

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Dean, Vice Chair

MEETING DATE: Wednesday, March 9, 2011
TIME: 3:15 —5:15 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Dean, Vice Chair; Senators Dockery, Margolis, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 104 Ring (Identical H 4035, S 1628, Compare S 1060)	Misdemeanor Pretrial Substance Abuse Programs; Provides that a person who has previously been admitted to a pretrial program may qualify for a misdemeanor pretrial substance abuse program. CJ 03/09/2011 Favorable JU BC	Favorable Yeas 5 Nays 0
2	SB 138 Bennett (Identical H 17)	Military Veterans Convicted of Criminal Offenses; Provides that persons convicted of criminal offenses who allege that the offenses resulted from posttraumatic stress disorder, substance abuse, or psychological problems stemming from service in a combat theater in the United States military may have a hearing on that issue before sentencing. Provides that defendants found to have committed offenses due to such causes and who are otherwise eligible for probation or community control may be placed in treatment programs for an equal period of time in certain circumstances, etc. CJ 02/22/2011 Temporarily Postponed CJ 03/09/2011 Fav/CS CF BC	Fav/CS Yeas 5 Nays 0
3	SB 144 Smith (Identical H 1177)	Elderly Inmates; Creates the Elderly Rehabilitated Inmate Supervision Program to authorize the Parole Commission to approve the early release of certain elderly inmates. Provides eligibility requirements for an inmate to participate in the program. Authorizes members of the public to be present at meetings of the commission held to determine an inmate's eligibility for the program. Authorizes a victim to make an oral statement or provide a written statement regarding the granting, denying, or revoking of an inmate's supervised release under the program, etc. CJ 02/22/2011 Temporarily Postponed CJ 03/09/2011 Pending reconsider (Unfavorable) JU BC	Unfavorable Yeas 2 Nays 3 -Pending Reconsideration

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Criminal Justice

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 146 Smith (Identical H 449, Compare H 1369, S 134)	Criminal Justice; Cites this act as the "Jim King Keep Florida Working Act." Requires state agencies and regulatory boards to prepare reports that identify and evaluate restrictions on licensing and employment for ex-offenders. Prohibits state agencies from denying an application for a license, permit, certificate, or employment based on a person's lack of civil rights. Requires an employer to review the results of a criminal background investigation. Clarifies under what circumstances a person may legally deny the existence of an expunged criminal history record, etc. GO 02/08/2011 Favorable CJ 03/09/2011 Fav/CS JU	Fav/CS Yeas 5 Nays 0
5	SB 234 Evers (Similar H 517, Compare S 956)	Firearms; Provides that a person in compliance with the terms of a concealed carry license may carry openly notwithstanding specified provisions. Allows the Division of Licensing of the Department of Agriculture and Consumer Services to take fingerprints from concealed carry license applicants. Limits a prohibition on carrying a concealed weapon or firearm into an elementary or secondary school facility, career center, or college or university facility to include only a public elementary or secondary school facility or administration building, etc. CJ 02/22/2011 Temporarily Postponed CJ 03/09/2011 Temporarily Postponed JU RC	Temporarily Postponed
6	SB 464 Latvala (Identical CS/H 3)	Assault or Battery of a Law Enforcement Officer; Requires the Department of Law Enforcement to issue a blue alert if a law enforcement officer has been killed, suffered serious bodily injury, or been assaulted and the suspect has fled the scene, or if a law enforcement officer is missing while in the line of duty. Requires that the blue alert be disseminated on the emergency alert system through television, radio, and highway signs. Provides that emergency traffic information may take precedence over blue alert information. CJ 03/09/2011 Favorable TR BC	Favorable Yeas 5 Nays 0

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Criminal Justice

Wednesday, March 9, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 496 Margolis (Identical H 433)	Ocean Lifeguards; Provides enhanced penalties for an assault or battery on an ocean lifeguard. Amends a provision relating to arrest without warrant to conform provisions. Amends and reenacts provisions relating to the offense severity ranking chart to conform. Amends provisions relating to criminal justice information to conform provisions, etc. CJ 03/09/2011 Favorable JU BC	Favorable Yeas 5 Nays 0
8	SB 514 Garcia (Identical H 347)	Vehicle Crashes Involving Death; Cites this act as the "Ashley Nicole Valdes Act." Requires a defendant who was arrested for leaving the scene of a crash involving death be held in custody until brought before a judge for admittance to bail in certain circumstances. Reenacts provision relating to the Criminal Punishment Code, to incorporate the amendments made to provision in a reference thereto. CJ 03/09/2011 Favorable JU BC	Favorable Yeas 5 Nays 0
9	SB 600 Criminal Justice	OGSR/Records/DJJ Employees & Family Members; Amends a provision which provides an exemption from public records requirements for certain records relating to current and former employees of the Department of Juvenile Justice and their family members, including juvenile probation officers and supervisors, detention and assistant detention superintendents, juvenile justice detention officers and supervisors, juvenile justice residential officers and supervisors, juvenile justice counselors and supervisors, human service counselor administrators, etc. CJ 03/09/2011 Favorable GO RC	Favorable Yeas 5 Nays 0
10	SB 602 Criminal Justice	OGSR/Biometric Identification Information; Amends a provision which provides an exemption from public records requirements for biometric identification information held by an agency. Saves the exemption from repeal under the Open Government Sunset Review Act. Removes the scheduled repeal of the exemption. CJ 03/09/2011 Favorable GO RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Wednesday, March 9, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 604 Criminal Justice	OGSR/Concealed Weapons or Firearms; Amends provision which provides an exemption from public records requirements for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm. Saves the exemption from repeal under the Open Government Sunset Review Act. Removes the scheduled repeal of the exemption. CJ 03/09/2011 Favorable GO RC	Favorable Yeas 5 Nays 0
12	SB 618 Evers (Compare H 4157)	Juvenile Justice; Requires a child who is adjudicated delinquent, or for whom adjudication is withheld, to be committed to a maximum-risk residential program for an act that would be a felony if committed by an adult if the child has completed two different high-risk residential commitment programs. Repeals a provision relating to cases involving grand theft of a motor vehicle committed by a child, etc. CJ 03/09/2011 Fav/CS BC	Fav/CS Yeas 5 Nays 0
13	SB 664 Benacquisto (Similar H 513)	Missing Person Investigations/Silver Alert; Provides that certain specified persons are immune from civil liability for damages for complying with the request to release Silver Alert information to appropriate agencies. Authorizes only the law enforcement agency having jurisdiction over a case to submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan, etc. CJ 03/09/2011 Fav/1 Amendment JU BC	Fav/1 Amendment (901184) Yeas 5 Nays 0

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 Criminal Justice Committee

BILL: SB 104

INTRODUCER: Senator Ring

SUBJECT: Misdemeanor Pretrial Substance Abuse Programs

DATE: March 3, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

This bill substantially amends section 948.16 of the Florida Statutes.

II. Present Situation:

Section 948.16, F.S., specifies that a person who is charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who has not previously been convicted of a felony nor been admitted to a pretrial program, is eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program, for a period based on the program requirements and the treatment plan for the offender.

Admission may be based upon motion of either party or the court except, if the state attorney believes the facts and circumstances of the case suggest the defendant is involved in dealing and selling controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes, by a preponderance of the evidence at such hearing, that the defendant was involved in dealing or selling controlled substances, the court shall deny the defendant's admission into the pretrial intervention program.

Participants in the program are subject to a coordinated strategy developed by a drug court team under s. 397.334(4), F.S., which may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court.

At the end of the pretrial intervention period, the court must:

- Consider the recommendation of the treatment program;
- Consider the recommendation of the state attorney as to disposition of the pending charges; and
- Determine, by written finding, whether the defendant successfully completed the pretrial intervention program.

If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment or return the charges to the criminal docket for prosecution. The court must dismiss the charges upon finding that the defendant has successfully completed the pretrial intervention program.

III. Effect of Proposed Changes:

Under current law only persons who have been charged with a misdemeanor for possession of a controlled substance or drug paraphernalia under ch. 893, F.S., and who have not previously been convicted of a felony nor been admitted to a pretrial program, are eligible for voluntary admission into a misdemeanor pretrial substance abuse education and treatment intervention program.

The bill expands the pool of people who are eligible for admission into a misdemeanor pretrial substance abuse education and treatment intervention program by removing the requirement that a person not have previously been admitted into a pretrial program in order to participate in such programs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill as written could expand the number of potential participants in county-funded misdemeanor pretrial substance abuse education and treatment intervention programs. Although no potential fiscal impact has been brought to our attention, it is conceivable that the counties may decide to increase program capacity which would result in increased expenditures.

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.

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 Criminal Justice Committee

BILL: SB 138

INTRODUCER: Senators Bennett, Gaetz, and Dockery

SUBJECT: Military Veterans Convicted of Criminal Offenses

DATE: February 15, 2011

REVISED: 03/07/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Pre-meeting
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill creates a framework for sentencing courts to consider diverting veterans who are convicted of criminal offenses from incarceration into treatment programs for posttraumatic stress disorder (PTSD), substance abuse, or psychological problems that stem from their military service. If a convicted defendant claims before sentencing that his or her crime resulted from one of the conditions that resulted from service in a combat zone, the court would be required to hold a hearing to determine whether the defendant is in fact a veteran who suffers from one of the conditions as a result of that service. If the claim is verified, and if the veteran is otherwise eligible to be placed on community supervision, the court may place a veteran defendant who is otherwise eligible for community supervision into a treatment program for the length of the sentence if the veteran agrees to participate. Veterans who participate in a residential treatment program would receive sentence credits for the time actually spent in the program if they are later incarcerated as a result of a violation of supervision.

The court is required to give preference to established treatment programs that have a history of successfully treating combat veterans with a history of PTSD, substance abuse, or psychological problems resulting from their service.

This bill creates section 921.00242 of the Florida Statutes:

II. Present Situation:

The Department of Corrections does not have statistics of how many of the 152,000 offenders on community supervision are military veterans. However, it reports that 6,864 state prison inmates (approximately 6.7% of the total prison population) identified themselves as a military veteran as

of December 20, 2010. This claim of veteran status was verified for 1,273 of these inmates by submission of a Certificate of Release or Discharge from Active Duty (Department of Defense Form 214). The types of offenses for which these veterans are incarcerated are reflected in the following table:¹

Primary Offense	Claimed Veteran Status	%	Verified Veteran Status	%
Murder/Manslaughter	1,079	15.7%	353	27.7%
Sexual/Lewd Behavior	1,773	25.8%	501	39.4%
Robbery	593	8.6%	97	7.6%
Aggravated Battery/ Assault, Kidnapping, Other Violent Crimes	747	10.9%	84	6.6%
Burglary	677	9.9%	98	7.7%
Property Theft/Fraud/Damage	579	8.4%	36	2.8%
Drugs	860	12.5%	62	4.9%
Weapons	165	2.4%	17	1.3%
Other	391	5.7%	25	2.0%
Total	6,864		1,273	

The table indicates that a majority of veteran inmates in Florida are incarcerated for violent crimes and a lesser number for property and drug offenses. This is in contrast to the findings of the American Bar Association's Commission on Homelessness and Poverty (ABA), which cited national statistics that 70 percent of incarcerated veterans are in jail for non-violent offenses.² However, the ABA statistic apparently relates to veterans in local jails. There is no comprehensive data on the number of veterans among the approximately 59,000 persons either serving sentences or awaiting trial or hearing in county jails throughout Florida.

