade County cases are handled by the state attorney's office, and Manatee County cases are handled by the clerk of court.
[3] *See* Comm. on Judiciary, *Bill Analysis and Fiscal Impact Statement, CS/CS/SB 694* (Mar. 29, 2010), *available at* http://archive.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s0694.ju.pdf (last visited Feb. 1, 2012).
[4] Section 322.01(17), F.S., defines a "driver's license" as a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes and operator's license as defined in 49 U.S.C. s. 30301.
[5] The agreement for repayment is entered into by the obligor and the obligee in non-Title IV-D cases, or by the obligor and the Title IV-D agency (DOR) in Title IV-D cases.
[6] Section 61.13016(1)(c), F.S.
[7] E-mail from Debbie Thomas, Dep't of Revenue, to Senate professional staff (Dec. 12, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[8] Section 322.271(1)(c)1., F.S.
[9] Section 61.13016(2), F.S.

If the obligor does not pay the delinquency, enter into a payment agreement, or file a motion to contest, the Title IV-D agency, or the depository or clerk of the court, shall file the notice of the delinquency with DHSMV and request the suspension of the obligor's driver's license and motor vehicle registration.[10]

Once a suspension is in place, the license and registration must be reinstated if the Title IV-D agency, or the depository or clerk of the court, provides an affidavit to DHSMV stating that:

- The person has paid the delinquency;
- The person has reached a written agreement for payment; or
- A court has entered an order granting relief to the obligor ordering reinstatement.[11]

III. Effect of Proposed Changes:

This bill amends Florida law relating to the suspension of driver licenses and motor vehicle registration. First, the bill amends s. 61.13016, F.S., to provide that a court must find that an obligor has the present ability to pay before approving a schedule of payment as a condition for an obligor to obtain a license for driving privileges restricted to business purposes only. Also, a court can only direct the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's license if the obligor fails to comply with the schedule of payment *and* if the obligor has the present ability to pay. Accordingly, it appears that under the bill, the court cannot direct DHSMV to suspend an obligor's driver license if the obligor fails to comply with the schedule of payment, but he or she does not have the present ability to pay.

Additionally, the bill adds a provision to s. 61.13016, F.S., that provides that a person whose driver license and registration have been suspended may petition the court for a payment plan that would allow a business use license.

The bill also amends s. 322.058, F.S., requiring the DHSMV to reinstate the driving privilege – for business purposes only – and allow registration of a motor vehicle of an obligor if the Title IV-D agency, or the depository or clerk of the court, provides an electronic notification to the DHSMV stating that the court has ordered the reinstatement of the license because the obligor has agreed to a schedule of payment on child support arrearages and to maintain support obligations. In addition, the DHSMV must reinstate the *full* driving privilege if the Title IV-D agency, or the depository or clerk of the court, provides an electronic notification stating that the person has paid the delinquency, the person has reached a written agreement for payment, or the court has entered an order granting relief.

Finally, the bill changes the term "driver's license" to "driver license" in certain provisions of law, and the bill also makes other technical and conforming changes.

The bill provides an effective date of July 1, 2012.

[10] Section 61.13016(3), F.S.
[11] Section 322.058(2), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles estimates non-recurring reprogramming costs of $8,000 to implement the bill.[12]

According to the Department of Revenue, there should not be a fiscal impact on the department.[13]

The bill requires a court to find that an obligor has the present ability to pay the schedule of payments for any child support arrearages and the current child support obligation before approving a schedule of payment. According to the Office of the State Courts Administrator, this requirement should have a minimal impact on judicial or court workload.[14]

VI. Technical Deficiencies:

According to the DHSMV, it is unclear how it will receive notification to allow an obligor to upgrade from a business purposes only license to an unrestricted license.

---

[12] Dep't of Highway Safety and Motor Vehicles, *Agency Bill Analysis, HB 1023* (Dec. 30, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs). HB 1023, prior to being amended, was identical to SB 914.
[13] Dep't of Revenue, *2012 Bill Analysis, SB 914* (Dec. 27, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[14] Office of the State Courts Admin., *2012 Judicial Impact Statement, SB 914* (Dec. 7, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

Currently, if the DHSMV issues a license with business purposes only restrictions, the restrictions have an expiration date.[15]

Also, the bill changes the term "driver's license" to "driver license" in ss. 61.13016, 322.058, and 409.256, F.S. Chapter 322, F.S., currently defines the term "driver's license" (rather than "driver license"); however, the bill does not amend this definition, nor does it change the terminology throughout the entire chapter. The Legislature may wish to amend the definition of "driver's license" within ch. 322, F.S., as well as change the terminology throughout ch. 322, F.S., in order to avoid any conflict or inconsistencies in interpretation.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 22, 2012:
The committee substitute provides that an obligor whose driver's license and registration has already been suspended may petition the court for a payment plan that would allow a business use only license. Additionally, the committee substitute provides for electronic notification – in lieu of an affidavit – from the Department of Revenue to the Department of Highway Safety and Motor Vehicles for reinstatement of a license or registration. Finally, the committee substitute makes technical changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[15] Dep't of Highway Safety and Motor Vehicles, *supra* note 12.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Dockery) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 136 - 211
4 and insert:
5
6 (6) A person whose driver license and registration have
7 been suspended under this section may petition for relief under
8 subsection (2). A petition under this subsection does not act as
9 a stay of any suspension.
10 Section 2. Subsection (2) of section 322.058, Florida
11 Statutes, is amended to read:
12 322.058 Suspension of driving privileges due to support

718638

13 delinquency; reinstatement.—
14 (2)(a) The department must reinstate the full driving
15 privilege and allow registration of a motor vehicle when the
16 Title IV-D agency in IV-D cases or the depository or the clerk
17 of the court in non-IV-D cases provides to the department an
18 electronic notification ~~affidavit~~ stating that:
19 1.~~(a)~~ The person has paid the delinquency;
20 2.~~(b)~~ The person has reached a written agreement for
21 payment with the Title IV-D agency or the obligee in non-IV-D
22 cases;
23 3.~~(c)~~ A court has entered an order granting relief to the
24 obligor ordering the reinstatement of the license and motor
25 vehicle registration; or
26 4.~~(d)~~ The person has complied with the subpoena, order to
27 appear, order to show cause, or similar order.
28 (b) The department must reinstate the driving privilege
29 restricted to business purposes only and allow registration of a
30 motor vehicle when the Title IV-D agency in IV-D cases or the
31 depository or the clerk of the court in non-IV-D cases provides
32 to the department electronic notification stating that a court
33 has entered an order granting relief to the obligor ordering the
34 reinstatement of the license restricted to business purposes
35 only and motor vehicle registration pursuant to s. 61.13016(2)
36 or (6).
37
38 ========== T I T L E A M E N D M E N T ==========
39 And the title is amended as follows:
40
41 Delete lines 17 - 30

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42 and insert:
43
44 obligor has the ability to pay; specifying that an
45 obligor whose license and registration have been
46 suspended may apply to the court for a license for
47 business purposes only if the obligor agrees to make
48 payments against the arrearage; amending s. 322.058,
49 F.S.; requiring that the Department of Highway Safety
50 and Motor Vehicles reinstate the driving privilege and
51 allow the registration of a motor vehicle of a person
52 who has a delinquent support obligation or who has
53 failed to comply with a subpoena, order to appear,
54 order to show cause, or similar order, if the Title
55 IV-D agency in IV-D cases, or the depository or the
56 clerk of the court in non-IV-D cases, provides
57 electronic notification to the department stating that
58 the court has directed that the person be issued a
59 driver license restricted to business purposes only;
60 providing an effective date.

By Senator Oelrich

14-00681-12 2012914__

A bill to be entitled

An act relating to suspension of driver licenses and motor vehicle registrations; amending s. 61.13016, F.S.; revising provisions providing for an obligor who is delinquent in support payments to petition the circuit court to direct the Department of Highway Safety and Motor Vehicles to issue to the obligor a driver license restricted to business purposes only; requiring that the court, before approving a schedule for an obligor's delinquent support payments, find that the obligor has the present ability to pay the child support arrearage and support obligation; requiring that the court direct the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver license if the obligor fails to comply with the schedule of payments and if the obligor has the ability to pay; amending s. 322.058, F.S.; requiring that the Department of Highway Safety and Motor Vehicles reinstate the driving privilege and allow registration of a motor vehicle of a person who has a delinquent support obligation or who has failed to comply with a subpoena, order to appear, order to show cause, or similar order, if the Title IV-D agency in IV-D cases, or the depository or the clerk of the court in non-IV-D cases, provides an affidavit to the department stating that the court has directed that the person be issued a license for driving privileges restricted to business purposes only; amending s. 409.256, F.S.; revising provisions to conform to

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

14-00681-12 2012914__

changes made by the act; providing an effective date.

