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 BC	
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 BC	

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 TR BC	
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 CJ BC	
5	Discussion of potential interim projects		
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:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.	Daniell	Farmer	CF	**Pre-meeting**
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 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:

None.

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.

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

duress or domination of another person.

(d) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(e) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected her or his behavior.

(f) 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.

(g) Whether the juvenile offender has successfully completed any General Educational Development or other educational, technical, work, vocational, or self-rehabilitation program.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before she or he committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender.

(j) The facts and circumstances of the offense for which the life sentence was imposed, including the severity of the offense.

(k) Any factor that the sentencing court may have taken into account at the initial sentencing hearing in relation to all other considerations listed in this section which may be relevant to the court's determination.

(6) If the court determines at the resentencing hearing that the juvenile offender can reasonably be believed to be fit to reenter society, the court must issue an order modifying the

sentence imposed and placing the offender on probation for a term of at least 5 years. If the juvenile offender violates the conditions of her or his probation, the court may revoke probation and impose any sentence that it might have originally imposed and the juvenile offender is no longer eligible for a resentencing hearing pursuant to this section.

(7) A juvenile offender who is not resentenced under this section at the initial resentencing hearing is eligible for a resentencing hearing 7 years after the date of the denial and every 7 years thereafter.

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

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

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	**Pre-meeting**
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.

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

web-based materials related to health care transition services which can be used by adolescents and young adults who have special health care needs and their families, providers, and others involved in health care transition.

(e) Collecting and disseminating information in specific clinical areas concerning evidence-based practices and best practices for providing health care transition services for adolescents and young adults who have special health care needs.

(f) Providing technical assistance to communities, providers, and organizations that are involved in the development and implementation of systems of services for adolescents and young adults who have special health care needs.

(g) Developing and disseminating quality improvement and evaluation components to other health care providers. The quality improvement and evaluation components must include a common or comparable set of performance measures for all entities that provide health care transition services for adolescents and young adults who have special health care needs.

(h) 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.

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

The Florida Senate

Committee Agenda Request

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

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 914
INTRODUCER:	Senator Oelrich
SUBJECT:	Suspension of Driver Licenses and Motor Vehicle Registrations
DATE:	February 21, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	**Pre-meeting**
2.			TR	
3.			BC	
4.				
5.				
6.				

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.

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 affidavit stating that 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.

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]

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

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.

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 affidavit to the DHSMV stating that the obligor has agreed to a schedule of payment on child support arrearages and to maintain support obligations. In addition to the affidavit, the court must also direct the DHSMV to issue a license for driving privileges restricted to business purposes only to the obligor.

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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

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 Department of Revenue (DOR or department), it currently provides the Department of Highway Safety and Motor Vehicles (DHSMV) with a daily data file of suspensions and reinstatements that automatically updates the DHSMV system. The department recommends amending the bill to authorize notice by interagency data exchange (rather than just by affidavit).[15]

Also, 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. Currently, if the DHSMV issues a license with business purposes only restrictions, the restrictions have an expiration date.[16]

Finally, 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,

[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).
[15] Dep't of Revenue, *supra* note 13.
[16] Dep't of Highway Safety and Motor Vehicles, *supra* note 12.

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.)

None.

B. Amendments:

None.

718638

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 136 - 211
and insert:

(6) A person whose driver license and registration have been suspended under this section may petition for relief under subsection (2). A petition under this subsection does not act as a stay of any suspension.

Section 2. Subsection (2) of section 322.058, Florida Statutes, is amended to read:

322.058 Suspension of driving privileges due to support

718638

delinquency; reinstatement.—

(2)(a) The department must reinstate the full driving privilege and allow registration of a motor vehicle when the Title IV-D agency in IV-D cases or the depository or the clerk of the court in non-IV-D cases provides to the department an electronic notification ~~affidavit~~ stating that:

1.~~(a)~~ The person has paid the delinquency;

2.~~(b)~~ The person has reached a written agreement for payment with the Title IV-D agency or the obligee in non-IV-D cases;

3.~~(c)~~ A court has entered an order granting relief to the obligor ordering the reinstatement of the license and motor vehicle registration; or

4.~~(d)~~ The person has complied with the subpoena, order to appear, order to show cause, or similar order.

(b) The department must reinstate the driving privilege restricted to business purposes only and allow registration of a motor vehicle when the Title IV-D agency in IV-D cases or the depository or the clerk of the court in non-IV-D cases provides to the department electronic notification stating that a court has entered an order granting relief to the obligor ordering the reinstatement of the license restricted to business purposes only and motor vehicle registration pursuant to s. 61.13016(2) or (6).