One Florida county judge who regularly deals with veterans has observed that the most frequent offenses committed by veterans are trespass, possession of an open container, obstructing traffic, possession of marijuana, loitering, worthless checks, disorderly conduct, domestic violence, resisting an officer and petit theft.³ A detailed report of veterans' involvement in the criminal judicial system in Travis County, Texas, reflects that the majority of misdemeanor charges against veterans were for non-violent offenses, while the majority of felony charges were for violent offenses.⁴

¹ Department of Corrections Analysis of House Bill 17 – Military Veterans Convicted of Criminal Offenses, December 21, 2010, p. 1.

² ABA Commission on Homelessness and Poverty, Resolution 105A, February 10, 2010 at http://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/ABA_Policy_on_Vets_Treatment_Courts_FINAL.authcheckdam.pdf, last viewed on February 17, 2011. The ABA report indicates that the statistics come from a 2002 report by the Department of Justice Bureau of Justice Statistics, but staff could not locate the underlying report.

³ Email from Okaloosa County Judge Pat Maney to legislative staff dated February 11, 2011.

⁴ *Report of Veterans Arrested and Booked Into the Travis County Jail, July 2009*, <http://www.nadcp.org/sites/default/files/nadcp/Texas%20Veterans%20Justice%20Research.pdf>, last viewed on February 17, 2011.

In 2008, the Florida Department of Veterans' Affairs and the Florida Office of Drug Control issued a paper examining the issue of mental health and substance abuse needs of returning veterans and their families.⁵ The study noted that combat medical advances are enabling veterans of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) to survive wounds that would have been fatal in previous conflicts, and thus some are returning with "more complex physical and emotional disorders, such as Traumatic Brain Injuries and Post-Traumatic Stress Disorder, substance abuse and depression."⁶ The study also estimated at that time that approximately 29,000 returning veterans residing in Florida may suffer from PTSD or some form of major depression.⁷

A Rand Center report in 2008 indicated that preliminary studies showed that 5 to 15 percent of OIF and OEF service members are returning with PTSD, 2 to 10 percent with depression, and an unknown number with Traumatic Brain Injury (TBI).⁸ A person with any of these disorders also has a greater likelihood of experiencing other psychiatric diagnoses than do other persons.⁹

A report by the Center for Mental Health Services National GAINS Center of the federal Substance Abuse and Mental Health Services Administration (SAMHSA) noted that many veterans coming into contact with the criminal justice system may have unmet treatment needs.¹⁰ Veterans courts have arisen across the country as some judges have begun to recognize a correlation among veterans appearing before them between the commission of offenses, substance abuse issues, mental health issues, and cognitive functioning problems. The judges concluded that in many cases, inadequate ability to deal with these conditions on their own contributed to the veterans' encounters with the legal system.

Typically, veterans' courts are patterned after successful specialty courts such as drug courts and mental health courts, and have the goal of identifying veterans who would benefit from a treatment program instead of incarceration or other sanctions. Since 2008, legislation authorizing the establishment of veterans' courts has been adopted or at least considered in California, Colorado, Texas, Nevada, Illinois, Connecticut, New Mexico, New York, Minnesota, and Oklahoma.¹¹ The National Association of Drug Court Professionals website indicates that there are veterans' courts in 47 cities or counties nationwide.¹²

⁵ Florida Department of Veterans' Affairs and Florida Office of Drug Control Green Paper, *Returning Veterans and Their Families with Substance Abuse and Mental Health Needs: Florida's Action Plan*, January 2009, page 5.

⁶ *Ibid.*, p. 5.

⁷ *Ibid.*, p. 5.

⁸ Rand Center for Military Health Policy Research, Benjamin R. Karney, Rajeev Ramchand, Karen Chan Osilla, Leah B. Caldarone, and Rachel M. Burns, *Invisible Wounds, Predicting the Immediate and Long-Term Consequences of Mental Health Problems in Veterans of Operation Enduring Freedom and Operation Iraqi Freedom*, April 2008, page xxi.

⁹ *Ibid.*, p. 127.

¹⁰ GAINS Center, *Responding to the Needs of Justice-Involved Combat Veterans with Service-Related Trauma and Mental Health Conditions*, August 2008, page 6, at www.gainscenter.samhsa.gov/pdfs/veterans/CVTJS_Report.pdf last viewed on 17 February 2011. The observation was based upon information provided by the VA.

¹¹ Interim Report 2011-131, Veterans' Courts, Florida Senate Committee on Military Affairs and Domestic Security, October 2011, p. 1. In addition, much of the information in this portion of the analysis is derived from the Interim Report.

¹² National Association of Drug Court Professionals website at <http://www.nadcp.org/JusticeForVets>, last viewed on February 17, 2011.

One advantage that veterans' courts have over drug and mental health courts is that the majority of veterans who have committed criminal offenses are likely eligible for treatment services provided and funded by the United States Department of Veterans Affairs (VA). The previously-cited ABA study indicates that 82 percent of veterans in jail nationwide are eligible for services from the VA based on the character of their discharge.¹³

Florida has experience with drug courts and mental health courts. Section 397.334, F.S., authorizes the establishment of drug courts that divert eligible persons to county-funded treatment programs in lieu of adjudication. The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program in s. 394.658, F.S., calls for award of a 1-year planning grant and a 3-year implementation or expansion grant to identify and treat individuals who have mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in or at risk of entering the criminal or juvenile justice systems.

Veterans Courts in Florida: There are several veterans' court and veterans' jail diversion initiatives around the state. Okaloosa County has begun referring veterans' cases to a court docket with special knowledge of veterans and veterans' issues. This has been possible through the cooperation of the local State's Attorney's Office, the court, and local treatment professionals. To determine eligibility, offenders are asked at initial booking if they have ever served in the military and what type of discharge they received. Veterans are further asked if they will sign a release in order to share information with the VA. Further screening is conducted through the Pre-Trial Services Office, and the program uses drug court case managers to monitor participants. Access to VA treatment facilities is being sought for eligible veterans in the program.

As noted previously, the bulk of Okaloosa County veterans' cases involve substance abuse, related domestic violence, and some theft related cases including worthless check charges that may be related to lost cognitive ability to do math. Successful completion of the program is defined as completion of a treatment program and avoiding additional legal problems.

Palm Beach County has established a veterans' court that began operating in December 2010. A feature of the program is assignment of a VA social worker supervisor to act as the court's VA liaison. This VA employee has oversight of screening and case management services for eligible veterans. In addition to receiving any needed mental health and substance abuse treatment, participating veterans also have access to VA programs that address homelessness and unemployment. This is compatible with the VA's national Veteran's Justice Outreach Initiative that will assign staff and trained volunteer resources to facilitate veterans' court programs.¹⁴

In October 2009, the Department of Children and Families Mental Health Program Office was awarded over \$1.8 million from SAMHSA over the next five years to provide services and support for Florida's returning veterans who served in Iraq and Afghanistan and who suffer with Post-Traumatic Stress Disorder and other behavioral health disorders. The department describes the grant and the project as follows:

¹³ ABA Commission on Homelessness and Poverty, Resolution 105A, at February 10, 2011, p. 4.

¹⁴ The Veteran's Justice Outreach Initiative website is <http://www.va.gov/HOMELESS/VJO.asp>, last viewed on February 17, 2011.

The project will redesign the state's response to the needs of veterans and their family members by helping returning veterans learn to cope with the trauma of war and the adjustments of coming home and avoiding unnecessary involvement with the criminal justice system. Florida's project is based on a foundation of evidence-based screening, assessment, treatment and recovery practices. The grant will enable the Department to implement two veteran's jail diversion pilot projects for 240 veterans over the next five years. This grant will expand the Department's existing jail diversion programs by identifying veterans who have an initial contact with the criminal justice system, helping them enroll in Veteran's Administration benefits for those who are eligible, providing trauma-related treatment services, linking them with support services in their community, and providing specialized peer support services. Additionally, this grant enables the Department to include family members as recipients of services. One unique aspect of this grant is Florida's creation and implementation of a new state-level Veteran Peer Support Specialist credential, possible through the Department's ongoing partnership with the Florida Certification Board. Certification of trained veterans will professionalize what we know works - trained veterans who've been there helping other returning veterans adjust to their home and community. In the first year, the grant from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) will provide DCF with \$268,849. Hillsborough County is one of two sites that will launch Florida's Jail Diversion and Trauma Recovery Program. The location of the other pilot project has not yet been determined.¹⁵

III. Effect of Proposed Changes:

The bill requires a sentencing court to hold a special pre-sentencing hearing for a convicted veteran when: (1) the defendant is facing incarceration in county jail or state prison; and (2) the defendant alleges that he or she committed the offense because of PTSD, substance abuse, or psychological problems stemming from service with the United States military in a combat theater. If these prerequisites are met, the court must hold a hearing to: (1) determine whether the defendant was a member of the United States military who served in combat; and (2) assess whether the defendant suffers from PTSD, substance abuse, or psychological problems as a result of that service. The court is not required to determine whether the condition contributed to commission of the offense.

If the court verifies the defendant's claim and the defendant is eligible for probation or community control, the court can place the defendant on probation or community control. As a condition of community supervision, the court can order the defendant to participate in a local, state, federal, or private non-profit treatment program, for a period that is no more than the length of time which they would have been incarcerated. In order for the court to exercise this option, the defendant must agree to participate and the court must determine that there is an appropriate treatment program. The court is required to give preference to a treatment program

¹⁵ Florida Department of Children and Families' description of the Veterans Jail Diversion Grant at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/consumerfamilyaffairs/currinitiatives.shtml>, last viewed on February 17, 2011.

that has had success in treating veterans who suffer from PTSD, substance abuse problems, or psychological problems relating to their military service.

A veteran who is ordered into a residential treatment program as a result of the hearing will earn sentence credits for the time he or she actually serves in the treatment program. These credits would be applied to reduce any remaining sentence in the event that the veteran is committed to jail or prison as a result of violating the terms of community supervision. Under current law, an offender cannot receive credit against prison sentence for any time served in a treatment or rehabilitation program prior to a violation of community supervision. *See State v. Cregan*, 908 So.2d 387 (Fla. 2005).

Current law allows a court to require an offender to participate in treatment as a special condition of probation or community control. However, the bill expands upon current law by: (1) focusing attention on the offender's veteran status by requiring the court to hold a hearing to consider the offender's veteran status and condition; (2) providing for sentencing credit for time that the offender who is a veteran spends in an inpatient treatment program; and (3) requiring the court to give preference to placing the offender who is a veteran into a treatment program that has a history of dealing with veterans' issues.