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

Section 1. Section 61.13016, Florida Statutes, is amended to read:

61.13016 Suspension of driver ~~driver's~~ licenses and motor vehicle registrations.—

(1) The driver ~~driver's~~ license and motor vehicle registration of a support obligor who is delinquent in payment or who has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings may be suspended. When an obligor is 15 days delinquent making a payment in support or failure to comply with a subpoena, order to appear, order to show cause, or similar order in IV-D cases, the Title IV-D agency may provide notice to the obligor of the delinquency or failure to comply with a subpoena, order to appear, order to show cause, or similar order and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. When an obligor is 15 days delinquent in making a payment in support in non-IV-D cases, and upon the request of the obligee, the depository or the clerk of the court must provide notice to the obligor of the delinquency and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. ~~In either case,~~ The notice must state:

(a) The terms of the order creating the support obligation;

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59 (b) The period of the delinquency and the total amount of
60 the delinquency as of the date of the notice or describe the
61 subpoena, order to appear, order to show cause, or other similar
62 order that ~~which~~ has not been complied with;
63 (c) That notification will be given to the Department of
64 Highway Safety and Motor Vehicles to suspend the obligor's
65 driver ~~driver's~~ license and motor vehicle registration unless,
66 within 20 days after the date the notice is mailed, the obligor:
67 1.a. Pays the delinquency in full and any other costs and
68 fees accrued between the date of the notice and the date the
69 delinquency is paid;
70 b. Enters into a written agreement for payment with the
71 obligee in non-IV-D cases or with the Title IV-D agency in IV-D
72 cases; or in IV-D cases, complies with a subpoena or order to
73 appear, order to show cause, or a similar order; or
74 c. Files a petition with the circuit court to contest the
75 delinquency action; and
76 2. Pays any applicable delinquency fees.
77
78 If the obligor in non-IV-D cases enters into a written agreement
79 for payment before the expiration of the 20-day period, the
80 obligor must provide a copy of the signed written agreement to
81 the depository or the clerk of the court.
82 (2)(a) If the obligor files a ~~Upon~~ petition ~~filed by the~~
83 ~~obligor~~ in the circuit court within 20 days after the mailing
84 date of the notice, the court may~~, in its discretion,~~ direct the
85 department to issue a license for driving privileges restricted
86 to business purposes only, as defined by s. 322.271, if the
87 person is otherwise qualified for such a license. As a condition

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88 for the court to exercise its discretion under this subsection,
89 the obligor must agree to a schedule of payment on any child
90 support arrearages and to maintain current child support
91 obligations. Before approving the schedule of payment, the court
92 must find that the obligor has the present ability to pay the
93 schedule of payment for the child support arrearage and the
94 current child support obligation.
95 (b) If the obligor fails to comply with the schedule of
96 payment and if the obligor has the present ability to do so, the
97 court shall direct the Department of Highway Safety and Motor
98 Vehicles to suspend the obligor's driver ~~driver's~~ license.
99 (c) ~~(b)~~ The obligor must serve a copy of the petition on the
100 Title IV-D agency in IV-D cases or on the depository or the
101 clerk of the court in non-IV-D cases. When an obligor timely
102 files a petition to set aside a suspension, the court must hear
103 the matter within 15 days after the petition is filed. The court
104 must enter an order resolving the matter within 10 days after
105 the hearing, and a copy of the order must be served on the
106 parties. The timely filing of a petition under this subsection
107 stays the intent to suspend until the entry of a court order
108 resolving the matter.
109 (3) If the obligor does not, within 20 days after the
110 mailing date on the notice, pay the delinquency, enter into a
111 payment agreement, comply with the subpoena, order to appear,
112 order to show cause, or other similar order, or file a motion to
113 contest, the Title IV-D agency in IV-D cases, or the depository
114 or clerk of the court in non-IV-D cases, shall file the notice
115 with the Department of Highway Safety and Motor Vehicles and
116 request the suspension of the obligor's driver ~~driver's~~ license

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117 and motor vehicle registration in accordance with s. 322.058.
118 (4) The obligor may, within 20 days after the mailing date
119 on the notice of delinquency or noncompliance and intent to
120 suspend, file in the circuit court a petition to contest the
121 notice of delinquency or noncompliance and intent to suspend on
122 the ground of mistake of fact regarding the existence of a
123 delinquency or the identity of the obligor. The obligor must
124 serve a copy of the petition on the Title IV-D agency in IV-D
125 cases or depository or clerk of the court in non-IV-D cases.
126 When an obligor timely files a petition to contest, the court
127 must hear the matter within 15 days after the petition is filed.
128 The court must enter an order resolving the matter within 10
129 days after the hearing, and a copy of the order must be served
130 on the parties. The timely filing of a petition to contest stays
131 the notice of delinquency and intent to suspend until the entry
132 of a court order resolving the matter.
133 (5) The procedures prescribed in this section and s.
134 322.058 may be used to enforce compliance with an order to
135 appear for genetic testing.
136 Section 2. Section 322.058, Florida Statutes, is amended to
137 read:
138 322.058 Suspension of driving privilege ~~privileges~~ due to
139 support delinquency; reinstatement.—
140 (1) When the department receives notice from the Title IV-D
141 agency or depository or the clerk of the court that a ~~any~~ person
142 licensed to operate a motor vehicle in the State of Florida
143 under the provisions of this chapter has a delinquent support
144 obligation or has failed to comply with a subpoena, order to
145 appear, order to show cause, or similar order, the department

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146 shall suspend the driver ~~driver's~~ license of the person named in
147 the notice and the registration of all motor vehicles owned by
148 that person.
149 (2) The department shall reinstate the driving privilege
150 and allow registration of the motor vehicle of a person who has
151 a delinquent support obligation or who has failed to comply with
152 a subpoena, order to appear, order to show cause, or similar
153 order, if the Title IV-D agency in IV-D cases, or the depository
154 or the clerk of the court in non-IV-D cases, provides to the
155 department an affidavit stating that the person has agreed to a
156 schedule of payment on child support arrearages and to maintain
157 support obligations, and the court has directed that the person
158 be issued a license for driving privileges restricted to
159 business purposes only, as defined by s. 322.271 and pursuant to
160 s. 316.13016.
161 (3) ~~(2)~~ The department shall also ~~must~~ reinstate the driving
162 privilege and allow registration of a motor vehicle when the
163 Title IV-D agency in IV-D cases or the depository or the clerk
164 of the court in non-IV-D cases provides to the department an
165 affidavit stating that:
166 (a) The person has paid the delinquency;
167 (b) The person has reached a written agreement for payment
168 with the Title IV-D agency or the obligee in non-IV-D cases;
169 (c) A court has entered an order granting relief to the
170 obligor ordering the reinstatement of the license and motor
171 vehicle registration; or
172 (d) The person has complied with the subpoena, order to
173 appear, order to show cause, or similar order.
174 (4) ~~(3)~~ The department is ~~shall~~ not ~~be held~~ liable for a ~~any~~

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

175 license or vehicle registration suspension resulting from the
176 discharge of its duties under this section.
177 (5) ~~(4)~~ This section applies only to the annual renewal in
178 the owner's birth month of a motor vehicle registration and does
179 not apply to the transfer of a registration of a motor vehicle
180 sold by a motor vehicle dealer licensed under chapter 320,
181 except for the transfer of registrations which is inclusive of
182 the annual renewals. This section does not affect the issuance
183 of the title to a motor vehicle, notwithstanding s.
184 319.23(7)(b).
185 Section 3. Subsection (7) of section 409.256, Florida
186 Statutes, is amended to read:
187 409.256 Administrative proceeding to establish paternity or
188 paternity and child support; order to appear for genetic
189 testing.—
190 (7) FAILURE OR REFUSAL TO SUBMIT TO GENETIC TESTING.—If a
191 person who is served with an order to appear for genetic testing
192 fails to appear without good cause or refuses to submit to
193 testing without good cause, the department may take one or more
194 of the following actions:
195 (a) Commence a proceeding to suspend the driver ~~driver's~~
196 license and motor vehicle registration of the person ordered to
197 appear, as provided in s. 61.13016;
198 (b) Impose an administrative fine against the person
199 ordered to appear in the amount of $500; or
200 (c) File a petition in circuit court to establish
201 paternity, obtain a support order for the child, and seek
202 reimbursement from the person ordered to appear for the full
203 cost of genetic testing incurred by the department.

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204
205 As provided in s. 322.058(3) ~~s. 322.058(2)~~, a suspended driver
206 ~~driver's~~ license and motor vehicle registration shall ~~may~~ be
207 reinstated when the person ordered to appear complies with the
208 order to appear for genetic testing. The department may collect
209 an administrative fine imposed under this subsection by using
210 civil remedies or other statutory means available to the
211 department for collecting support.
212 Section 4. This act shall take effect July 1, 2012.

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The Florida Senate

Committee Agenda Request

RECEIVED
JAN 10 2012
Senate Committee
Children and Families

To: Senator Ronda Storms, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: January 10, 2012

I respectfully request that **Senate Bill # 914**, relating to Suspension of Driver's Licenses, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Steve Oelrich

Senator Steve Oelrich
Florida Senate, District 14

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1744

INTRODUCER: Senator Latvala

SUBJECT: Substance Abuse Treatment Services

DATE: February 21, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Farmer	Farmer	CF	**Favorable**
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill, entitled "The Jennifer Act" (act), creates a filing fee of up to $195 for involuntary admissions proceedings under the Marchman Act for substance abuse treatment. Specifically, the party instituting a civil action, suit, or proceeding in the circuit court shall pay the fee in all cases in which there are up to five defendants and an additional filing fee of up to $2.50 for each defendant in excess of five. The bill provides for distribution of the proceeds.

The bill also increases the time limit for an assessment and stabilization from 72 hours to 5 days for certain involuntary admissions.

The bill includes a requirement for drug testing and mental, physical, and emotional assessment by qualified professionals upon an inmate's arrival at a Department of Corrections (department or DOC) reception center for initial processing. When an inmate is initially processed by DOC for substance abuse services, the bill requires that each inmate be given the choice of a faith based or non-faith based rehabilitation and drug treatment program if the programs are available in the area.

This bill substantially amends the following sections of the Florida Statutes: 28.241, 397.6772, 393.6773, 397.6797, 397.6798, and 397.754.

II. Present Situation:

Substance abuse can have long lasting, devastating effects on the person who suffers from addiction. If left untreated, substance abuse can result in job loss; alienation from friends and loved ones; and a host of physical and psychological problems.