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

And the title is amended as follows:

Delete lines 17 - 30

and insert:

obligor has the ability to pay; specifying that an obligor whose license and registration have been suspended may apply to the court for a license for business purposes only if the obligor agrees to make payments against the arrearage; amending s. 322.058, F.S.; requiring that the Department of Highway Safety and Motor Vehicles reinstate the driving privilege and allow the 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 electronic notification to the department stating that the court has directed that the person be issued a driver license restricted to business purposes only; 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

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;

(b) The period of the delinquency and the total amount of the delinquency as of the date of the notice or describe the subpoena, order to appear, order to show cause, or other similar order that ~~which~~ has not been complied with;

(c) That notification will be given to the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license and motor vehicle registration unless, within 20 days after the date the notice is mailed, the obligor:

1.a. Pays the delinquency in full and any other costs and fees accrued between the date of the notice and the date the delinquency is paid;

b. Enters into a written agreement for payment with the obligee in non-IV-D cases or with the Title IV-D agency in IV-D cases; or in IV-D cases, complies with a subpoena or order to appear, order to show cause, or a similar order; or

c. Files a petition with the circuit court to contest the delinquency action; and

2. Pays any applicable delinquency fees.

If the obligor in non-IV-D cases enters into a written agreement for payment before the expiration of the 20-day period, the obligor must provide a copy of the signed written agreement to the depository or the clerk of the court.

(2)(a) If the obligor files a ~~Upon~~ petition ~~filed by the obligor~~ in the circuit court within 20 days after the mailing date of the notice, the court may~~, in its discretion,~~ direct the department to issue a license for driving privileges restricted to business purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. As a condition

for the court to exercise its discretion under this subsection, the obligor must agree to a schedule of payment on any child support arrearages and to maintain current child support obligations. Before approving the schedule of payment, the court must find that the obligor has the present ability to pay the schedule of payment for the child support arrearage and the current child support obligation.

(b) If the obligor fails to comply with the schedule of payment and if the obligor has the present ability to do so, the court shall direct the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license.

(c) ~~(b)~~ The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or on the depository or the clerk of the court in non-IV-D cases. When an obligor timely files a petition to set aside a suspension, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a petition under this subsection stays the intent to suspend until the entry of a court order resolving the matter.

(3) If the obligor does not, within 20 days after the mailing date on the notice, pay the delinquency, enter into a payment agreement, comply with the subpoena, order to appear, order to show cause, or other similar order, or file a motion to contest, the Title IV-D agency in IV-D cases, or the depository or clerk of the court in non-IV-D cases, shall file the notice with the Department of Highway Safety and Motor Vehicles and request the suspension of the obligor's driver ~~driver's~~ license

and motor vehicle registration in accordance with s. 322.058.

(4) The obligor may, within 20 days after the mailing date on the notice of delinquency or noncompliance and intent to suspend, file in the circuit court a petition to contest the notice of delinquency or noncompliance and intent to suspend on the ground of mistake of fact regarding the existence of a delinquency or the identity of the obligor. The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or depository or clerk of the court in non-IV-D cases. When an obligor timely files a petition to contest, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a petition to contest stays the notice of delinquency and intent to suspend until the entry of a court order resolving the matter.

(5) The procedures prescribed in this section and s. 322.058 may be used to enforce compliance with an order to appear for genetic testing.

Section 2. Section 322.058, Florida Statutes, is amended to read:

322.058 Suspension of driving privilege ~~privileges~~ due to support delinquency; reinstatement.—

(1) When the department receives notice from the Title IV-D agency or depository or the clerk of the court that a ~~any~~ person licensed to operate a motor vehicle in the State of Florida under the provisions of this chapter has a delinquent support obligation or has failed to comply with a subpoena, order to appear, order to show cause, or similar order, the department

shall suspend the driver ~~driver's~~ license of the person named in the notice and the registration of all motor vehicles owned by that person.

(2) The department shall reinstate the driving privilege and allow registration of the 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 to the department an affidavit stating that the person has agreed to a schedule of payment on child support arrearages and to maintain support obligations, and the court has directed that the person be issued a license for driving privileges restricted to business purposes only, as defined by s. 322.271 and pursuant to s. 316.13016.

(3)~~(2)~~ The department shall also ~~must~~ reinstate the driving privilege and allow registration of a motor vehicle when the Title IV-D agency in IV-D cases or the depository or the clerk of the court in non-IV-D cases provides to the department an affidavit stating that:

(a) The person has paid the delinquency;

(b) The person has reached a written agreement for payment with the Title IV-D agency or the obligee in non-IV-D cases;

(c) A court has entered an order granting relief to the obligor ordering the reinstatement of the license and motor vehicle registration; or

(d) The person has complied with the subpoena, order to appear, order to show cause, or similar order.