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:

This bill would have an impact on the private sector to the extent that participants are diverted from incarceration into private treatment programs.

C. Government Sector Impact:

The Criminal Justice Impact Conference assessed that the bill would have no impact on the state prison population. If the bill diverts some defendants from incarceration to

community-based treatment programs, it is anticipated that much of the programming could be provided by the VA.

VI. Technical Deficiencies:

In new s. 921.00242(a), F.S., (lines 27 through 37), the veteran must claim that he or she performed military service in a combat theater but requires the court to determine whether the defendant served in combat. These are not equivalent terms and there is therefore some ambiguity as to what type of service is required.

Also in s. 921.00242(a), F.S., eligible persons include those who are “convicted of a criminal offense.” This would require that the individual be adjudicated guilty and would not include those for whom adjudication is withheld.

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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "T. Patt Maney Veterans' Treatment Intervention Act."

Section 2. Section 921.00242, Florida Statutes, is created to read:

921.00242 Convicted military veterans; posttraumatic stress disorder, traumatic brain injury, substance use disorder, or psychological problems from service; treatment services.-

(1) If a circuit or county court finds that a defendant has



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13 committed a criminal offense, the court must hold a veterans
14 status hearing prior to sentencing if the defendant has alleged
15 that he or she committed the offense as a result of
16 posttraumatic stress disorder, traumatic brain injury, substance
17 use disorder, or psychological problems stemming from service in
18 a combat theater in the United States military.

19 (2) At a veterans status hearing conducted as required by
20 subsection (1), the court shall determine whether the defendant
21 was a member of the military forces of the United States who
22 served in a combat theater and assess whether the defendant
23 suffers from posttraumatic stress disorder, traumatic brain
24 injury, substance use disorder, or psychological problems as a
25 result of that service. The defendant shall bear the burden of
26 proof at the hearing.

27 (3) If the court concludes that the defendant is a person
28 described in subsection (2) who is eligible for probation or
29 community control and the court places the defendant on county
30 or state probation or into community control, the court may
31 order the defendant into a local, state, federal, or private
32 nonprofit treatment program as a condition of probation or
33 community control provided the defendant agrees to participate
34 in the program and the court determines that an appropriate
35 treatment program exists.

36 (4) A defendant who is placed on county or state probation
37 or into community control and committed to a residential
38 treatment program under this section shall earn sentence credits
39 for the actual time he or she serves in the residential
40 treatment program if the court makes a written finding that it
41 would otherwise have sentenced the defendant to incarceration



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42 except for the fact that the defendant is a person described in
43 subsection (2).

44 (5) In making an order under this section to commit a
45 defendant to an treatment program, whenever possible the court
46 shall place the defendant in a treatment program that has a
47 history of successfully treating combat veterans who suffer from
48 posttraumatic stress disorder, traumatic brain injury, substance
49 use disorder, or psychological problems as a result of that
50 service. The court shall give preference to treatment programs
51 for which the veteran is eligible through the United States
52 Department of Veterans Affairs or the Florida Department of
53 Veterans Affairs.

54 Section 3. Subsection (7) of section 948.08, Florida
55 Statutes, is renumbered as subsection (8), and a new subsection
56 (7) is added to that section, to read:

57 948.08 Pretrial intervention program.—

58 (7) (a) For purposes of this subsection, the term
59 "nonviolent felony" means a third degree felony violation of
60 chapter 810 or any other felony offense that is not a forcible
61 felony as defined in s. 776.08. Notwithstanding any provision of
62 this section, a person who is charged with a nonviolent felony
63 and is identified as a member or former member of the military
64 forces of the United States who served in a combat theater and
65 who suffers from posttraumatic stress disorder, traumatic brain
66 injury, substance use disorder, or psychological problems as a
67 result of that service is eligible for voluntary admission into
68 a pretrial veterans treatment intervention program approved by
69 the chief judge of the circuit, upon motion of either party or
70 the court's own motion, except:



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71 1. If a defendant was previously offered admission to a
72 pretrial veterans treatment intervention program at any time
73 prior to trial and the defendant rejected that offer on the
74 record, then the court or the state attorney may deny the
75 defendant's admission to such a program.

76 2. If a defendant previously entered a court-ordered
77 veterans treatment program, then the court or the state attorney
78 may deny the defendant's admission into the pretrial veterans
79 treatment program.

80 3. If the state attorney believes that the facts and
81 circumstances of the case suggest the defendant's involvement in
82 the selling of controlled substances, the court shall hold a
83 preadmission hearing. If the state attorney establishes, by a
84 preponderance of the evidence at such hearing, that the
85 defendant was involved in the selling of controlled substances,
86 the court shall deny the defendant's admission into a pretrial
87 intervention program.

88 (b) While enrolled in a pretrial intervention program
89 authorized by this subsection, the participant is subject to a
90 coordinated strategy developed by a veterans treatment
91 intervention team. The coordinated strategy should be modeled
92 after the therapeutic jurisprudence principles and key
93 components in s. 397.334(4), with treatment specific to the
94 needs of veterans. The coordinated strategy may include a
95 protocol of sanctions that may be imposed upon the participant
96 for noncompliance with program rules. The protocol of sanctions
97 may include, but is not limited to, placement in a treatment
98 program offered by a licensed service provider or in a jail-
99 based treatment program or serving a period of incarceration



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100 within the time limits established for contempt of court. The
101 coordinated strategy must be provided in writing to the
102 participant before the participant agrees to enter into a
103 pretrial veterans treatment intervention program or other
104 pretrial intervention program. Any person whose charges are
105 dismissed after successful completion of the pretrial veterans
106 treatment intervention program, if otherwise eligible, may have
107 his or her arrest record and plea of nolo contendere to the
108 dismissed charges expunged under s. 943.0585.

109 (c) At the end of the pretrial intervention period, the
110 court shall consider the recommendation of the administrator
111 pursuant to subsection (5) and the recommendation of the state
112 attorney as to disposition of the pending charges. The court
113 shall determine, by written finding, whether the defendant has
114 successfully completed the pretrial intervention program. If the
115 court finds that the defendant has not successfully completed
116 the pretrial intervention program, the court may order the
117 person to continue in education and treatment, which may include
118 treatment programs offered by licensed service providers or
119 jail-based treatment programs, or order that the charges revert
120 to normal channels for prosecution. The court shall dismiss the
121 charges upon a finding that the defendant has successfully
122 completed the pretrial intervention program.

123 (8)(7) The department may contract for the services and
124 facilities necessary to operate pretrial intervention programs.

125 Section 4. Section 948.16, Florida Statutes, is amended to
126 read:

127 948.16 Misdemeanor pretrial substance abuse education and
128 treatment intervention program; misdemeanor pretrial veterans



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129 treatment intervention program.-

130 (1) (a) A person who is charged with a misdemeanor for
131 possession of a controlled substance or drug paraphernalia under
132 chapter 893, and who has not previously been convicted of a
133 felony nor been admitted to a pretrial program, is eligible for
134 voluntary admission into a misdemeanor pretrial substance abuse
135 education and treatment intervention program, including a
136 treatment-based drug court program established pursuant to s.
137 397.334, approved by the chief judge of the circuit, for a
138 period based on the program requirements and the treatment plan
139 for the offender, upon motion of either party or the court's own
140 motion, except, if the state attorney believes the facts and
141 circumstances of the case suggest the defendant is involved in
142 dealing and selling controlled substances, the court shall hold
143 a preadmission hearing. If the state attorney establishes, by a
144 preponderance of the evidence at such hearing, that the
145 defendant was involved in dealing or selling controlled
146 substances, the court shall deny the defendant's admission into
147 the pretrial intervention program.

148 (b) While enrolled in a pretrial intervention program
149 authorized by this section, the participant is subject to a
150 coordinated strategy developed by a drug court team under s.
151 397.334(4). The coordinated strategy may include a protocol of
152 sanctions that may be imposed upon the participant for
153 noncompliance with program rules. The protocol of sanctions may
154 include, but is not limited to, placement in a substance abuse
155 treatment program offered by a licensed service provider as
156 defined in s. 397.311 or in a jail-based treatment program or
157 serving a period of incarceration within the time limits



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158 established for contempt of court. The coordinated strategy must
159 be provided in writing to the participant before the participant
160 agrees to enter into a pretrial treatment-based drug court
161 program or other pretrial intervention program. Any person whose
162 charges are dismissed after successful completion of the
163 treatment-based drug court program, if otherwise eligible, may
164 have his or her arrest record and plea of nolo contendere to the
165 dismissed charges expunged under s. 943.0585.

166 (2) (a) A member or former member of the military forces of
167 the United States who served in a combat theater and who suffers
168 from posttraumatic stress disorder, traumatic brain injury,
169 substance use disorder, or psychological problems as a result of
170 that service who is charged with a misdemeanor, and who has not
171 previously been admitted to a veterans treatment intervention
172 program, is eligible for voluntary admission into a misdemeanor
173 pretrial veterans treatment intervention program approved by the
174 chief judge of the circuit, for a period based on the program
175 requirements and the treatment plan for the offender, upon
176 motion of either party or the court's own motion.

177 (b) While enrolled in a pretrial intervention program
178 authorized by this section, the participant is subject to a
179 coordinated strategy developed by a veterans treatment
180 intervention team. The coordinated strategy should be modeled
181 after the therapeutic jurisprudence principles and key
182 components in s. 397.334(4), with treatment specific to the
183 needs of veterans. The coordinated strategy may include a
184 protocol of sanctions that may be imposed upon the participant
185 for noncompliance with program rules. The protocol of sanctions
186 may include, but is not limited to, placement in a treatment



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187 program offered by a licensed service provider or in a jail-
188 based treatment program or serving a period of incarceration
189 within the time limits established for contempt of court. The
190 coordinated strategy must be provided in writing to the
191 participant before the participant agrees to enter into a
192 misdemeanor pretrial veterans treatment intervention program or
193 other pretrial intervention program. Any person whose charges
194 are dismissed after successful completion of the misdemeanor
195 pretrial veterans treatment intervention program, if otherwise
196 eligible, may have his or her arrest record and plea of nolo
197 contendere to the dismissed charges expunged under s. 943.0585.

198 ~~(3)(2)~~ At the end of the pretrial intervention period, the
199 court shall consider the recommendation of the treatment program
200 and the recommendation of the state attorney as to disposition
201 of the pending charges. The court shall determine, by written
202 finding, whether the defendant successfully completed the
203 pretrial intervention program. Notwithstanding the coordinated
204 strategy developed by a drug court team pursuant to s.
205 397.334(4) or by the veterans treatment intervention team, if
206 the court finds that the defendant has not successfully
207 completed the pretrial intervention program, the court may order
208 the person to continue in education and treatment or return the
209 charges to the criminal docket for prosecution. The court shall
210 dismiss the charges upon finding that the defendant has
211 successfully completed the pretrial intervention program.

212 ~~(4)(3)~~ Any public or private entity providing a pretrial
213 substance abuse education and treatment program under this
214 section shall contract with the county or appropriate
215 governmental entity. The terms of the contract shall include,



624892

216 but not be limited to, the requirements established for private
217 entities under s. 948.15(3).