Estimates of the total overall costs of substance abuse in the United States, including productivity and health-and crime-related costs, exceed $600 billion annually. This includes approximately $181 billion for illicit drugs, $193 billion for tobacco, and $235 billion for alcohol.[1] Annually, an average of 7.5 million children younger than the age of 18 live with a parent who had an alcohol use disorder in the past year.[2] These children are at greater risk for depression, anxiety disorders, problems with cognitive and verbal skills, and parental abuse or neglect. Furthermore, they are four times more likely than other children to develop alcohol problems themselves.[3]

Florida has seen a marked upsurge in prescription drug misuse/abuse in recent years, particularly opiates and benzodiazepines[4]. This has created an added demand for medically-assisted detoxification programs.[5] In addition, the state is now feeling the effects of sharp increases in methamphetamine use among certain adult populations in Central Florida (Lakeland and Tampa), Northwest Florida (rural counties between Pensacola and Tallahassee), and South Florida (Broward and Miami-Dade counties), primarily trafficked into the state from Southern California and Mexico.[6]

Alcohol continues to account for the highest percent of treatment admissions for adults (33.32 percent), followed by opiates (18.46 percent) and prescription drugs (18 percent). This is followed by marijuana and cocaine or crack.[7]

Both the United States Congress and the Florida Legislature have recognized that substance abuse is a major health problem that leads to profoundly disturbing consequences, such as serious impairment, chronic addiction, criminal behavior, injury, and death, and contributes to spiraling health care costs. Substance abuse impairment is a disease which affects the whole family, as well as the community, and requires effective, specialized prevention, intervention, and treatment services.[8]

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[1] Nat'l Institute on Drug Abuse, *InfoFacts: Understanding Drug Abuse and Addiction* (March 2011), http://www.drugabuse.gov/publications/infofacts/understanding-drug-abuse-addiction (last visited Feb. 20, 2012)
[2] *Id*.
[3] Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, d*ata spotlight*, Feb. 16, 2012, http://www.samhsa.gov/data/spotlight/Spot061ChildrenOfAlcoholics2012.pdf (last visited Feb. 20, 2012)
[4] Opiate drugs include heroin, morphine, codeine, Oxycontin, Dilaudid, methadone, and others. Benzodiazepines, such as diazepam (Valium) and alprazolam (Xanax), are sometimes prescribed to treat anxiety, acute stress reactions, and panic attacks. The more sedating benzodiazepines, such as triazolam (Halcion) and estazolam (ProSom) are prescribed for short-term treatment of sleep disorders. Usually, benzodiazepines are not prescribed for long term use because of the risk for developing tolerance, dependence, or addiction. Nat'l Institute on Drug Abuse, *Topics in Brief: Buprenorphine:Treatment for Opiate Addiction Right in the Doctor's Office)* (Aug. 2006), http://www.drugabuse.gov/publications/topics-in-brief/buprenorphine-treatment-opiate-addiction-right-in-doctors-office
[5] Fla. Dep't of Children and Families, *Long Range Plan*, Sept. 30, 2011. http://floridafiscalportal.state.fl.us/PDFDoc.aspx?ID=6143, p.112.
[6] *Id*.
[7] *Id*.
[8] Comm. on Health Regulation, The Florida Senate, Bill Analysis and Fiscal Impact Statement CS/CS/SB 2612 (April 16, 2009) available at http://archive.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s2612.ha.pdf

The Marchman Act

Florida's substance abuse program is governed under ch. 397, F.S., otherwise known as the "Marchman Act "or the Florida Substance Abuse Impairment Act. The program is also governed by rule 65D-30 of the Florida Administrative Code (F.A.C.). Created in 1993, the Marchman Act was named after Reverend Hal. S. Marchman, a tireless advocate for persons who suffered from alcoholism and drug abuse.[9] He was recognized by the Florida Legislature for his contributions addressing the delivery of substance abuse services.[10]

The Department of Children and Families is statutorily charged with administering the state's substance abuse program. The program is designed to support the prevention and remediation of substance abuse through the provision of a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

The program's major functions include planning, policy development, implementation and administration, fiscal administration, provision of a comprehensive and integrated system of care, and monitoring and regulating substance abuse services and treatment facilities. The program provides services for individuals in the following areas:

- **Assessment** services provide systematic evaluation of client information to determine the nature and severity of clients' substance abuse problems and their need and motivation for services;
- **Detoxification** services assist clients in their efforts to withdraw from the effects of substance abuse;
- **Intervention** services provide early intervention services to at-risk adults and children such as short-term counseling, referral, and outreach services;
- **Outpatient Treatment** provides a range of assessment and counseling services, including a structured schedule of treatment, education, and rehabilitative services for substance abuse clients;
- **Prevention** services reduce the development of substance abuse problems by increasing public awareness through information, education, and alternative-focused activities. School-based prevention programs, aim to increase the educational achievement of students in grades four through eight. Community substance abuse agencies provide prevention services in partnership with county school boards; and
- **Residential Treatment** provides a range of assessment, treatment, rehabilitation, and education programs in an intensive therapeutic environment.[11]

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[9] Fla. Dep't of Children and Families, *Marchman Act User Reference Guide 2003*, available at http://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/marchman/marchmanacthand03p.pdf, p. 7 (last visited Feb. 21, 2012).
[10] *Id*.
[11] Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Government Program Summaries, Dep't of Children and Families Substance Abuse Program* (June 2011) http://www.oppaga.state.fl.us/profiles/5057/.

The program serves adults and children with and at-risk of substance abuse problems. Target client groups include:

- adult intravenous drug users;
- adults involved in the criminal justice system who abuse substances;
- adults over the age of 55 with or at risk for substance abuse or dependence;
- children at risk of substance abuse;
- children not under the supervision of the state who are abusing substances;
- children under the supervision of the state who are abusing substances;
- dually diagnosed adults (mental illness and substance abuse); and
- parents who put their children at risk because of their substance abuse (e.g., pregnant women and parents referred by the department's Family Safety Program).[12]

The program provides an array of statutorily protected rights[13] of persons seeking and or receiving substance abuse services as well as due process rights of those persons for whom involuntary interventions are sought.[14]

Florida Department of Corrections Substance Abuse Programs[15]

The DOC has developed Correctional Substance Abuse Programs at Institutional and Community-Based sites throughout the state. These programs serve offenders with substance involvement, abuse, dependence or related problems. The programs' principle objectives are to identify substance abusers, assess the severity of their drug problems, and provide the appropriate substance abuse program services.

All inmates are screened at reception, and those inmates identified as being in need of services become Mandated Program Participants (MPP's) and are placed on the department's centralized Statewide Automated Priority List for placement in a substance abuse program. Inmates screened as being in need of services are either referred to a substance abuse program or placed on a waiting list pending availability of such programming. The Bureau of Substance Abuse Program Services is responsible for the coordination and delivery of substance abuse program services for offenders under community supervision and in prison.

The Jennifer Act

The bill is named after Jennifer Reynolds-Gonzalez, a 29 year old woman who died from an accidental overdose of prescription painkillers and other drugs on January 15, 2009.[16] Her mother, Sharon Blair, who lives part-time in Bloomington, Indiana, and in Clearwater, Florida,

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[12] *Id*.
[13] s. 397.501, F.S.. Also see Department of Children and Families, Marchman Act User Reference Guide 2003, http://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/marchman/marchmanacthand03p.pdf, p. 9.
[14] *Id*.
[15] Information contained in this portion of the analysis is from the Fla. Dep't of Corrections, *Substance Abuse Report-Inmate Programs, FY 2005-06,available at* http://www.dc.state.fl.us/pub/subabuse/inmates/05-06/progtypes.html (last visited Feb. 20, 2012)
[16] Justin George, *MOSI exhibit on toll of drug abuse taps into a mother's pain and mission, tampa bay times, Oct. 16, 2011, available at* http://www.tampabay.com/news/business/tourism/mosi-exhibit-on-toll-of-drug-abuse-taps-into-a-mothers-pain-and-mission/1196427 (last visited Feb. 21, 2012).

has worked tirelessly since her daughter's tragic death to bring awareness to the devastating effects of drug addiction.[17] From a website dedicated to Jennifer, www.thejenniferact.com, Blair provides some insight into the reason this legislation is needed:

> "I am asking for the legislature to review and revise The Marchman Act to include **The Jennifer Act**.
>
> Due to the recent death of my daughter, Jennifer M. Reynolds (age 29) and repeated attempts to intervene and save her life by following all Florida laws currently in place, (filing of the Marchman Act in Pinellas, Hillsborough and Hardee Counties on behalf of my daughter, Jennifer), I see the need for reforming this law.
>
> Respectfully, the following revisions I bring before the legislature:
>
> There are no secure beds in Pinellas County, of which The Marchman Act requires. Therefore, I petition the state of Florida and ask for **secured beds** and facilities for the addicted under the new amendment: **The Jennifer Act**.
>
> There are very few Florida state funded facilities currently available for the addicted for detox. Currently, the addicted can walk out of a treatment facility.
>
> The enforcement of the Marchman Act changes from county to county within the state of Florida. . . .The fee for filing a Marchman Act petition at the courthouse is very costly: **$400.00.** Therefore, I ask for the new law, **The Jennifer Act**, and that this filing fee be changed and re-adjusted at an affordable rate of the cost of processing the paper work **only**. Currently the cost varies from county to county, so **The Jennifer Act** would make the fee the same for every county in Florida.
>
> Currently, the Marchman Act "holds" the addicted person for 72 hours for observation and a professional assessment. Therefore, I ask for the length of time extended for proper medical detoxing, and a board certified professional (C.A.P.) evaluation of the addicted person. The length of detox varies based the substance and the individual, but in either case 72 hours is an insufficient amount of time. Note: intake specialist must be board certified.
>
> **Evaluation and assessment of the patient/ the addicted is critical**. Therefore, I ask for the new law, **The Jennifer Act,** to supervise and oversee county by county all facilities by The Office Of Drug Control, The Capitol, Tallahassee, Florida.
>
> **The Jennifer Act** would provide a watchdog team. This would hold the patient/addicted until a thorough and proper assessment and evaluation and stabilization of the patient/addicted has been approved by an elected board on staff at The Office of Drug Control. This is a three-fold plan.