(4)~~(3)~~ The department is ~~shall~~ not ~~be held~~ liable for a ~~any~~

license or vehicle registration suspension resulting from the discharge of its duties under this section.

(5)~~(4)~~ This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under chapter 320, except for the transfer of registrations which is inclusive of the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(7)(b).

Section 3. Subsection (7) of section 409.256, Florida Statutes, is amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(7) FAILURE OR REFUSAL TO SUBMIT TO GENETIC TESTING.—If a person who is served with an order to appear for genetic testing fails to appear without good cause or refuses to submit to testing without good cause, the department may take one or more of the following actions:

(a) Commence a proceeding to suspend the driver ~~driver's~~ license and motor vehicle registration of the person ordered to appear, as provided in s. 61.13016;

(b) Impose an administrative fine against the person ordered to appear in the amount of $500; or

(c) File a petition in circuit court to establish paternity, obtain a support order for the child, and seek reimbursement from the person ordered to appear for the full cost of genetic testing incurred by the department.

As provided in s. 322.058(3) ~~s. 322.058(2)~~, a suspended driver ~~driver's~~ license and motor vehicle registration shall ~~may~~ be reinstated when the person ordered to appear complies with the order to appear for genetic testing. The department may collect an administrative fine imposed under this subsection by using civil remedies or other statutory means available to the department for collecting support.

Section 4. This act shall take effect July 1, 2012.

The Florida Senate

Committee Agenda Request

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	**Pre-meeting**
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]

[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.

[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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~~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

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.

c. An additional filing fee of $4 shall be paid to the clerk, of which~~.~~ the clerk shall remit $3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and ~~shall remit~~ 50 cents to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission to fund clerk education. An additional filing fee of up to $18 shall be paid by the party seeking each severance that is granted. The clerk may impose an additional filing fee of up to $85 for all proceedings of garnishment, attachment, replevin, and distress. Postal charges incurred by the clerk ~~of the circuit court~~ in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. ~~No~~ Additional fees, charges, or costs may not ~~shall~~ be added to the filing fees imposed under this section, except as authorized in this section or by general law.

d. The party instituting a civil action, suit, or proceeding in the circuit court under part V of chapter 397 shall pay to the clerk of that court a filing fee of up to $195 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 first $90 in filing fees shall be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, $3.50 shall 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.

2.~~a.~~ Notwithstanding the fees prescribed in subparagraph 1., a party instituting a civil action in circuit court relating to real property or mortgage foreclosure must ~~shall~~ pay a graduated filing fee based on the value of the claim.

a.~~b.~~ The ~~A~~ party shall estimate in writing the amount of the claim in controversy ~~of the claim~~ upon filing the action. For purposes of this subparagraph, the value of a mortgage foreclosure action is based upon the principal due on the note secured by the mortgage, plus interest owed on the note and any moneys advanced by the lender for property taxes, insurance, and other advances secured by the mortgage, at the time of filing the foreclosure. The value ~~shall~~ also includes ~~include~~ the value of any tax certificates related to the property. In stating the value of a mortgage foreclosure claim, the ~~a~~ party shall declare in writing the total value of the claim, as well as the individual elements of the value as prescribed in this sub-subparagraph.

b.~~c.~~ In its order providing for the final disposition of the matter, the court shall identify the actual value of the

claim. The clerk shall adjust the filing fee if there is a difference between the estimated amount in controversy and the actual value of the claim and collect any additional filing fee owed or provide a refund of excess filing fee paid.

c.~~d.~~ The party shall pay a filing fee of:

(I) Three hundred and ninety-five dollars in all cases in which the value of the claim is $50,000 or less and ~~in which~~ there are not more than five defendants. The party shall pay 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;

(II) Nine hundred dollars in all cases in which the value of the claim is more than $50,000 but less than $250,000 and ~~in which~~ there are not more than five defendants. The party shall pay an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $785 in filing fees, $80 shall ~~must~~ be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, $700 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 described 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; or

(III) One thousand nine hundred dollars in all cases in which the value of the claim is $250,000 or more and ~~in which~~ there are not more than five defendants. The party shall pay an additional filing fee of up to $2.50 for each defendant in excess of five. Of the first $1,785 in filing fees, $80 shall ~~must~~ be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, $1,700 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 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.

d.~~e.~~ An additional filing fee of $4 shall be paid to the clerk, of which~~.~~ the clerk shall remit $3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and

~~shall remit~~ 50 cents to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission to fund clerk education. An additional filing fee of up to $18 shall be paid by the party seeking each severance that is granted. The clerk may impose an additional filing fee of up to $85 for all proceedings of garnishment, attachment, replevin, and distress. Postal charges incurred by the clerk ~~of the circuit court~~ in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. ~~No~~ Additional fees, charges, or costs may not ~~shall~~ be added to the filing fees imposed under this section, except as authorized in this section or by general law.