218 Section 5. This act shall take effect July 1, 2011.

219

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

221 And the title is amended as follows:

222 Delete everything before the enacting clause
223 and insert:

224 A bill to be entitled

225 An act relating to military veterans convicted of
226 criminal offenses; creating s. 921.00242, F.S.;
227 providing that persons found to have committed
228 criminal offenses who allege that the offenses
229 resulted from posttraumatic stress disorder, traumatic
230 brain injury, substance use disorder, or psychological
231 problems stemming from service in a combat theater in
232 the United States military may have a hearing on that
233 issue before sentencing; providing that defendants
234 found to have committed offenses due to such causes
235 and who are eligible for probation or community
236 control may be placed in treatment programs in certain
237 circumstances; providing for sentence credit for
238 defendants placed in treatment who would have
239 otherwise been incarcerated; providing a preference
240 for treatment programs with histories of successfully
241 treating such combat veterans; amending s. 948.08;
242 creating a pretrial veterans treatment intervention
243 program; amending s. 948.16; creating a misdemeanor
244 pretrial veterans treatment intervention program;



624892

245

providing an effective date.



407422

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment to Amendment (624892)

Delete lines 58 - 62
and insert:

(7) (a) For purposes of this subsection, the term "disqualifying felony" means any offense that is listed in section 948.06(8) (c). Notwithstanding any provision of this section, a person who is charged with a disqualifying felony



159962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment to Amendment (624892)

Delete lines 74 - 77
and insert:
record, then the court may deny the defendant's admission to
such a program.

2. If a defendant previously entered a court-ordered
veterans treatment program, then the court



601128

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment to Amendment (624892)

Delete lines 170 - 176
and insert:
that service who is charged with a misdemeanor is eligible for voluntary admission into a misdemeanor pretrial veterans treatment intervention program approved by the chief judge of the circuit, for a period based on the program requirements and the treatment plan for the offender, upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans treatment intervention program if the defendant has previously



601128

13

entered a court-ordered veterans treatment program.



940590

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment to Amendment (624892)

Delete line 217
and insert:
entities under s. 948.15(3). This requirement does not apply to services provided by the Florida Department of Veterans Affairs or the United States Department of Veterans Affairs.

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 Criminal Justice Committee

BILL: SB 144

INTRODUCER: Senator Smith

SUBJECT: Elderly Inmates

DATE: February 17, 2011

REVISED: 03/04/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill creates the Elderly Rehabilitated Inmate Program to provide a means for the release of inmates who are at least 50 years old and who have demonstrated that they have been rehabilitated while incarcerated for at least 25 years and have met certain other criteria. The program would be administered by the Florida Parole Commission. The bill also requires the Department of Corrections (DOC) to develop a pilot program based upon restorative justice that includes classes on the effect of crime on crime victims.

This bill amends s. 947.141 and creates sections 947.148 and 947.1481 of the Florida Statutes.

II. Present Situation:

Elderly Inmates

Florida considers an inmate who is 50 years old or older to be “aging or elderly.”¹ The age when an inmate is considered to be elderly is far lower than in the general population because of generally poorer health. This may be due to life experiences before and during incarceration that contribute to lower life expectancy.² Section 944.804, F.S., (the Elderly Offenders’ Correctional Facilities Program of 2000), reflected the Legislature’s concern that the population of elderly inmates was increasing then and would continue to increase. Because on average it costs approximately three times more to incarcerate an elderly offender as it does to incarcerate a younger inmate, the statute required exploration of alternatives to the current approaches to

¹ Chapter 33-601.217, Florida Administrative Code.

² State of Florida Correctional Medical Authority 2008-2009 Annual Report, p. 51.

housing, programming, and treating the medical needs of elderly offenders.³ There were no specific geriatric facilities at the time the law was passed, but the new statute specifically required the department to establish River Junction Correctional Institution (RJCI) as a geriatric facility and to establish rules for which offenders are eligible to be housed there.

The elderly population has continued to increase since RJCI was opened as a geriatric facility. On June 30, 2010, 16,386 inmates in the department's custody fit into the elderly or aging classification. This represents approximately 16 percent of the entire inmate population.⁴

Section 944.8041, F.S., requires the department and the Correctional Medical Authority to each submit an annual report on the status and treatment of elderly offenders in the state-administered and private state correctional systems, as well as specific information on RJCI. The report must also include an examination of promising geriatric policies, practices, and programs currently implemented in other correctional systems within the United States.

Parole

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission. Eligibility for parole has been abolished in Florida, but approximately 5500 inmates are still eligible for parole consideration.⁵ These are inmates who:

- Committed an offense other than capital felony murder or capital felony sexual battery prior to October 1, 1983;
- Committed capital felony murder prior to May 25, 1994; or
- Committed capital felony sexual battery prior to October 1, 1995.

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 Department of Corrections' (department) probation officers. As of November 30, 2010, 365 offenders were actively supervised on parole from Florida sentences.⁶

Conditional Medical Release

Section 947.149, F.S., provides for conditional medical release of inmates who are "permanently incapacitated" or "terminally ill." If an inmate's health deteriorates to the point that conditional medical release might be appropriate, the department's institutional health service staff reviews the case and provides medical information to the commission for consideration of release. If the inmate is granted conditional medical release and his or her medical condition improves, or if he/she violates the conditions of the release, the inmate can be returned to prison to resume service of the original sentence. If return is due to improved health, there is no penalty for having been on the program.

³ Section 944.804(1), F.S.

⁴ Department of Corrections Analysis of Senate Bill 144, p. 1.

⁵ Florida Parole Commission Analysis of Senate Bill 160, March 3, 2010, page 2.

⁶ Community Supervision Population Monthly Status Report, December 2009, Florida Department of Corrections, p. 3.

III. Effect of Proposed Changes:

The bill creates the Elderly Rehabilitated Inmate Supervision Program. Basic eligibility requirements for the program would be that the inmate:

- (1) is at least 50 years of age;
- (2) has served at least 25 consecutive years of incarceration;
- (3) has not been sentenced for a capital felony;
- (4) is not eligible for parole or conditional medical release;
- (5) is not serving a minimum mandatory sentence; and
- (6) has not received a disciplinary report within the previous 6 months.

Assuming that the bill applies retroactively to inmates who are already in prison, DOC identified 91 inmates who will meet the eligibility criteria over the next 5 years. As indicated by the table below, most of the inmates are incarcerated for a violent offense.⁷

Primary Offense	Number
Murder	14
Kidnapping	5
Sexual Battery	15
Robbery/Robbery with Deadly Weapon	40
Aggravated Battery	3
Burglary (Armed and Assaults included)	11
Drugs, including Trafficking	2
Possession of Firearm by Felon	1
Total	91

An inmate who meets the basic eligibility requirements can petition the commission one time to participate in supervised release under the program. The petition must include:

- (1) A proposed release plan;
- (2) Documentation of the inmate’s relevant medical history, including current prognosis;
- (3) The inmate’s prison experience and criminal history. The criminal history must include any claim of innocence, the degree to which the inmate accepts responsibility for his or her acts leading to the conviction of the crime, and how the claim of responsibility has affected the inmate’s feelings of remorse;
- (4) Documentation of the inmate’s history of substance abuse and mental health;
- (5) Documentation of any disciplinary action taken against the inmate while in prison;
- (6) Documentation of the inmate’s participation in prison work and programs; and
- (7) Documentation of the inmate’s renunciation of gang activity.

Consideration of the Petition

The procedure for considering the inmate’s petition to participate in the program is similar to the process used to consider an application for parole. The commission must notify the victim, a lawful representative of the victim, or the victim’s next of kin if the victim is deceased within 30

⁷ Department of Corrections Analysis of Senate Bill 144, p. 6. The data reflects the inmate population as of January 21, 2011.

days of receipt of the petition. An examiner must meet with the inmate within 90 days after the petition is filed. This meeting may be postponed for up to 90 days from the originally scheduled date for good cause. At the meeting, the examiner explains the program to the inmate and reviews the information contained in the petition. Within 10 days, the examiner must make a written recommendation of a release date to a panel of at least two commissioners.

The commission's decision as to whether to grant or deny supervised release must be made at a meeting that is open to the public. The victim, the victim's parents or guardian if the victim was a minor, a lawful representative of the victim (or of the parents or guardian if the victim was a minor), or a homicide victim's next of kin may make an oral or written statement regarding his or her views on granting or denying the petition.⁸ If the chairman of the commission approves, these persons and any other person who is not a member or employee of the commission can participate in the deliberations as to whether the petition is granted. One of the persons who is authorized to receive notice of filing of the petition must be given at least 30 days notice in advance of the meeting, and must be notified of the commission's decision within 30 days from when it is made.

In making its determination as to whether the inmate will be allowed to participate in the program, the commission must review and consider the inmate's:

- Entire criminal history and record;
- Complete medical history including substance abuse and mental health history, and current medical prognosis;
- Prison disciplinary record;
- Work record;
- Program participation;
- Gang affiliation, if any; and
- Responsibility for the acts leading to the conviction, including any prior and continued statements of innocence and the inmate's feelings of remorse.

As is the case with parole, an inmate cannot be placed in the program solely as a reward for good conduct or efficient performance of assigned duties. The commission must find that there is a reasonable probability that the inmate would live and conduct himself or herself as a respectable and law-abiding person. It also must find that release would be compatible with the inmate's own welfare and the welfare of society. The inmate must demonstrate:

- Successful participation in programs designed to restore him or her as a useful and productive person in the community upon release;
- Genuine reform and changed behavior over a period of years;
- Remorse for actions that have caused pain or suffering to his or her victims;
- A renunciation of criminal activity and gang affiliation if the inmate was a member of a gang.

⁸ It is not clear why the bill limits the right to make a statement to the next of kin of a homicide victim rather than the next of kin of a deceased victim, as is the case for the notification requirements.

If the inmate is approved for release⁹, a panel of at least two commissioners must set the terms and conditions of supervision. The length of supervision would be the remaining time of the inmate's sentence, including gain-time credit as determined by the department. A certified copy of these terms and conditions must be provided to the inmate, and the bill provides a process for an inmate to request that the commission review and modify the terms and conditions. Three conditions are required unless the commission finds reasons not to impose them:

- Participation in 10 hours of community service for each year served in prison;
- Electronic monitoring for at least one year; and
- Reparation or restitution to the victim for any damage or loss caused by the offense.

In addition, the commission may impose any special conditions that it considers to be warranted. The bill sets out four specific special conditions that may be considered, although the commission may impose others. The enumerated special conditions require the inmate to:

- Pay any debt due to the state under s. 960.17, F.S. or any attorney's fees and costs owed to the state under s. 938.29, F.S.;
- Not leave the state or a definite area within the state without the commission's consent;
- Not associate with persons engaged in criminal activity; and
- Carry out the instructions of his or her supervising correctional probation officer.