[17] *Id*.

- It brings accountability to the state funded, state run facility.
- It involves another certified addiction professional, a second evaluation and opinion.
- It ensures a treatment plan that does not release the addicted immediately. This extra time required initially, will provide a time of intense residential drug treatment.

. . . I ask for the new law, **The Jennifer Act,** for the purpose of a network of Doctors and Certified Addiction Professionals, staffed by the **Dept. of Corrections** to evaluate inmates, including drug testing, mental, physical and emotional assessment due to their addiction. After positive assessment has been made of an addict, I ask on behalf of the addicted, they be given 2 alternatives/choices for rehabilitation and drug treatment vs. incarceration:

- Faith based drug treatment
- Secular drug treatment

The purpose of **The Jennifer Act** is that we as a body in the state of Florida, work together as advocates to better mankind, especially the weak, sick and drug addicted. For twelve years, I have fearlessly fought hard and mightily for drug treatment (through the Florida court system and laws in place, including petitions to many Judges and Magistrates) for my precious daughter, Jennifer. I am a voice for the castaways, the addicted.

They are somebody's daughter, son, mother, father, sister, brother or loved one. Often times, they have children, like my daughter. She has died at age 29 and left behind a precious little son, age seven and a family that loves her deeply. It is for Jennifer, my grandson Trey and others who have no voice and believe no one hears them or cares, that I write **The Jennifer Act.**

In summary, it has taken too many petitions, phone calls, letters, emails, and visits to get basic drug treatment for Jennifer – which is why I know first-hand the struggle to help an addict. Most people do not have the time, knowledge, willpower or resources to accomplish what I have done, which is why I have proposed **The Jennifer Act** – so that they may have the chance to save their loved one.

I humbly petition the state of Florida for a revision and improvement of The Marchman Act.[18]"

[18] TheJenniferAct.com, *What is the Jennifer Act, available at* http://thejenniferact.com/the-jennifer-act/ (last visited Feb. 21, 2012).

III. Effect of Proposed Changes:

The bill cites this act as "The Jennifer Act."

The bill amends s. 28.241, F.S., related to filing fees for trial and appellate proceedings, to create a $195 filing fee for a party who institutes a civil action, suit, or proceeding in the circuit court under part V of chapter 397, F.S.[19] The party shall pay the fee in all cases in which there are up to five defendants as well as an additional filing fee of up to $2.50 for each defendant in excess of five. The fee shall be distributed as follows:

- The first $90 shall be remitted to the Department of Revenue (DOR) for deposit into the State Courts Revenue Trust Fund;
- $3.50 shall be remitted to the DOR for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. Specifically, the monies will be used to fund the Florida Clerks of Court Operations Corporation under s. 28.35, F.S.; and
- $1.50 shall be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services (DFS) to fund clerk budget reviews conducted by the DFS.

The fee is established in statute to provide uniformity throughout the state when an individual has a person committed under the act. It has been stated that some counties do not charge a fee, while other counties in Florida charge up to $400 to have a person committed.

The bill amends s. 397.6772(1), F.S., increasing the time period from 72 hours to 5 days in which the attending physician must provide an assessment to a person taken into involuntary protective custody to determine if the person needs additional services.

The bill amends s. 397.6797, F.S., removing a requirement for the attending physician to determine the need for further services; therefore requiring that the individual be assessed by a qualified professional.[20]

The bill amends s. 397.6798, F.S., to increase the time period from 72 hours to 5 days that a minor must be assessed after being admitted to an addictions receiving facility for involuntary assessment and stabilization.

The bill amends s. 397.754, F.S., to specify that, upon arrival at a Department of Corrections reception center for initial processing, to the fullest extent possible, inmates must also undergo drug testing and mental, physical, and emotional assessment by qualified professionals. In areas where both faith-based and nonfaith-based drug programs are available, and to the fullest extent

[19] Part V, ch. 397, F.S., governs Involuntary Admissions Procedures under the Marchman Act (ss. 397.675 – 397.6977, F.S.).
[20] Section 397.311(26), F.S., defines a "qualified professional" as a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced registered nurse practitioner having a specialty in psychiatry licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

practicable, each inmate must be given the choice of a faith-based or nonfaith-based program for rehabilitation and drug treatment.

The bill also makes technical and conforming changes.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to DCF, private sector agencies and agencies under contract with the department such as hospitals, detoxification programs, addiction receiving facilities, and treatment programs may incur costs associated with additional capacity utilization.[21]

C. Government Sector Impact:

According to DCF, the department's contracted substance abuse detoxification, addiction receiving facilities, and treatment programs would be impacted by additional capacity utilization (i.e., longer stays occupying available bed space). Any recommendations to require additional lengths of stay for involuntary assessment and treatment would need to be addressed through modifications to 65D-30, F.A.C.

According to the Office of the State Courts Administrator (OSCA), the bill creates a new filing fee and a new revenue source to the State Courts Revenue Trust Fund. The proposed bill would impose a $195 filing fee for involuntary admissions proceedings under the Marchman Act for substance abuse treatment. Currently, there is no filing fee

[21] Fla. Dep't. of Children and Families, *Senate Bill 1744 Staff Analysis and Economic Impact* (Jan. 12, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

for these actions. Ninety dollars of the filing fee is to be remitted into the State Courts Revenue Trust Fund. [22]

The precise impact would depend upon the number of these cases that are filed annually. There were 9,059 cases filed for Marchman Act (substance abuse) in FY 2010-11. Assuming the same number of cases are filed in FY 2012-13 as were in FY 2010-11, the revenues to the State Courts Revenue Trust fund would be $815,310. However, the OSCA does not know how many cases would be exempt from the filing fee or would not pay because they are indigent.[23]

According to the Clerks of the Court, this bill would have an indeterminate fiscal impact on the office of the Clerk.[24]

According to the Department of Revenue (DOR), with respect to the new filing fee and the requirement for distribution of funds through DOR, three additional lines will be added to the Clerks of the Court's SUNTAX/web reporting application and the clerks will need to be notified of the changes. Programming changes are done by the SUNTAX Project Office and require approximately 20 hours of in-house labor and 20 hours of contract labor ($120/hour) at a cost of $2,400.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[22] Office of the State Courts Administrator, *Amended 2012 Judicial Impact Statement, Senate Bill 1744* (Jan. 30, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[23] *Id*.
[24] Fla. Ass'n. of the Court Clerks, *Senate Bill 1744 Substance Abuse Treatment Services* (Jan. 30, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[25] Fla. Dep't. of Revenue, 2012 Bill Analysis, Senate Bill 1744 (Jan. 23, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

By Senator Latvala

16-01081A-12 20121744__

A bill to be entitled

An act relating to substance abuse treatment services; providing a short title; amending s. 28.241, F.S.; revising the filing fee for involuntary admissions proceedings for substance abuse treatment; providing for the distribution of proceeds from the fee; amending ss. 397.6772, 397.6773, 397.6797, and 397.6798, F.S.; increasing the period allowed for assessment of a person following involuntary custody or admission to a hospital or other facility; conforming provisions; amending s. 397.754, F.S.; specifying requirements for initial processing of inmates by the Department of Corrections for substance abuse needs; providing that, to the fullest extent practicable, inmates be given the choice between faith-based and nonfaith-based substance abuse programs; providing an effective date.

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

Section 1. This act may be cited as "The Jennifer Act."

Section 2. Paragraph (a) of subsection (1) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(1)(a)1.a. Except as provided in sub-subparagraphs ~~sub-subparagraph~~ b. and d. and subparagraph 2., the party instituting a ~~any~~ civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a filing fee of up to $395 in all cases in which there are up to ~~not more~~

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16-01081A-12 20121744__

~~than~~ five defendants and an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $280 in filing fees, $80 shall ~~must~~ be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, $195 shall ~~must~~ be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, $3.50 shall ~~must~~ be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission and used to fund the Florida Clerks of Court Operations Corporation created in s. 28.35, and $1.50 shall be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk budget reviews conducted by the Department of Financial Services. One third of the ~~any~~ filing fees collected by the clerk of the circuit court in excess of $100 shall be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission.

b. The party instituting any civil action, suit, or proceeding in the circuit court under chapter 39, chapter 61, chapter 741, chapter 742, chapter 747, chapter 752, or chapter 753 shall pay to the clerk of that court a filing fee of up to $295 in all cases in which there are up to ~~not more than~~ five defendants and an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $180 in filing fees, $80 shall ~~must~~ be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, $95 shall ~~must~~ be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, $3.50 shall ~~must~~ be