Section 3. Subsection (1) of section 397.6772, Florida Statutes, is amended to read:

397.6772 Protective custody without consent.—

(1) If a person in circumstances that ~~which~~ justify protective custody as described in s. 397.677 fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

(a) Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or

(b) In the case of an adult, detain the person for his or her own protection in a ~~any~~ municipal or county jail or other appropriate detention facility.

Such detention is not to be considered an arrest for any purpose, and no entry or other record may be made to indicate that the person has been detained or charged with any crime. The officer in charge of the detention facility must notify the nearest appropriate licensed service provider within the first 8 hours after detention that the person has been detained. ~~It is the duty of~~ The detention facility must ~~to~~ arrange, as necessary, for transportation of the person to an appropriate licensed service provider with an available bed. Persons taken into protective custody must be assessed by the attending physician within the 5-day ~~72-hour~~ period and without unnecessary delay, to determine the need for further services.

Section 4. Section 397.6773, Florida Statutes, is amended to read:

397.6773 Dispositional alternatives after protective custody.—

(1) An individual who is in protective custody must be released by a qualified professional if ~~when~~:

(a) The individual no longer meets the involuntary admission criteria in s. 397.675(1);

(b) The 5-day ~~72-hour~~ period has elapsed; or

(c) The individual has consented to remain voluntarily at the licensed service provider.

(2) An individual may ~~only~~ be retained in protective custody beyond the 5-day ~~72 hour~~ period only if ~~when~~ a petition for involuntary assessment or treatment has been initiated. The timely filing of the petition authorizes the service provider to retain physical custody of the individual pending further order

of the court.

Section 5. Section 397.6797, Florida Statutes, is amended to read:

397.6797 Dispositional alternatives after emergency admission.—Within 5 days ~~72 hours~~ after an emergency admission to a hospital, ~~or~~ a licensed detoxification or addictions receiving facility, or ~~the individual must be assessed by the attending physician to determine the need for further services. Within 5 days after an emergency admission to~~ a nonresidential component of a licensed service provider, the individual must be assessed by a qualified professional to determine the need for further services. Based upon that assessment, a qualified professional of the hospital, detoxification facility, or addictions receiving facility, or a qualified professional if a less restrictive component was used, must ~~either~~:

(1) Release the individual and, if ~~where~~ appropriate, refer the individual to other needed services; or

(2) Retain the individual if ~~when~~:

(a) The individual has consented to remain voluntarily at the licensed provider; or

(b) A petition for involuntary assessment or treatment has been initiated, the timely filing of which authorizes the service provider to retain physical custody of the individual pending further order of the court.

Section 6. Subsection (1) of section 397.6798, Florida Statutes, is amended to read:

397.6798 Alternative involuntary assessment procedure for minors.—

(1) In addition to protective custody, emergency admission,

and involuntary assessment and stabilization, an addictions receiving facility may admit a minor for involuntary assessment and stabilization upon the filing of an application to an addictions receiving facility by the minor's parent, guardian, or legal custodian. The application must establish the need for involuntary assessment and stabilization based on the criteria for involuntary admission in s. 397.675. Within 5 days ~~72 hours~~ after involuntary admission of a minor, the minor must be assessed to determine the need for further services. Assessments must be performed by a qualified professional. If, after the 5-day ~~72 hour~~ period, it is determined by the attending physician that further services are necessary, the minor may be kept for a period of up to 5 days, inclusive of the 5-day ~~72-hour~~ period.

Section 7. Subsections (1) and (2) of section 397.754, Florida Statutes, are amended to read:

397.754 Duties and responsibilities of the Department of Corrections.—The Department of Corrections shall:

(1) To the fullest extent possible, provide inmates upon arrival at a department ~~of Corrections~~ reception center for initial processing with an assessment of substance abuse service needs, including drug testing and mental, physical, and emotional assessment by qualified professionals.

(2) Provide inmates who are admitted to inmate substance abuse services with an individualized treatment plan that ~~which~~ is developed on the basis of assessed need for services and that ~~which~~ includes measurable goals and specifies the types of services needed to meet those goals. In areas where both faith-based and nonfaith-based drug programs are available, and to the fullest extent practicable, each inmate must be given the choice

of a faith-based or nonfaith-based program for rehabilitation and drug treatment.

Section 8. This act shall take effect July 1, 2012.

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 no fees 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 every 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.