As is the case for all types of community supervision, the released inmate will be supervised by a DOC correctional probation officer. Section 4 of the bill amends s. 947.141, F.S., to include inmates released under the program in the current statutory process for addressing violations of the release conditions. The bill also adds a new subsection that authorizes a law enforcement officer to arrest a program participant without warrant if the officer has reasonable grounds to believe that the releasee has violated the terms and conditions of supervision in a material respect.

Restorative Justice Pilot Program

Section 3 of the bill requires the department to develop a pilot program patterned after the Neighborhood Restorative Justice Centers established under s. 985.155, F.S. This pilot program must be implemented at one maximum security prison for women and two maximum security prisons for men and be available to inmates on a voluntary basis. Inmates who are eligible to participate in the Elderly Rehabilitated Inmate Program must be given priority for participation in the restorative justice programs.¹⁰

⁹ The bill also creates a process for the sentencing court to retain jurisdiction over the offender to review a release order. This retention of jurisdiction is patterned after the retention of jurisdiction language in s. 947.16, F.S., that is applicable to inmates who are eligible for parole consideration. The court may retain jurisdiction for the first third of the sentence, so the retention provisions would only come into consideration for inmates whose sentence exceeds 75 years.

¹⁰ In its analysis of the bill, the department indicates that only 3 institutions house maximum security inmates, who are inmates under a sentence of death. One of these facilities (Florida State Prison) does not have beds that are designated for elderly offenders.

The bill requires that any proposed program or strategy must be developed based upon a finding of need for such program in the community after consulting with the public, judges, law enforcement agencies, state attorneys, and defense attorneys.

The department is authorized to either use its own staff or to contract with other public or private agencies to deliver services related to programs created by the bill. It is also authorized to adopt rules to administer the provisions of the bill.

Effective Date

The bill has an effective date of July 1, 2011.

Other Potential Implications:

Although it is not explicitly stated, it appears that the bill would permit discretionary release of some inmates who would otherwise be required to complete 85 percent of their sentence as required by s. 921.002(e), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None, except to the extent that the Restorative Justice Pilot Program may be administered by a private contractor.

C. Government Sector Impact:

Elderly Rehabilitated Inmate Program

Due to the Parole Commissions' discretion in release decisions, there is no way to predict in advance how many inmates will actually be released to supervision under the program. Because the great majority of the inmates are violent offenders, the percentage of eligible inmates who are actually released may be low. Medical costs for inmates tends to rise

with age, so inmates released under the program may have higher medical costs than the general inmate population.¹¹

Assuming that the bill is intended to apply retroactively, the department estimates that 91 inmates will meet the basic eligibility requirements and be considered for possible release over the next 5 years:¹²

FY 2011-2012	27
FY 2012-2013	8
FY 2013-2014	11
FY 2014-2015	19
FT 2015-2016	26
5 Year Total	91

Savings from Releases and Costs of Supervision

The department has noted the following with regard to costs of incarceration that are saved by releasing an inmate:

While the department uses the full per diem of \$53.34 for estimating cost avoidance for future inmates, two lesser per diems are used for impacts resulting from relatively small releases. If the projected change to the inmate population is less than a full facility but such that one or more dormitories could be closed, the dorm per diem including security staff of \$33.26 is used. If the projected change to the inmate population is small and implementation does not facilitate the closure of at least a dorm, the inmate variable per diem of \$14.01 is used.¹³

The department’s assessment is that the smaller per diem cost of \$14.01 is the most appropriate for estimating the bill’s reduction in incarceration costs.

Because of the low volume that is expected over the next five years, the commission indicates that its costs for administering the program would be insignificant and could be absorbed into its existing workload. The Criminal Justice Impact Conference also forecasts that the bill will have an insignificant fiscal impact on the state prison population.

The bill also requires that offenders be on electronic monitoring for at least the first year of release. Supervising an offender who is on electronic monitoring increases the workload for a correctional probation officer. Also, participants in the program are unlikely to have the financial ability to pay the costs of monitoring. The cost of supervision plus electronic monitoring of an average probationer is \$13.78 per day. However, in its analysis of the bill the department notes that supervision of inmates released under the program is likely to be particularly labor intensive. Because of their

¹¹ However, the department notes that the program excludes inmates who are eligible for conditional medical release and therefore does not target those who are currently the most expensive to care for in the prison population.

¹² Department of Corrections Analysis, p. 6.

¹³ Department of Corrections Analysis, p. 9.

lengthy incarceration, they are less likely to have support from family or friends and will need significant assistance in readjusting to society. Also, they are likely to be in a high risk category that requires close supervision.

Restorative Justice Pilot Program

The department indicates that it would require one additional staff member at each of the 3 institutions that would have a Restorative Justice Pilot Program. The cost of this position for Fiscal Year 2011-2012 is \$72,796, and the total cost for 3 positions would be \$218,388.

VI. Technical Deficiencies:

The following changes are recommended:

- It appears that the bill is intended to apply retroactively to inmates who are sentenced for offenses that occur before the effective date, but it should be amended to clearly state whether or not it is intended to be applied retroactively.
- Inconsistencies regarding whether the 25 year eligibility period is to be cumulative or consecutive should be resolved.
- Subsections (15) and (16) of Section 2 do not appear to relate to that section and are duplicative of language in Section 3 of the bill and should be deleted.
- The language in subsection (11) of Section 2 should be clarified to remove an ambiguity as to whether the commission can find “reasons to the contrary” not to impose any of the three mandatory conditions, or whether only victim restitution can be excepted from the conditions.

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.



630324

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. The Legislature recognizes the need to provide a means for the release of older inmates who have demonstrated that they have been rehabilitated while incarcerated. It is the intent of the Legislature to address this issue by establishing a conditional extension of the limits of confinement by providing a mechanism for determining eligibility for early release and supervising inmates who have been incarcerated for at least 25 consecutive years and are 60 years of age or older.



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13 It is the Legislature's intent that the provisions of this bill
14 be applied to include inmates who have previously been sentences
15 as well as those who will be sentenced in the future. The
16 Legislature intends to provide for victim input and the
17 enforcement of penalties for those who fail to comply with
18 supervision while outside a prison facility. The Legislature
19 also intends that a pilot program patterned after the program
20 offered by Neighborhood Restorative Justice Centers be
21 implemented and offered to inmates who are eligible for release
22 under the Elderly Rehabilitated Inmate Supervision Program.

23 Section 2. Section 947.148, Florida Statutes, is created to
24 read:

25 947.148 Elderly Rehabilitated Inmate Supervision Program.-

26 (1) This section may be cited as the "Elderly Rehabilitated
27 Inmate Supervision Program Act."

28 (2) As used in this section, the term "program" means the
29 Elderly Rehabilitated Inmate Supervision Program unless the
30 context indicates otherwise.

31 (3) An inmate may petition the commission for supervised
32 release under the program if the inmate:

33 (a) Is 60 years of age or older;

34 (b) Has been convicted of a felony and served at least 25
35 consecutive years of incarceration;

36 (c) Is not eligible for parole or conditional medical
37 release;

38 (d) Has not been sentenced for a capital felony;

39 (e) Is not serving a minimum mandatory sentence; and

40 (f) Has not received a disciplinary report within the
41 previous 6 months.



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42 (4) Each petition filed on behalf of an inmate to
43 participate in the program must contain:

44 (a) A proposed release plan;

45 (b) Documentation of the inmate's relevant medical history,
46 including current medical prognosis;

47 (c) The inmate's prison experience and criminal history.
48 The criminal history must include any claim of innocence, the
49 degree to which the inmate accepts responsibility for his or her
50 acts leading to the conviction of the crime, and how the claim
51 of responsibility has affected the inmate's feelings of remorse;

52 (d) Documentation of the inmate's history of substance
53 abuse and mental health;

54 (e) Documentation of any disciplinary action taken against
55 the inmate while in prison;

56 (f) Documentation of the inmate's participation in prison
57 work and programs; and

58 (g) Documentation of the inmate's renunciation of gang
59 affiliation.

60 (5) An inmate may not file a new petition within one year
61 of receiving notification of denial of his or her petition to
62 participate in the program. Any petition that is filed prior to
63 the one year period will be returned to the inmate with a
64 notation indicating the date when a petition can be refiled.

65 (6) All matters relating to the granting, denying, or
66 revoking of an inmate's supervised release in the program shall
67 be decided in a meeting at which the public may be present. A
68 victim of the crime committed by the inmate, a victim's parent
69 or guardian if the victim is a minor, a lawful representative of
70 the victim or of the victim's parent or guardian if the victim



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71 is a minor, or a homicide victim's next of kin may make an oral
72 statement or submit a written statement regarding his or her
73 views as to the granting, denying, or revoking of supervision. A
74 person who is not a member or employee of the commission, the
75 victim of the crime committed by the inmate, the victim's parent
76 or guardian if the victim is a minor, a lawful representative of
77 the victim or of the victim's parent or guardian if the victim
78 is a minor, or a homicide victim's next of kin may participate
79 in deliberations concerning the granting and revoking of an
80 inmate's supervised release in the program only upon the prior
81 written approval of the chair of the commission. The commission
82 shall notify the victim, the victim's parent or guardian if the
83 victim is a minor, a lawful representative of the victim or of
84 the victim's parent or guardian if the victim is a minor, or the
85 victim's next of kin if the victim is deceased no later than 30
86 days after the petition is received by the commission, no later
87 than 30 days before the commission's meeting, and no later than
88 30 days after the commission's decision.

89 (7) The commission may approve an inmate for participation
90 in the program if the inmate demonstrates:

91 (a) Successful participation in programs designed to
92 restore the inmate as a useful and productive person in the
93 community upon release;

94 (b) Genuine reform and changed behavior over a period of
95 years;

96 (c) Remorse for actions that have caused pain and suffering
97 to the victims of his or her offenses; and

98 (d) A renunciation of criminal activity and gang
99 affiliation if the inmate was a member of a gang.



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100 (8) In considering eligibility for participation in the
101 program, the commission shall review the inmate's:

102 (a) Entire criminal history and record;

103 (b) Complete medical history, including history of
104 substance abuse, mental health, and current medical prognosis;

105 (c) Prison disciplinary record;

106 (d) Work record;

107 (e) Program participation; and

108 (f) Gang affiliation, if any.

109
110 The commission shall consider the inmate's responsibility for
111 the acts leading to the conviction, including any prior and
112 continued statements of innocence and the inmate's feelings of
113 remorse.

114 (9) (a) An examiner shall interview the inmate within 90
115 days after a petition is filed on behalf of the inmate. An
116 interview may be postponed for a period not to exceed 90 days.
117 Such postponement must be for good cause, which includes, but
118 need not be limited to, the need for the commission to obtain a
119 presentence or postsentence investigation report or a violation
120 report. The reason for postponement shall be noted in writing
121 and included in the official record. A postponement for good
122 cause may not result in an interview being conducted later than
123 90 days after the inmate's initial scheduled interview.

124 (b) During the interview, the examiner shall explain the
125 program to the inmate and review the inmate's institutional
126 conduct record, criminal history, medical history, work records,
127 program participation, gang affiliation, and satisfactory
128 release plan for supervision under the program.