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59 remitted to the Department of Revenue for deposit into the
60 Clerks of the Court Trust Fund within the Justice Administrative
61 Commission and used to fund the Florida Clerks of Court
62 Operations Corporation created in s. 28.35, and $1.50 shall be
63 remitted to the Department of Revenue for deposit into the
64 Administrative Trust Fund within the Department of Financial
65 Services to fund clerk budget reviews conducted by the
66 Department of Financial Services.
67 c. An additional filing fee of $4 shall be paid to the
68 clerk, of which~~.~~ the clerk shall remit $3.50 to the Department
69 of Revenue for deposit into the Court Education Trust Fund and
70 ~~shall remit~~ 50 cents to the Department of Revenue for deposit
71 into the Clerks of the Court Trust Fund within the Justice
72 Administrative Commission to fund clerk education. An additional
73 filing fee of up to $18 shall be paid by the party seeking each
74 severance that is granted. The clerk may impose an additional
75 filing fee of up to $85 for all proceedings of garnishment,
76 attachment, replevin, and distress. Postal charges incurred by
77 the clerk ~~of the circuit court~~ in making service by certified or
78 registered mail on defendants or other parties shall be paid by
79 the party at whose instance service is made. ~~No~~ Additional fees,
80 charges, or costs may not ~~shall~~ be added to the filing fees
81 imposed under this section, except as authorized in this section
82 or by general law.
83 d. The party instituting a civil action, suit, or
84 proceeding in the circuit court under part V of chapter 397
85 shall pay to the clerk of that court a filing fee of up to $195
86 in all cases in which there are up to five defendants and an
87 additional filing fee of up to $2.50 for each defendant in

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88 excess of five. The first $90 in filing fees shall be remitted
89 to the Department of Revenue for deposit into the State Courts
90 Revenue Trust Fund, $3.50 shall be remitted to the Department of
91 Revenue for deposit into the Clerks of the Court Trust Fund
92 within the Justice Administrative Commission and used to fund
93 the Florida Clerks of Court Operations Corporation created in s.
94 28.35, and $1.50 shall be remitted to the Department of Revenue
95 for deposit into the Administrative Trust Fund within the
96 Department of Financial Services to fund clerk budget reviews
97 conducted by the Department of Financial Services.
98 2.~~a.~~ Notwithstanding the fees prescribed in subparagraph
99 1., a party instituting a civil action in circuit court relating
100 to real property or mortgage foreclosure must ~~shall~~ pay a
101 graduated filing fee based on the value of the claim.
102 a.~~b.~~ The ~~A~~ party shall estimate in writing the amount of
103 the claim in controversy ~~of the claim~~ upon filing the action.
104 For purposes of this subparagraph, the value of a mortgage
105 foreclosure action is based upon the principal due on the note
106 secured by the mortgage, plus interest owed on the note and any
107 moneys advanced by the lender for property taxes, insurance, and
108 other advances secured by the mortgage, at the time of filing
109 the foreclosure. The value ~~shall~~ also includes ~~include~~ the value
110 of any tax certificates related to the property. In stating the
111 value of a mortgage foreclosure claim, the ~~a~~ party shall declare
112 in writing the total value of the claim, as well as the
113 individual elements of the value as prescribed in this sub-
114 subparagraph.
115 b.~~c.~~ In its order providing for the final disposition of
116 the matter, the court shall identify the actual value of the

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117 claim. The clerk shall adjust the filing fee if there is a
118 difference between the estimated amount in controversy and the
119 actual value of the claim and collect any additional filing fee
120 owed or provide a refund of excess filing fee paid.
121 c.~~d.~~ The party shall pay a filing fee of:
122 (I) Three hundred and ninety-five dollars in all cases in
123 which the value of the claim is $50,000 or less and ~~in which~~
124 there are not more than five defendants. The party shall pay an
125 additional filing fee of up to $2.50 for each defendant in
126 excess of five. Of the first $280 in filing fees, $80 shall ~~must~~
127 be remitted by the clerk to the Department of Revenue for
128 deposit into the General Revenue Fund, $195 shall ~~must~~ be
129 remitted to the Department of Revenue for deposit into the State
130 Courts Revenue Trust Fund, $3.50 shall ~~must~~ be remitted to the
131 Department of Revenue for deposit into the Clerks of the Court
132 Trust Fund within the Justice Administrative Commission and used
133 to fund the Florida Clerks of Court Operations Corporation
134 created in s. 28.35, and $1.50 shall be remitted to the
135 Department of Revenue for deposit into the Administrative Trust
136 Fund within the Department of Financial Services to fund clerk
137 budget reviews conducted by the Department of Financial
138 Services;
139 (II) Nine hundred dollars in all cases in which the value
140 of the claim is more than $50,000 but less than $250,000 and ~~in~~
141 ~~which~~ there are not more than five defendants. The party shall
142 pay an additional filing fee of up to $2.50 for each defendant
143 in excess of five. Of the first $785 in filing fees, $80 shall
144 ~~must~~ be remitted by the clerk to the Department of Revenue for
145 deposit into the General Revenue Fund, $700 shall ~~must~~ be

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146 remitted to the Department of Revenue for deposit into the State
147 Courts Revenue Trust Fund, $3.50 shall ~~must~~ be remitted to the
148 Department of Revenue for deposit into the Clerks of the Court
149 Trust Fund within the Justice Administrative Commission and used
150 to fund the Florida Clerks of Court Operations Corporation
151 described in s. 28.35, and $1.50 shall be remitted to the
152 Department of Revenue for deposit into the Administrative Trust
153 Fund within the Department of Financial Services to fund clerk
154 budget reviews conducted by the Department of Financial
155 Services; or
156 (III) One thousand nine hundred dollars in all cases in
157 which the value of the claim is $250,000 or more and ~~in which~~
158 there are not more than five defendants. The party shall pay an
159 additional filing fee of up to $2.50 for each defendant in
160 excess of five. Of the first $1,785 in filing fees, $80 shall
161 ~~must~~ be remitted by the clerk to the Department of Revenue for
162 deposit into the General Revenue Fund, $1,700 shall ~~must~~ be
163 remitted to the Department of Revenue for deposit into the State
164 Courts Revenue Trust Fund, $3.50 shall ~~must~~ be remitted to the
165 Department of Revenue for deposit into the Clerks of the Court
166 Trust Fund within the Justice Administrative Commission to fund
167 the Florida Clerks of Court Operations Corporation created in s.
168 28.35, and $1.50 shall be remitted to the Department of Revenue
169 for deposit into the Administrative Trust Fund within the
170 Department of Financial Services to fund clerk budget reviews
171 conducted by the Department of Financial Services.
172 d.~~e.~~ An additional filing fee of $4 shall be paid to the
173 clerk, of which~~,~~ the clerk shall remit $3.50 to the Department
174 of Revenue for deposit into the Court Education Trust Fund and

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175 ~~shall remit~~ 50 cents to the Department of Revenue for deposit
176 into the Clerks of the Court Trust Fund within the Justice
177 Administrative Commission to fund clerk education. An additional
178 filing fee of up to $18 shall be paid by the party seeking each
179 severance that is granted. The clerk may impose an additional
180 filing fee of up to $85 for all proceedings of garnishment,
181 attachment, replevin, and distress. Postal charges incurred by
182 the clerk ~~of the circuit court~~ in making service by certified or
183 registered mail on defendants or other parties shall be paid by
184 the party at whose instance service is made. ~~No~~ Additional fees,
185 charges, or costs may not ~~shall~~ be added to the filing fees
186 imposed under this section, except as authorized in this section
187 or by general law.
188 Section 3. Subsection (1) of section 397.6772, Florida
189 Statutes, is amended to read:
190 397.6772 Protective custody without consent.—
191 (1) If a person in circumstances that ~~which~~ justify
192 protective custody as described in s. 397.677 fails or refuses
193 to consent to assistance and a law enforcement officer has
194 determined that a hospital or a licensed detoxification or
195 addictions receiving facility is the most appropriate place for
196 the person, the officer may, after giving due consideration to
197 the expressed wishes of the person:
198 (a) Take the person to a hospital or to a licensed
199 detoxification or addictions receiving facility against the
200 person's will but without using unreasonable force; or
201 (b) In the case of an adult, detain the person for his or
202 her own protection in a ~~any~~ municipal or county jail or other
203 appropriate detention facility.

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204
205 Such detention is not to be considered an arrest for any
206 purpose, and no entry or other record may be made to indicate
207 that the person has been detained or charged with any crime. The
208 officer in charge of the detention facility must notify the
209 nearest appropriate licensed service provider within the first 8
210 hours after detention that the person has been detained. ~~It is~~
211 ~~the duty of~~ The detention facility must ~~to~~ arrange, as
212 necessary, for transportation of the person to an appropriate
213 licensed service provider with an available bed. Persons taken
214 into protective custody must be assessed by the attending
215 physician within the 5-day ~~72-hour~~ period and without
216 unnecessary delay, to determine the need for further services.
217 Section 4. Section 397.6773, Florida Statutes, is amended
218 to read:
219 397.6773 Dispositional alternatives after protective
220 custody.—
221 (1) An individual who is in protective custody must be
222 released by a qualified professional if ~~when~~:
223 (a) The individual no longer meets the involuntary
224 admission criteria in s. 397.675(1);
225 (b) The 5-day ~~72-hour~~ period has elapsed; or
226 (c) The individual has consented to remain voluntarily at
227 the licensed service provider.
228 (2) An individual may ~~only~~ be retained in protective
229 custody beyond the 5-day ~~72-hour~~ period only if ~~when~~ a petition
230 for involuntary assessment or treatment has been initiated. The
231 timely filing of the petition authorizes the service provider to
232 retain physical custody of the individual pending further order