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129 (c) Within 10 days after the interview, the examiner shall
130 recommend in writing to a panel of no fewer than two
131 commissioners appointed by the chair a release date for the
132 inmate. The commissioners are not bound by the examiner's
133 recommended release date.

134 (10) An inmate may not be placed in the program merely as a
135 reward for good conduct or efficient performance of duties
136 assigned in prison. An inmate may not be placed in the program
137 unless the commission finds that there is reasonable probability
138 that, if the inmate is placed in the program, he or she will
139 live and conduct himself or herself as a respectable and law-
140 abiding person and that the inmate's release will be compatible
141 with his or her own welfare and the welfare of society.

142 (11) When the commission has accepted the petition,
143 approved the proposed release plan, and determined that the
144 inmate is eligible for the program, a panel of no fewer than two
145 commissioners shall establish the terms and conditions of the
146 supervision. When granting supervised release under the program,
147 the commission shall require the inmate to participate in 10
148 hours of community service for each year served in prison,
149 require that the inmate be subject to electronic monitoring for
150 at least 1 year, and require that reparation or restitution be
151 paid to the victim for the damage or loss caused by the offense
152 for which the inmate was imprisoned. The commission may elect
153 not to impose any or all of the conditions if it finds reasons
154 that it should not do so. If the commission does not order
155 restitution or orders only partial restitution, the commission
156 must state on the record the reasons for its decision. The
157 amount of such reparation or restitution shall be determined by



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158 the commission.

159 (12) The commission may impose any special conditions it
160 considers warranted from its review of the release plan and
161 inmate's record, including, but not limited to, a requirement
162 that the inmate:

163 (a) Pay any debt due and owing to the state under s. 960.17
164 or pay attorney's fees and costs that are owed to the state
165 under s. 938.29;

166 (b) Not leave the state or any definite physical area
167 within the state without the consent of the commission;

168 (c) Not associate with persons engaged in criminal
169 activity; and

170 (d) Carry out the instructions of her or his supervising
171 correctional probation officer.

172 (13) (a) An inmate may request a review of the terms and
173 conditions of his or her supervised release under the program. A
174 panel of at least two commissioners appointed by the chair shall
175 consider the inmate's request, render a written decision and the
176 reasons for the decision to continue or to modify the terms and
177 conditions of the program supervision, and inform the inmate of
178 the decision in writing within 30 days after the date of receipt
179 of the request for review. During any period of review of the
180 terms and conditions of supervision, the inmate shall be subject
181 to the authorized terms and conditions of supervision until such
182 time that a decision is made to continue or modify the terms and
183 conditions of supervision.

184 (b) The length of supervision shall be the remaining amount
185 of time the inmate has yet to serve, including calculations for
186 gain-time credit, as determined by the department.



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187 (c) An inmate's participation in the program is voluntary,
188 and the inmate must agree to abide by all conditions of release.
189 The commission, upon authorizing a supervision release date,
190 shall specify in writing the terms and conditions of the program
191 supervision and provide a certified copy of these terms and
192 conditions to the inmate.

193 (14) (a) At the time of sentencing, the trial court judge
194 may enter an order retaining jurisdiction over the offender for
195 review of a release order by the commission under this section.
196 This jurisdiction of the trial court judge is limited to the
197 first one-third of the maximum sentence imposed. When a person
198 is convicted of two or more felonies and concurrent sentences
199 are imposed, the jurisdiction of the trial court applies to the
200 first one-third of the maximum sentence imposed for the highest
201 felony of which the person was convicted. When any person is
202 convicted of two or more felonies and consecutive sentences are
203 imposed, the jurisdiction of the trial court judge applies to
204 one-third of the total consecutive sentences imposed.

205 (b) In retaining jurisdiction for purposes of this
206 subsection, the trial court must state the justification with
207 individual particularity, and such justification shall be made a
208 part of the court record. A copy of the justification and the
209 uniform commitment form issued by the court pursuant to s.
210 944.17 shall be delivered together to the department.

211 (c) Gain-time as provided for by law shall accrue, except
212 that an offender over whom the trial court has retained
213 jurisdiction as provided in this subsection may not be released
214 during the first one-third of her or his sentence by reason of
215 gain-time.



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216 (d) In such a case of retained jurisdiction, the
217 commission, within 30 days after the entry of its release order,
218 shall send notice of its release order to the original
219 sentencing judge and to the appropriate state attorney. The
220 release order shall be made contingent upon entry of an order by
221 the appropriate circuit judge relinquishing jurisdiction as
222 provided for in paragraph (e). If the original sentencing judge
223 is no longer in service, such notice shall be sent to the chief
224 judge of the circuit in which the offender was sentenced. The
225 chief judge may designate any circuit judge within the circuit
226 to act in the place of the original sentencing judge.

227 (e) The original sentencing judge or her or his replacement
228 shall notify the commission within 10 days after receipt of the
229 notice provided for in paragraph (d) as to whether the court
230 desires to retain jurisdiction. If the original sentencing judge
231 or her or his replacement does not so notify the commission
232 within the 10-day period or notifies the commission that the
233 court does not desire to retain jurisdiction, the commission may
234 dispose of the matter as it sees fit.

235 (f) Upon receipt of notice of intent to retain jurisdiction
236 from the original sentencing judge or her or his replacement,
237 the commission shall, within 10 days, forward to the court its
238 release order, the examiner's report and recommendation, and all
239 supporting information upon which its release order was based.

240 (g) Within 30 days after receipt of the items listed in
241 paragraph (f), the original sentencing judge or her or his
242 replacement shall review the order, findings, and evidence. If
243 the judge finds that the order of the commission is not based on
244 competent, substantial evidence or that participation in the



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245 program is not in the best interest of the community or the
246 inmate, the court may vacate the release order. The judge or her
247 or his replacement shall notify the commission of the decision
248 of the court, and, if the release order is vacated, such
249 notification must contain the evidence relied on and the reasons
250 for denial. A copy of the notice shall be sent to the inmate.

251 (15) A correctional probation officer as defined in s.
252 943.10 shall supervise the inmate released under this program.

253 (16) The department and commission shall adopt rules to
254 administer this section.

255 Section 3. Section 947.1481, Florida Statutes, is created
256 to read:

257 947.1481 Restorative Justice Pilot Program.—

258 (1) As used in this section, the term "pilot program" means
259 the Restorative Justice Pilot Program.

260 (2) The department shall develop the pilot program that is
261 patterned after the program offered by the Neighborhood
262 Restorative Justice Centers established under s. 985.155. The
263 pilot program shall be implemented at one prison for women and
264 at two prisons for men. The portion of the pilot program which
265 include classes on the effect that crime has on victims shall be
266 made available on a voluntary basis. Inmates who are eligible to
267 participate in the Elderly Rehabilitated Inmate Supervision
268 Program shall be given priority for participation in the pilot
269 program.

270 (3) The pilot program created under this section shall be
271 developed after identifying a need in the community for the
272 pilot program through consultation with representatives of the
273 public, members of the judiciary, law enforcement agencies,



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274 state attorneys, and defense attorneys.

275 (4) The department may provide departmental staff to
276 conduct the pilot program or may contract with other public or
277 private agencies for the delivery of services related to the
278 pilot program.

279 (5) The department shall adopt rules to administer this
280 section.

281 Section 4. Section 947.141, Florida Statutes, is amended to
282 read:

283 947.141 Violations of conditional release, control release,
284 ~~or~~ conditional medical release, ~~or~~ addiction-recovery
285 supervision, or elderly rehabilitated inmate supervision.-

286 (1) If a member of the commission or a duly authorized
287 representative of the commission has reasonable grounds to
288 believe that an offender who is on release supervision under s.
289 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has
290 violated the terms and conditions of the release in a material
291 respect, such member or representative may cause a warrant to be
292 issued for the arrest of the releasee; if the offender was found
293 to be a sexual predator, the warrant must be issued.

294 (2) Upon the arrest on a felony charge of an offender who
295 is on release supervision under s. 947.1405, s. 947.146, s.
296 947.148, s. 947.149, or s. 944.4731, the offender must be
297 detained without bond until the initial appearance of the
298 offender at which a judicial determination of probable cause is
299 made. If the trial court judge determines that there was no
300 probable cause for the arrest, the offender may be released. If
301 the trial court judge determines that there was probable cause
302 for the arrest, such determination also constitutes reasonable



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303 grounds to believe that the offender violated the conditions of
304 the release. Within 24 hours after the trial court judge's
305 finding of probable cause, the detention facility administrator
306 or designee shall notify the commission and the department of
307 the finding and transmit to each a facsimile copy of the
308 probable cause affidavit or the sworn offense report upon which
309 the trial court judge's probable cause determination is based.
310 The offender must continue to be detained without bond for a
311 period not exceeding 72 hours excluding weekends and holidays
312 after the date of the probable cause determination, pending a
313 decision by the commission whether to issue a warrant charging
314 the offender with violation of the conditions of release. Upon
315 the issuance of the commission's warrant, the offender must
316 continue to be held in custody pending a revocation hearing held
317 in accordance with this section.

318 (3) Within 45 days after notice to the Parole Commission of
319 the arrest of a releasee charged with a violation of the terms
320 and conditions of conditional release, control release,
321 conditional medical release, ~~or~~ addiction-recovery supervision,
322 or elderly rehabilitated inmate supervision, the releasee must
323 be afforded a hearing conducted by a commissioner or a duly
324 authorized representative thereof. If the releasee elects to
325 proceed with a hearing, the releasee must be informed orally and
326 in writing of the following:

- 327 (a) The alleged violation with which the releasee is
328 charged.
- 329 (b) The releasee's right to be represented by counsel.
- 330 (c) The releasee's right to be heard in person.
- 331 (d) The releasee's right to secure, present, and compel the



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332 attendance of witnesses relevant to the proceeding.

333 (e) The releasee's right to produce documents on the
334 releasee's own behalf.

335 (f) The releasee's right of access to all evidence used
336 against the releasee and to confront and cross-examine adverse
337 witnesses.

338 (g) The releasee's right to waive the hearing.

339 (4) Within a reasonable time following the hearing, the
340 commissioner or the commissioner's duly authorized
341 representative who conducted the hearing shall make findings of
342 fact in regard to the alleged violation. A panel of no fewer
343 than two commissioners shall enter an order determining whether
344 the charge of violation of conditional release, control release,
345 conditional medical release, ~~or~~ addiction-recovery supervision,
346 or elderly rehabilitated inmate supervision has been sustained
347 based upon the findings of fact presented by the hearing
348 commissioner or authorized representative. By such order, the
349 panel may revoke conditional release, control release,
350 conditional medical release, ~~or~~ addiction-recovery supervision,
351 or elderly rehabilitated inmate supervision and thereby return
352 the releasee to prison to serve the sentence imposed, reinstate
353 the original order granting the release, or enter such other
354 order as it considers proper. Effective for inmates whose
355 offenses were committed on or after July 1, 1995, the panel may
356 order the placement of a releasee, upon a finding of violation
357 pursuant to this subsection, into a local detention facility as
358 a condition of supervision.

359 (5) Effective for inmates whose offenses were committed on
360 or after July 1, 1995, notwithstanding the provisions of ss.



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361 775.08, former 921.001, 921.002, 921.187, 921.188, 944.02, and
362 951.23, or any other law to the contrary, by such order as
363 provided in subsection (4), the panel, upon a finding of guilt,
364 may, as a condition of continued supervision, place the releasee
365 in a local detention facility for a period of incarceration not
366 to exceed 22 months. Prior to the expiration of the term of
367 incarceration, or upon recommendation of the chief correctional
368 officer of that county, the commission shall cause inquiry into
369 the inmate's release plan and custody status in the detention
370 facility and consider whether to restore the inmate to
371 supervision, modify the conditions of supervision, or enter an
372 order of revocation, thereby causing the return of the inmate to
373 prison to serve the sentence imposed. The provisions of this
374 section do not prohibit the panel from entering such other order
375 or conducting any investigation that it deems proper. The
376 commission may only place a person in a local detention facility
377 pursuant to this section if there is a contractual agreement
378 between the chief correctional officer of that county and the
379 Department of Corrections. The agreement must provide for a per
380 diem reimbursement for each person placed under this section,
381 which is payable by the Department of Corrections for the
382 duration of the offender's placement in the facility. This
383 section does not limit the commission's ability to place a
384 person in a local detention facility for less than 1 year.

385 (6) Whenever a conditional release, control release,
386 conditional medical release, ~~or~~ addiction-recovery supervision,
387 or elderly rehabilitated inmate supervision is revoked by a
388 panel of no fewer than two commissioners and the releasee is
389 ordered to be returned to prison, the releasee, by reason of the



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390 misconduct, shall be deemed to have forfeited all gain-time or
391 commutation of time for good conduct, as provided for by law,
392 earned up to the date of release. However, if a conditional
393 medical release is revoked due to the improved medical or
394 physical condition of the releasee, the releasee shall not
395 forfeit gain-time accrued before the date of conditional medical
396 release. This subsection does not deprive the prisoner of the
397 right to gain-time or commutation of time for good conduct, as
398 provided by law, from the date of return to prison.

399 (7) If a law enforcement officer has probable cause to
400 believe that an offender who is on release supervision under s.
401 947.1405, s. 947.146, s. 947.148, s. 947.149, or s. 944.4731 has
402 violated the terms and conditions of his or her release by
403 committing a felony offense, the officer shall arrest the
404 offender without a warrant, and a warrant need not be issued in
405 the case.

406 (8) When a law enforcement officer or a correctional
407 probation officer has reasonable grounds to believe that an
408 offender who is supervised under the Elderly Rehabilitated
409 Inmate Supervision Program has violated the terms and conditions
410 of her or his supervision in a material respect, the officer may
411 arrest the offender without warrant and bring her or him before
412 one or more commissioners or a duly authorized representative of
413 the commission. Proceedings shall take place when a warrant has
414 been issued by a member of the commission or a duly authorized
415 representative of the commission.

416 Section 5. This act shall take effect July 1, 2011.

417
418 ===== T I T L E A M E N D M E N T =====



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419 And the title is amended as follows:

420 Delete everything before the enacting clause
421 and insert:

422 A bill to be entitled

423 An act relating to elderly inmates; providing
424 legislative intent; creating s. 947.148, F.S.;

425 providing a short title; creating the Elderly
426 Rehabilitated Inmate Supervision Program to authorize
427 the Parole Commission to approve the early release of
428 certain elderly inmates; providing eligibility
429 requirements for an inmate to participate in the
430 program; requiring that the petition to participate in
431 the program include certain documents; authorizing
432 members of the public to be present at meetings of the
433 commission held to determine an inmate's eligibility
434 for the program; authorizing a victim to make an oral
435 statement or provide a written statement regarding the
436 granting, denying, or revoking of an inmate's
437 supervised release under the program; requiring that
438 the commission notify the victim or the victim's
439 family within a specified period regarding the filing
440 of a petition, the date of the commission's meeting,
441 and the commission's decision; authorizing the
442 commission to approve an inmate's participation in the
443 program under certain conditions; providing
444 eligibility requirements that the commission must
445 review; requiring an examiner to interview within a
446 specified time an inmate who has filed a petition for
447 supervised release under the program; authorizing the



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448 postponement of the interview; requiring the examiner
449 to explain and review certain criteria during the
450 interview; requiring that the examiner recommend a
451 release date for the inmate; providing certain
452 conditions under which an inmate may not be released;
453 requiring a panel of commissioners to establish terms
454 and conditions of the supervised release under certain
455 circumstances; requiring that the inmate participate
456 in community service, submit to electronic monitoring,
457 and provide restitution to victims as a condition for
458 participating in the program; authorizing the
459 commission to impose special conditions of
460 supervision; authorizing the inmate to request a
461 review of the terms and conditions of his or her
462 program supervision; requiring a panel of
463 commissioners to render a decision within a specified
464 period regarding a request to modify or continue the
465 supervised release; providing that participation in
466 the program is voluntary; requiring the commission to
467 specify in writing the terms and conditions of
468 supervision and provide a certified copy to the
469 inmate; authorizing the trial court judge to enter an
470 order to retain jurisdiction over the offender;
471 providing a limitation of the trial court's
472 jurisdiction; providing for gain-time to accrue;
473 providing procedures if the trial court retains
474 jurisdiction of the inmate; requiring a correctional
475 probation officer to supervise an inmate who is
476 released under the program; authorizing the Department



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477 of Corrections to conduct the program using
478 departmental employees or private agencies; requiring
479 the department and commission to adopt rules; creating
480 s. 947.1481, F.S.; creating the Restorative Justice
481 Pilot Program; requiring the Department of Corrections
482 to develop a pilot program patterned after the
483 juvenile justice program offered by Neighborhood
484 Restorative Justice Centers; requiring that inmates
485 who are eligible to participate in the Elderly
486 Rehabilitated Inmate Supervision Program be given
487 priority for participating in the pilot program;
488 providing that the pilot program be developed after
489 consultation with specified persons; authorizing the
490 department to conduct the pilot program using
491 departmental employees or private agencies; requiring
492 the department to adopt rules; amending s. 947.141,
493 F.S.; conforming provisions to changes made by the
494 act; authorizing a law enforcement officer or
495 correctional probation officer to arrest an inmate
496 under certain circumstances who has been released
497 under the Elderly Rehabilitated Inmate Supervision
498 Program; providing an effective date.

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 Criminal Justice Committee

BILL: CS/SB 146

INTRODUCER: Criminal Justice Committee and Senators Smith, Lynn, and Dockery

SUBJECT: Ex-Offenders/Licensing and Employment

DATE: March 10, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Favorable
2.	Clodfelter	Cannon	CJ	Fav/CS
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill makes changes to Florida’s laws relating to the restoration of civil rights, restrictions on the employment of ex-offenders, and sealing and expunging criminal records. Specifically, the bill:

- Provides that restoration of civil rights cannot be required as a condition of eligibility for public employment or to obtain a license, permit, or certificate.
- Requires state agencies and regulatory boards to submit to the Governor and certain legislative officers a report that outlines current disqualifying policies on the employment or licensure of ex-offenders and possible alternatives that are compatible with protecting public safety.
- Provides that an ex-offender may lawfully deny or fail to acknowledge any arrests or subsequent dispositions covered by a sealed or expunged record and that a person cannot be liable for perjury for doing so on an employment application.
- Permits the subject of an expunged record to receive the contents of that record without a court order.
- Allows for a second sealing of a criminal record.

This bill substantially amends the following sections of the Florida Statutes: 112.011, 943.0585, and 943.059.

II. Present Situation:

Restoration of Civil Rights

Section 112.011(1)(a), F.S., provides that a criminal conviction does not automatically disqualify a person from eligibility for public employment. However, a person who has been convicted of a felony or first-degree misdemeanor may be denied employment if the crime is directly related to the position sought. This section does not refer to restoration of civil rights.

Section 112.011(1)(b), F.S., relates to the impact of a prior criminal conviction on obtaining a license, permit, or certificate from a public agency to engage in an occupation, trade, vocation, profession, or business. If a person has had his or her civil rights restored, the status of having a prior conviction is not necessarily a disqualification. However, the conviction may be disqualifying if the specific crime for which the person was convicted was a felony or first-degree misdemeanor that is directly related to the position for which the license, permit, or certificate is required. In addition, some licensing boards have interpreted this statute to imply a requirement for restoration of civil rights.¹

Counties and municipalities that are hiring for positions deemed to be critical to security or public safety, law enforcement agencies, and correctional agencies are exempted from the provisions of s. 112.011(1), F.S.² Fire departments are also prohibited from hiring firefighters with a prior felony conviction sooner than four years after expiration of the sentence unless the applicant has been pardoned or had his or her civil rights restored.

According to a report prepared in 2007 by the Public Safety Unit of the Office of Policy and Budget within the Executive Office of the Governor (EOG), the overwhelming majority of licenses that were denied in the two years prior to the report were due to statutory restrictions relating to criminal convictions and not for a requirement for civil rights restoration.³ More than 4,000 licenses were denied during the prior year, but only 14 were denied due to a lack of restoration of civil rights. These denials were by the Department of Health's (DOH) Board of Nursing (12 denials)⁴ and the Department of Business and Professional Regulation's (DBPR) Construction Industry Licensing Board (two denials).⁵ There is no way to estimate how many

¹ In the space of two months, three District Courts of Appeal overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. See *Yeoman v. Construction Industry Licensing Bd.*, 919 So. 2d 542 (Fla. 1st DCA 2005); *Scherer v. Dep't of Business and Professional Regulation*, 919 So. 2d 662 (Fla. 5th DCA 2006); *Vetter v. Dep't of Business and Professional Regulation, Electrical Contractors' Licensing Bd.*, 920 So. 2d 44 (Fla. 2d DCA 2005).

² Section 112.011(2), F.S.

³ Public Safety Unit, Office of Policy and Budget, Executive Office of the Governor, *Report on the Survey of License and Employment Restrictions in State Agencies* (Oct. 2007).

⁴ The Board of Nursing removed its discretionary requirement of civil rights restoration in November 2007.

⁵ Section 489.115(6), F.S., was amended by Senate Bill 404 in 2007 to provide that the Construction Industry Licensing Board cannot deny a contractor's license based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights. If the applicant was convicted of a felony, licensure denial may be based upon the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The Board is also required to consider the length of time since the commission of the crime and the rehabilitation of the applicant.

persons were deterred from applying for licensing because of an actual or perceived requirement for civil rights restoration.

The EOG's review found that the DOH and the Department of Highway Safety and Motor Vehicles restrict some licenses based upon a requirement for restoration of civil rights.⁶ Outside of the Governor's agencies, the Department of Agriculture and Consumer Services and the Department of Financial Services have both statutorily mandated and non-mandated requirements for restoration of civil rights.