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233 of the court.
234 Section 5. Section 397.6797, Florida Statutes, is amended
235 to read:
236 397.6797 Dispositional alternatives after emergency
237 admission.—Within 5 days ~~72 hours~~ after an emergency admission
238 to a hospital, ~~or~~ a licensed detoxification or addictions
239 receiving facility, or ~~the individual must be assessed by the~~
240 ~~attending physician to determine the need for further services.~~
241 ~~Within 5 days after an emergency admission to~~ a nonresidential
242 component of a licensed service provider, the individual must be
243 assessed by a qualified professional to determine the need for
244 further services. Based upon that assessment, a qualified
245 professional of the hospital, detoxification facility, or
246 addictions receiving facility, or a qualified professional if a
247 less restrictive component was used, must ~~either~~:
248 (1) Release the individual and, if ~~where~~ appropriate, refer
249 the individual to other needed services; or
250 (2) Retain the individual if ~~when~~:
251 (a) The individual has consented to remain voluntarily at
252 the licensed provider; or
253 (b) A petition for involuntary assessment or treatment has
254 been initiated, the timely filing of which authorizes the
255 service provider to retain physical custody of the individual
256 pending further order of the court.
257 Section 6. Subsection (1) of section 397.6798, Florida
258 Statutes, is amended to read:
259 397.6798 Alternative involuntary assessment procedure for
260 minors.—
261 (1) In addition to protective custody, emergency admission,

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262 and involuntary assessment and stabilization, an addictions
263 receiving facility may admit a minor for involuntary assessment
264 and stabilization upon the filing of an application to an
265 addictions receiving facility by the minor's parent, guardian,
266 or legal custodian. The application must establish the need for
267 involuntary assessment and stabilization based on the criteria
268 for involuntary admission in s. 397.675. Within 5 days ~~72 hours~~
269 after involuntary admission of a minor, the minor must be
270 assessed to determine the need for further services. Assessments
271 must be performed by a qualified professional. If, after the 5-
272 day ~~72 hour~~ period, it is determined by the attending physician
273 that further services are necessary, the minor may be kept for a
274 period of up to 5 days, inclusive of the 5-day ~~72-hour~~ period.
275 Section 7. Subsections (1) and (2) of section 397.754,
276 Florida Statutes, are amended to read:
277 397.754 Duties and responsibilities of the Department of
278 Corrections.—The Department of Corrections shall:
279 (1) To the fullest extent possible, provide inmates upon
280 arrival at a department ~~of Corrections~~ reception center for
281 initial processing with an assessment of substance abuse service
282 needs, including drug testing and mental, physical, and
283 emotional assessment by qualified professionals.
284 (2) Provide inmates who are admitted to inmate substance
285 abuse services with an individualized treatment plan that ~~which~~
286 is developed on the basis of assessed need for services and that
287 ~~which~~ includes measurable goals and specifies the types of
288 services needed to meet those goals. In areas where both faith-
289 based and nonfaith-based drug programs are available, and to the
290 fullest extent practicable, each inmate must be given the choice

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291 of a faith-based or nonfaith-based program for rehabilitation
292 and drug treatment.
293 Section 8. This act shall take effect July 1, 2012.

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The Jennifer Act – An open letter to NOPE

(Narcotics Overdose Prevention & Education)

By Raymond G. Ferrero III, Esq.

(Executive Director for Health Affairs for Nova Southeastern University

Partner and attorney with Addiction Recovery Legal Services, LLC.)

I am writing regarding a recent post added to your "Advocacy" section re: "The Jennifer Act".

On the surface, I can understand why your organization might support (or, encourage others to support) "The Jennifer Act" by posting the aforementioned legislative initiative on your website. This proposed legislation seeks to "improve" upon an existing "involuntary commitment" statute for substance abuse in Florida, and encourages Indiana to adopt similar legislation. On its face, The Jennifer Act is the personal campaign of a Florida mother, who lost her daughter Jennifer to prescription drugs in 2009, who believes the existing law in Florida (The Florida Marchman Act), is flawed and contributed to her daughter's death. As a result, The Jennifer Act seeks to amend The Florida Marchman Act and implement these changes to better serve the public. I cannot comment on Indiana law, but I am an attorney in Florida, who can comment on my own state's involuntary commitment statute - The Florida Marchman Act. Having handled thousands of Florida Marchman Act cases, I am writing to specifically address and dispute The Jennifer Act contention that The Florida Marchman Act is a "flawed" law and that its failure ultimately played a role in the death of this young woman. I am also writing because I am aware of the achievements and advocacy of your organization, and recognize the scope of your internet audience. Your influence within this very public and very active grassroots base is significant. You are engaged in meaningful national substance abuse prevention, education and reform, which I commend and respect. Accordingly, your organization and audience should be aware of any and all issues that exist concerning The Jennifer Act, now that this proposed bill has been brought to their attention.

Specifically, on the public website: www.TheJenniferAct.com:

"I fought on [my daughter's] behalf and tried to intervene and save her life using the current [Florida Marchman Act] laws. But these laws failed because they are flawed. That is why I am introducing The Jennifer Act. It is a way for the family or loved one to intervene and rescue someone from addiction."

First, let me begin by saying The Florida Marchman Act statute is not a "flawed" piece of legislation. Such claims are altogether inaccurate and I also believe quite irresponsible. The

Florida Marchman Act was not responsible for Jennifer's tragic death. Jennifer was a victim of illegal "Pill Mill" operators, unethical doctors (who prescribed her powerful opiates like they were giving away candy) and Jennifer's own terrible disease – the disease of addiction. Simply because Jennifer's death happened to occur at the time an involuntarily committed process was being attempted via The Florida Marchman Act does not necessarily mean that the law itself is at fault. Many factors will be shown to have contributed to this tragedy, which are well outside the scope of this law, and feelings of loss, grief, frustration and/or anger should never have been turned against this uniquely effective law as a result. The Florida Marchman Act has been saving the lives of addicts in Florida since it was first enacted in 1993. Unfortunately, however, The Jennifer Act has become a very public attack against The Florida Marchman Act statute. Ironically, the proposed changes outlined in The Jennifer Act, if passed (at least in the State of Florida), would both impede and have a chilling effect upon families seeking court mandated treatment for an addicted loved one in crisis. I say this not only as a former Gubernatorial appointee to Florida's Statewide Drug Policy Advisory Committee, but as an attorney who has spent more than a decade assisting families via the Florida Marchman Act. I take no pleasure in bringing this issue to light publically (as I have considered the extent of the loss at the heart of this legislation and understand that supporters of The Jennifer Act may at some time read this letter). However, as a matter of public concern, I feel compelled to address the fact that The Jennifer Act is not an innocuous piece of legislation, nor is its attack against The Florida Marchman Act harmless.

Please consider: Currently, 38 versions of some form of involuntary commitment legislation exist across the United States. Of these, the Florida Marchman Act can be considered among the most progressive and effective. When I first came across "The Jennifer Act" campaign, I thoroughly digested every issue cited against the Florida Marchman Act statute as a "flawed" statute, which contributed to a young woman's death. I will address each of these perceived "flaws" specifically at the conclusion of this open letter. However, to briefly summarize for the sake of time: There was not a single, purported issue that I found to ultimately have anything to do with The Florida Marchman Act as it previously (and, currently) exists on the books. Instead, The Jennifer Act's concerns regarding the existing statute mainly arose from: (1) financial hardships that were imposed by the Clerk of the Court of Pinellas County in filing fees; (2) a lack of state subsidized treatment for Jennifer resulting from a lack of local funding for health and human services (a fiscal deficit and concern that exists not only throughout the State of Florida, but unfortunately at a state and federal level nationwide); and (3) misinterpretations of The Florida Marchman Act statue itself; both in language and procedure. Initially, it is understandable that a layperson might connect any of the above as flaws in The Florida Marchman Act statute. The ultimate cause and effect to the public as a result of limitations in health and human services at both a state and federal level is difficult to accept for even the most seasoned treatment provider and/or policy advocate on the front lines of the substance

abuse services debate. However, I am unable to excuse The Jennifer Act campaign for the following reason.

In 2010, I and other members of the Florida Statewide Drug Policy Advisory Committee were asked by the Governor's Office to form a sub-committee to officially review the existing Florida Marchman Act statute. With Florida's "Pill Mill" problem gaining national attention and seven Floridian's dying every day from prescription drug overdose, we were charged with the task of identifying and recommending changes in the law that might assist the State in addressing these escalating public concerns. Over a 12 month period, our Marchman Act sub-committee held open public meetings across every major county in Florida asking for input from both treatment providers and the public to assist us in this fine tooth comb review of The Florida Marchman Act statute. The Jennifer Act proponents were made aware of this process and invited to become a part of the sub-committee. Our offer was not accepted and the lobby for the adoption of The Jennifer Act continued independently.

Specifically, there are three (3) major areas that I take issue with The Jennifer Act as proposed in Florida.

To begin, in Indiana, The Jennifer Act has been proposed as merely a "concurrent resolution" to urge the Indiana Commission on Mental Health and Addiction to "examine" the issue of involuntary commitment of persons with substance use disorders in the state. In Florida, The Jennifer Act seeks to actually "amend" the existing involuntary commitment statute (The Florida Marchman Act). This is problematic because the legislative sponsors of the bill in Florida, who ultimately drafted The Jennifer Act, misinterpreted the law as written. As a result, The Jennifer Act asks for legal remedies that already exist within the framework of the current Florida Marchman Act statute, making significant aspects of The Jennifer Act both redundant and unnecessary.

Second, The Jennifer Act proposes an amendment in Florida law that will introduce a uniform filing fee structure in all involuntary commitment cases. This is problematic because there are currently <u>no fees</u> assessed for filing involuntary commitment cases in any of Florida's 67 counties with the exception of 1 (Pinellas County). Tragically, when Jennifer's mother was seeking assistance in Pinellas County from The Florida Marchman Act, the local Clerk of the Court imposed an outrageous fee for filing the petition for unknown reasons. Accordingly, in response, The Jennifer Act seeks to impose a system of structured filing fees. However, currently, for obvious reasons, local Clerks of Court do not impose filing fees for families seeking assistance for substance abuse or mental health crisis services. However, the misperception that Pinellas County was a reflection of the rest of the state created the legislative initiative found in The Jennifer Act Bill that seeks to and would impose fees (possibly

in the hundreds of dollars) upon the public where none currently exist. Such fees create a financial barrier and/or hardship to those seeking its benefit.

Third, and most importantly, The Jennifer Act campaign is fueled by a public misrepresentation that The Florida Marchman Act is a law that is flawed, broken and ineffective. This is problematic because the perceived "flaws and breaks" as advertised, stem mainly from external social factors and not the law itself. Mainly, deficiencies in local, state and national funding for substance abuse services in Florida, which are completely outside the framework of The Florida Marchman Act statute and legal system. I would suggest that The Jennifer Act should have been directed toward social and governmental avenues of public advocacy and change that seek funding for substance abuse services on the local, state or federal level. Instead, The Jennifer Act inaccurately points the finger quite publically toward the Florida Marchman Act; a scapegoat for both the tragic passing of a young woman and limitations in the availability of substance abuse services in Pinellas County and elsewhere in Florida. The ultimate effect: At the very heart of The Jennifer Act campaign exists a publicly vocal and undeserved maligning of The Florida Marchman Act; a progressive, effective and lifesaving legal resource for the families and friends of addicts across Florida since 1993.

I hope readers of this open letter will not misinterpret my frank remarks and position against The Jennifer Act. This is not a letter against its author or supporters. In fact, I commend the activism and desire to turn tragedy into triumph as expressed in The Jennifer Act. However, at the same time, I take issue with The Jennifer Act in its public internet campaign against The Florida Marchman Act. Accordingly, I respectfully submit this equally fervent and necessary response to set the record straight.

For those of your organization, who wish to examine proposals in The Jennifer Act in detail, I have addressed the specific contentions against The Florida Marchman Act below, as follows:

The Jennifer Act proposes on the following site www.TheJenniferAct.com:

*"Respectfully, the following revisions I bring before the legislature: 1) There are no secure beds in Pinellas County, of which The Marchman Act requires. Therefore, I petition the state of Florida and ask for secured beds and facilities for the addicted under the new amendment: The Jennifer Act. *note: There are very few Florida state funded facilities currently available for the addicted for detox. Currently, the addicted can walk out of a treatment facility."*

The facts:

In part, the above assertion is accurate. The Marchman Act does require that a person be ordered to a "secure" facility. However, the misinterpretation by The Jennifer Act lies in the laws statutory definition and meaning of the word "secure". "Secure" cannot be confused with "locked". The legislative intent of the Florida Marchman Act was to keep addicts out of jail and not locked away for their medical condition (the disease of addiction). Institutionalizing addicts is regarded as an antiquated clinical approach and an ugly shadow of our national treatment history. Physical restraint and jailing is recognized as an outdated and draconian approach to treatment that is fraught with the potential for abuses (especially, in instances of locking up substance abusers who are minor children). Horrors were inflicted upon addicts based upon this past idea that addicts need to be locked away for their own safety, and, that we are doing them and society a favor by doing so. However, addicts are not criminals – they are simply sick. Addiction is a medical condition to be approached no differently from diabetes, high blood pressure or cancer – with treatment. The Florida Marchman Act was written with this in mind to insure treatment under the law and not punishment or stigma. In fact, the current standard of care for treatment facilities strongly disapproves or strictly prohibits, locking addicts up against their will – Marchman Act or not.

The Jennifer Act is also correct in the assertion that an addict may be ordered under the Florida Marchman Act into treatment and simply *"...walk out of the treatment facility".* However, The Jennifer Act failed to recognize that the current Florida Marchman Act statute is dictated by the Florida Rules of Civil Procedure. Accordingly, there are well established consequences for any addict (and, a legal remedy for every petitioning family) should this occur. The existing law has safety nets for families and personal consequences for addicts who are non-compliant with treatment. It is important to realize that addicts walk out of treatment facilities against medical advice in America every single day whether there voluntarily or not. Why? Because the addict is at a critical stage of active addiction and may not appreciate their own need for care and/or make rational decisions regarding that care. That is why the Florida Rules of Civil Procedure (mentioned above) provide an effective and legal recourse within the existing Florida Marchman Act statute. For example, an addict is ordered to detox/treatment under the Florida Marchman Act and then compulsively comes to the decision to violate the court order by walking out of treatment against medical advice. In this example, the addict would now face a consequence for their action - civil contempt. Most simply put: civil contempt = return to treatment or face the consequence of going to jail until you agree to return to treatment. By creating a consequence for the addict, where none existed before, the Florida Marchman Act becomes mechanism for leveraging the addict into treatment with the invaluable lesson that their actions have consequences. This I refer to as "compulsive care". Instead of simply stripping the addict of due process and freedom, the Florida Marchman Act creates a situation

whereby the addict is "handed the keys to the jail" so to speak. Once the court has made a legal determination an addict is in need of involuntary care for the protection of themselves and the public (compliance = freedom, non-compliance = loss of freedom). To put this in perspective: my own office files contempt motions on behalf of families every day to compel an addict to return to, or, stay in treatment, under The Florida Marchman Act. As a result, we witness addicts make the decision to continue with their treatment every single day. Why? Because an addict is just like any other individual. They will always choose treatment and freedom over being locked away like criminal (something currently proposed by The Jennifer Act).

The Jennifer Act proposes on the following site www.TheJenniferAct.com:

"The enforcement of The Marchman Act changes from county to county within the state of Florida. Therefore, I ask for the new law The Jennifer Act. The purpose is to ensure revision of the law firmly in place in all counties in which it is filed in the state of Florida."

The facts:

This statement misrepresents the law and is simply inaccurate. A specific law in one area of Florida is the same law in any other area of Florida. The rules of civil procedure exist to ensure that there is a uniform process for enforcing every law in the same procedural fashion. Because a law is not properly litigated or enforced by the party seeking the benefit of the law, or, impeded by eternal factors outside the judicial system, does not suggest that enforcement is not available or uniform throughout from one area to the next. This is at the very core of our legal system.

The Jennifer Act proposes on the following site www.TheJenniferAct.com:

"The fee for filing a Marchman Act petition at the courthouse is very costly: $300.00. Therefore, I ask for the new law, The Jennifer Act, and that this filing fee be changed and re-adjusted at an affordable rate of the cost of processing the paper work only. Currently the cost varies from county to county, so The Jennifer Act would make the fee the same for every county in Florida."

The facts:

As discussed earlier, the County Clerk of Court in any area has the power to assess and collect filing fees and costs. The Clerk of the Courts is an independently elected and autonomous political body that is separate from the judiciary. In Florida, there is only one county that

imposes significant filing fees for Florida Marchman Act cases - Pinellas County. The Jennifer Act fails to recognize this and instead proposes to actually create and impose a system of uniform filing fees for involuntary commitment cases. Ironically, the exact and greatest impediment that is purported to exist under the Florida Marchman Act by The Jennifer Act - the fee – would inadvertently be imposed upon others throughout Florida should The Jennifer Act bill pass.

The Jennifer Act proposes on the following site www.TheJenniferAct.com:

"Currently, the Marchman Act "holds" the addicted person for 72 hours for observation and a professional assessment. Therefore, I ask for the length of time extended for proper medical detoxing, and a board certified professional (C.A.P.) evaluation of the addicted person. The length of detox varies based the substance and the individual, but in either case 72 hours is an insufficient amount of time. Note: intake specialist must be board certified."

The facts:

The above position is a misinterpretation of the existing Florida Marchman Act statute. The 72 hour "hold" spoken of is in the statute, but relates only to an additional power under the Marchman Act that is available to law enforcement and medical professionals that equates to a "non-court involved protective hold" of an addict in crisis. This provision (mainly used by law enforcement and ER doctors in their day to day duties) allows for a legally imposed protective custody hold upon an impaired individual without the need to arrest the individual for some crime. A non-court involved protective hold is a provision that was written into the statute to protect both the service provider and the addict. The legislative intent of The Florida Marchman Act was to create a procedure, whereby the state does not create a criminal record for an impaired individual simply to save their life. Accordingly, The Florida Marchman Act addresses this via a 72 hour hold by statutorily defined professionals without them having to seek court involvement. In the alternative, the current statutory "hold" for an impaired individual under The Florida Marchman Act that can be ordered by an actual court is in fact *"up to five days for detox and assessment"*. More so, the statue allows for the person to then be held until a treatment bed is available, if treatment has been recommended. Following this and a recommendation for treatment, the families can then ask the court to order the addict to comply with involuntary treatment *"for up to 60 days – with the possibility of repeated consecutive 90 day extensions should the crisis continue"*.

The Jennifer Act proposes on the following site www.TheJenniferAct.com:

"Evaluation and assessment of the patient/ the addicted is critical. Therefore, I ask for the new law, The Jennifer Act, to supervise and oversee county by county all facilities by The Office of Drug Control, The Capitol, Tallahassee, Florida. The Jennifer Act would provide a watchdog team. This would hold the patient/addicted until a thorough and proper assessment and evaluation and stabilization of the patient/addicted has been approved by an elected board on staff at The Office of Drug Control. This is a three-fold plan. a) It brings accountability to the state funded, state run facility b) It involves another certified addiction professional, a second evaluation and opinion c) It ensures a treatment plan that does not release the addicted immediately. This extra time required initially, will provide a time of intense residential drug treatment."

The facts:

This proposed measure under The Jennifer Act (1) has nothing to do with the existing Florida Marchman Act Statute and (2) is simply a terrible idea. First, the Department of Children and Families currently oversees "state run facilities" and substance abuse providers in Florida are licensed and held to extremely high standards by state and national professional licensing boards. Accordingly, if passed, this proposal under the bill is such a terrible idea because it would compel the State of Florida to do the following: (1) undergo the financial burden of holding elections to create a non-specific board that would be under the authority of The Office of Drug Control to act as an independent bureaucratic entity or "watchdog team"; (2) require this watchdog team to replicate services already being performed by trained professionals at <u>every</u> state run (or, state funded) treatment facility across 67 counties in Florida; (3) empower and require that this panel of non-specified or required professionals; on a daily basis, to reject or approve every detox/drug assessment performed at every state funded treatment facility across Florida; (4) grant this watchdog team the authority to require a "hold" of every addict indefinitely at any state funded treatment facility until approval or consensus is met regarding the addicts future care needs; (5) legislate that the State of Florida has the power to hold an addict indefinitely prior to any consensus being made as to the addicts clinical needs for *"a time of intense residential drug treatment"* (Translation: the Executive and Judicial branches of the State of Florida are granted the power to dictate the level of care of any person that is deemed a substance abuser without the consensus of a trained addiction professional); and (5) economically, considering the scope of the manpower required to accomplish the mandated daily duties specified above, millions upon millions of dollars would be required under The Jennifer Act, diverting those dollars from Florida's budget to the Office of Drug Control to fund a bureaucracy of replicated services that might otherwise be spent on essential services for mentally ill and drug addicted indigent across Florida.

In conclusion, The Jennifer Act proposes on the following site www.TheJenniferAct.com:

"Incarceration is not drug treatment. Incarcerating the addicted is perpetuating a revolving door of repeating the insanity of addiction. It brings nothing of purpose to an individual and the result is of no lasting value for mankind. I believe in investing in people, regardless of race, creed or gender which can positively alter and change addiction behaviors and habits. It costs thousands of dollars per year to incarcerate the addicted. Therefore, I ask for the new law, The Jennifer Act, for the purpose of a network of Doctors and Certified Addiction Professionals - staffed by the Dept. of Corrections to evaluate inmates, including drug testing, mental, physical and emotional assessment due to their addiction. After positive assessment has been made of an addict, I ask on behalf of the addicted, they be given 2 alternatives/choices for rehabilitation and drug treatment vs. incarceration: a) Faith based drug treatment b) Secular drug treatment".

The facts:

Although, this again has nothing to do with a flaw in The Florida Marchman Act statute, I think this is a positive philosophical approach to dealing with the harsh social and economic reality that 70-85% of our national prison populations are non-violent drug offenders, who could benefit from treatment vs. incarceration (or, benefit from some version of incarceration for crimes committed that includes a transition back into society via drug treatment). Across the country "specialty courts" such as drug courts and/or mental health courts are to be commended for taking this approach and addressing the issues of substance abuse and addiction within the judicial system. More so, addressing the correlation between addiction, recidivism and budgetary burdens placed on state budgets that enforce drug possession and use laws as well as pay the cost of subsequent incarceration. Treatment vs. Incarceration is not a new public health model, and the current national economic crisis has created a great deal of momentum for change in this national dialogue. However, this dialogue does not translate in any capacity as an argument against the existing Florida Marchman Act statute. In fact, the Florida Marchman Act operates in the jurisdiction of Florida's civil (not criminal) state courts. By its very nature and intent, The Florida Marchman Act is a statute that embraces this philosophy as a prophylactic measure against incarceration by: (1) recognizing the compulsive, destructive and/and dangerous behavior that are symptomatic of the disease of addiction; (2) creating a legal avenue within the courts that can assist in intervention when this behavior occurs; and (3) providing addicts with a short and long term treatment alternatives in lieu of incarceration.

On a side note:

One aspect of The Jennifer Act (as proposed above) that will face great difficulty in any form debate is the request for state legislated and/or mandated use of faith-based treatment

programs. Faith and/or a religious approach to treatment is a personal choice for the family. These programs exist currently and are available to anyone who wants them. Furthermore, The Florida Marchman Act does not discriminate and an individual may be ordered to a faith based program currently, if that is the desire of the parties.

Thank you for your consideration.

Raymond G. Ferrero III, Esq., The Jennifer Act – An open letter to NOPE (Narcotics Overdose Prevention & Education) © 2012

CourtSmart Tag Report

Room: SB 401 **Case:** **Type:**
Caption: Children, Families, and Elder Affairs Committee **Judge:**

Started: 2/22/2012 3:33:04 PM
Ends: 2/22/2012 4:55:38 PM Length: 01:22:35

3:33:19 PM	Roll Call
3:33:35 PM	Chair Storms opening remarks
3:34:33 PM	(Tab 1) -- CS/SB 212, Juvenile Offenders by Senator Oelrich
3:37:43 PM	Senator Rich question
3:38:11 PM	Senator Oelrich response
3:38:25 PM	Senator Rich question
3:38:31 PM	Senator Oelrich response
3:38:47 PM	Senator Rich question
3:38:54 PM	Senator Oelrich response
3:39:13 PM	Senator Rich question
3:39:17 PM	Senator Oelrich response
3:39:28 PM	Senator Rich remarks
3:39:41 PM	Senator Oelrich remarks
3:39:48 PM	Senator Rich remarks
3:39:53 PM	Senator Oelrich response
3:40:03 PM	Chair Storms remarks
3:41:26 PM	Senator Oelrich response
3:43:13 PM	Chair Storms remarks
3:44:05 PM	Senator Oelrich response
3:44:31 PM	Chair Storms remarks
3:44:35 PM	Senator Oelrich response
3:44:50 PM	Senator Latvala remarks
3:45:39 PM	Senator Dockery remarks
3:47:15 PM	Senator Latvala remarks
3:48:04 PM	Senator Dockery remarks
3:48:53 PM	Senator Gibson question
3:49:35 PM	Senator Oelrich response
3:51:13 PM	Representative Weinstein remarks
3:53:27 PM	Senator Latvala remarks
3:53:41 PM	Chair Storms remarks
3:54:40 PM	Representative Weinstein response
3:54:59 PM	Chair Storms remarks
3:55:09 PM	Representative Weinstein response
3:55:46 PM	Chair Storms question
3:56:04 PM	Representative Weinstein response
3:56:20 PM	Chair Storms remarks
3:56:52 PM	Representative Weinstein response
3:56:57 PM	Chair Storms question
3:57:02 PM	Representative Weinstein response
3:57:27 PM	Chair Storms remarks
3:57:33 PM	Representative Weinstein response
3:57:59 PM	Senator Rich question
3:58:20 PM	Representative Weinstein response
3:58:57 PM	Senator Rich question
3:59:29 PM	Representative Weinstein response
3:59:48 PM	Chair Storms remarks
4:01:24 PM	Representative Weinstein response
4:02:05 PM	Chair Storms remarks
4:02:14 PM	Representative Weinstein response
4:02:38 PM	CS/SB 212, handwritten amendment by Senator Dockery
4:04:00 PM	Senator Oelrich remarks
4:05:24 PM	Chair Storms remarks

4:06:36 PM CS/SB 212, Juvenile Offenders (Public Testimony)
4:16:52 PM Senator Dockery question
4:17:56 PM CS/SB 212, Juvenile Offenders vote
4:18:22 PM Senator Gibson remarks
4:18:59 PM Chair Storms and Senator Oelrich remarks
4:19:48 PM (Tab 3) -- SB 914, Suspension of Driver Licenses and Motor Vehicle Registrations by Senator Oelrich
4:21:19 PM Senator Gibson question
4:21:35 PM Senator Oelrich response
4:22:16 PM Senator Gibson question
4:22:36 PM Senator Oelrich response
4:23:14 PM SB 914, Suspension of Driver Licenses and Motor Vehicle Registrations amendment (barcode 718638) by Senator Dockery
4:24:20 PM Senator Dockery remarks
4:25:25 PM Senator Detert remarks
4:26:29 PM Senator Rich question
4:26:43 PM Senator Oelrich response
4:27:13 PM Chair Storms remarks
4:27:26 PM SB 914, Suspension of Driver Licenses and Motor Vehicle Registrations vote
4:28:10 PM (Tab 2) -- CS/SB 282, Health Care Transition/Adolescents and Young Adults/Special Health Care Needs by Senator Wise
4:30:40 PM Chair Storms remarks
4:30:48 PM CS/SB 282, Health Care Transition/Adolescents and Young Adults/Special Health Care Needs (Public Testimony)
4:31:26 PM Senator Wise remarks
4:31:41 PM CS/SB 282, Health Care Transition/Adolescents and Young Adults/Special Health Care Needs vote
4:32:02 PM (Tab 4) -- SB 1744, Substance Abuse Treatment Services (Presented by Jennifer Wilson, Senator Latvala's Legislative Assistant)
4:35:07 PM Senator Detert remarks
4:36:31 PM Jennifer Wilson response
4:37:06 PM Senator Detert remarks
4:37:57 PM Jennifer Wilson response
4:38:09 PM Senator Rich remarks
4:39:24 PM Jennifer Wilson response
4:40:16 PM Senator Rich question
4:40:31 PM Jennifer Wilson response
4:40:52 PM Senator Rich question
4:41:01 PM Jennifer Wilson response
4:41:07 PM Chair Storms remarks
4:41:40 PM Senator Detert remarks
4:43:16 PM Chair Storms remarks
4:44:10 PM Senator Detert remarks
4:44:37 PM Senator Rich remarks
4:45:16 PM Chair Storms remarks
4:45:47 PM SB 1744, Substance Abuse Treatment Services vote
4:46:32 PM Chair Storms discussion of potential interim projects
4:47:39 PM Chair Storms remarks
4:48:15 PM Senator Dockery remarks
4:49:23 PM Chair Storms remarks
4:50:28 PM Senator Rich remarks
4:51:46 PM Senator Detert remarks
4:52:34 PM Chair Storms remarks
4:55:33 PM Adjourn