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction. Other civil rights that are lost in accordance with statute include the right to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.⁷

The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, Section 8(a), of the Florida Constitution. In April 2007, the Governor and Cabinet changed the Rules of Executive Clemency so that more convicted felons who have completed their sentences are eligible for restoration of civil rights. Between July 1, 2007, and September 30, 2008, 123,232 felons had their rights restored.⁸ This contrasts with 11,002 restorations during Fiscal Year 2005-2006, the last full fiscal year before the clemency rules were amended.⁹ Many offenses for which restoration of rights was either excluded or delayed for a period of years are now eligible for restoration after verification that all qualifying conditions have been met.

Eligibility for restoration of civil rights requires that the felon have completed all sentences, that all conditions of supervision have been satisfied or expired, and that there is no outstanding victim restitution. Thereafter, felons fall into one of three categories based upon the Clemency Board's assessment of the seriousness of the offense:

- Immediately eligible for automatic approval of restoration;
- Immediately eligible for restoration without a hearing; or
- Eligible for restoration without a hearing after 15 years.

⁶ It appears that there are also statutorily mandated requirements for civil rights restoration related to the Department of Revenue (s. 206.026, F.S. – terminal supplier, importer, exporter, blender, carrier, terminal operator, or wholesaler fueler license); and the DBPR (s. 447.04, F.S. – labor union business agent license; s. 550.1815, F.S. – horseracing, dogracing, or jai alai fronton permit).

⁷ Section 944.292, F.S., provides: “[u]pon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution.”

⁸ Florida Parole Commission, *Annual Report 2007-2008*, 21 (Dec. 31, 2008), available at <https://fpc.state.fl.us/PDFs/FPCAnnualreport200708.pdf> (last visited Apr. 10, 2010).

⁹ Comm. on Criminal Justice, The Florida Senate, *Rules for Restoration of Civil Rights for Felons and Impacts on Obtaining Occupational Licenses and Other Opportunities*, 6 (Interim Report 2008-114) (Dec. 2007), available at http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-114cj.pdf (last visited Apr. 10, 2010).

The Florida Parole Commission acts as the agent of the Clemency Board in verifying eligibility, and has prioritized processing of the automatic approval cases for which it conducts a less extensive review. A more extensive investigation is conducted for those who are immediately eligible for restoration without a hearing. Due to the large number of persons who are eligible for automatic approval, persons who are immediately eligible for restoration without a hearing may face a delay of several years before their rights are restored.

The Florida Department of Law Enforcement's criminal history database includes records of more than 800,000 persons who have been convicted of a felony in Florida. This is not an accurate reflection of the number of Florida residents who have lost their civil rights, because it includes persons who have died or left the state and does not include persons who were convicted in other jurisdictions. However, it illustrates the magnitude of the population that is affected by loss of civil rights.

There were 102,138 inmates in the custody of the Florida Department of Corrections as of December 31, 2010. Almost 90 percent of these inmates will be released one day. During the 2008-2009 fiscal year, 37,391 inmates were released from prison,¹⁰ and the current recommitment rate indicates that almost one-third of them will be recommitted within three years.¹¹

The federal Second Chance Act of 2007 (act) is designed to help inmates safely and successfully transition back into the community. Among its many initiatives, the act authorizes the U.S. Justice Department's National Institute of Justice and the Bureau of Justice Statistics to conduct reentry-related research. The National Institute of Justice has found that one year after release, up to 60 percent of former inmates are not employed. The act also establishes a national resource center to collect and disseminate best practices and provide training on and support for reentry efforts. It also provides an initiative to provide specific information on health, employment, personal finance, release requirements, and community resources to each inmate released.

Restrictions on the Employment of Ex-Offenders

State agencies restrict occupational licenses and employment to ex-offenders based upon statute, administrative rule, or agency policy. The nature and variety of occupational licenses and employment with state agencies dictates that different standards will apply to different types of employees and licensees.

Restrictions based on agency policy that are not adopted as rules could be problematic. Chapter 120, F.S., specifies that a "rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.¹² Rulemaking is not a matter of agency discretion – each agency statement defined as a rule must be adopted through

¹⁰ Florida Department of Corrections Annual Report FY 2008-2009, p. 14. The number reported in the text of this analysis does not include inmates released by reason of death.

¹¹ Transcript of remarks by Secretary Walter A. McNeil at the Restoration of Rights Summit in Tallahassee, Florida, June 17, 2008, viewed on September 24, 2008 at http://free-rein.us/McNeil_Restoration_of_Rights_Summit_speech_06_18_08.pdf. Also, "2009 Florida Prison Recidivism Study," Florida Department of Corrections, May 2010, p. 7.

¹² Section 120.52(15), F.S.

the rulemaking procedure provided in ch. 120, F.S., as soon as feasible and practicable.¹³ Agencies should not impose employment or licensing restrictions on applicants that are not based on statute or rules adopted pursuant to statutory authority.

The Governor's Ex-Offender Task Force (Task Force) was established in 2005 to "help improve the effectiveness of the State of Florida in facilitating the re-entry of ex-offenders into their communities so as to reduce the incidence of recidivism."¹⁴ The Task Force estimated that almost 40 percent of the 7.6 million jobs in Florida are subject to criminal background checks or restrictions based on criminal history. The restrictions include requiring restoration of civil rights, disqualification based on commission of specific crimes, or requiring the passing of a background check under ch. 435, F.S. Less defined restrictions require assessment of whether the applicant has good moral character or has committed an act or crime of moral turpitude. The Task Force found that convicted felons face significant barriers to employment because of these restrictions.

After the Task Force found that many state laws and policies imposed restrictions on the employment of ex-offenders, and that no comprehensive review of those restrictions had been undertaken, executive agencies were instructed to produce for the Task Force a report detailing all employment restrictions and disqualifications based on criminal records.¹⁵ The Task Force released its Final Report to the Governor in November 2006, and recommended that employment restrictions be studied, specifically the "feasibility of a single background check act that would streamline, organize, and cohere employment restrictions based on the nature of the job."¹⁶

In October 2007, the Governor's Office made a presentation to the Senate Criminal Justice Committee addressing licensing and employment restrictions, based on surveys of non-Cabinet agencies. Nine agencies reported licensing restrictions, citing criminal history or restoration of civil rights as the legal basis for the restrictions. The presentation noted that pursuant to s. 112.011, F.S., an agency *may* deny employment by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and *directly related* to the position of employment sought.

Pursuant to s. 112.011(1)(a), F.S., a person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime, except for those drug offenses specified in s. 775.16, F.S. However, a person may be denied employment by those entities by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought. Specific restrictions for licenses and employment are found throughout the Florida Statutes, as detailed in the Governor's Survey of License and Employment Restrictions in State Agencies, presented to the Senate Criminal Justice Committee in October 2007.

¹³ Section 120.54(1)(a), F.S.

¹⁴ Executive Order No. 05-28.

¹⁵ Executive Order No. 06-89.

¹⁶ Governor's Ex-Offender Task Force, *Final Report to Governor Jeb Bush*, 27 (Nov. 2006), available at <http://www.aecf.org/upload/PublicationFiles/Final%20Report%20of%20Florida%20Ex-Offender%20Task%20Force.pdf> (last visited Apr. 10, 2010).

Sealing and Expunction of Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The department can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE.¹⁷ Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The department, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first-degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.¹⁸

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,¹⁹ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.²⁰

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.²¹ It is then up to the court to decide whether the sealing or expunction is appropriate.

A criminal history record may be expunged by a court if the petitioner has obtained a certificate of eligibility and swears that he or she:

- Has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses.
- Has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged.
- Has not obtained a prior sealing or expunction.

¹⁷ Section 943.0585(4), F.S.

¹⁸ Section 943.0585(4)(c), F.S.

¹⁹ These types of employment include: law enforcement, the Florida Bar, working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities, or a Florida seaport.

²⁰ Section 943.0585(4)(a), F.S.

²¹ Section 943.0585(2), F.S.

- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.²²

In addition, the record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.²³ The same criteria apply for sealing a criminal history record under s. 943.059, F.S. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.²⁴

The Legislature also prohibits criminal history records relating to certain offenses in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication was withheld, from being sealed or expunged.²⁵

III. Effect of Proposed Changes:

Section 1: Title

Section 1 provides that the act may be cited as the “Jim King Keep Florida Working Act.”

Section 2: Restrictions on the Employment of Ex-Offenders

Each state agency, including professional and occupational regulatory boards, will submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2011, and every eight years thereafter. This report will include policies imposed by the agency or board that disqualify a person who has been convicted of a crime from employment or licensure. The report will also contain a review of these restrictions and their availability to prospective employees. The report will take into account these disqualifications and consider less restrictive ways to protect public safety while offering employment opportunities for ex-offenders. If any restriction is based on language referring to “good moral character” or “moral turpitude,” the report may propose restrictions that more precisely describe the basis for employment decision making.

Section 3: Restoration of Civil Rights

Section 112.011(1)(b), F.S., is rewritten to exclude any reference to restoration of civil rights. The bill amends the original language to allow a government entity to deny an application for a license, permit, or certificate to engage in an occupation, trade, vocation, profession, or business if the applicant was convicted of a felony or first-degree misdemeanor relevant to the standards normally associated with, or determined by the regulatory authority to be necessary for the protection of the public or other parties for which the license, permit, or certificate is required.

²² Section 943.0585(1)(b), F.S.

²³ Section 943.0585(2)(h), F.S.

²⁴ Section 943.0585(1), F.S.

²⁵ These offenses include the following: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child; lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

Paragraph (c) is added to expressly preclude disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment on the grounds that his or her civil rights have not been restored. This applies notwithstanding any provision in another section of Florida Statutes, though it does not apply to applications for a license to carry a concealed weapon. However, the exemptions within the section of law for county and municipal positions, which are deemed to be critical to security or public safety, law enforcement agencies, correctional agencies, and fire departments are retained.

The effect of these revisions to s. 112.011(1), F.S., is that the restoration of civil rights will no longer be used as a measure of fitness for public employment and licensure. This recognizes that restoration of civil rights is dependent upon completion of sentence, not upon a demonstration of rehabilitation or suitability for employment. Public safety may be increased by precluding consideration of restoration of civil rights as a validation that a person is fit for employment regardless of the specifics of his or her criminal background.

In addition, otherwise qualified persons will not be precluded from employment if they have a prior conviction for a crime that is not related to the position or permit which they seek. These increased employment opportunities should have some impact in reducing recidivism, thus reducing the direct costs of crime as well as costs of re-incarceration. With the link between civil rights restoration and ex-offender employment eligibility separated, regulatory agencies and licensing boards may be more likely to establish criteria significant to their specific trades that can more effectively satisfy public safety concerns.

Sections 4 and 5: Sealing and Expunction of Criminal History Records

The bill makes the following changes to the statutes governing the sealing and expunction of criminal records:

- Requires the clerk of court to place on his or her website information on the availability of criminal history record sealing and expunction, including a link to the Florida Department of Law Enforcement's website for sealing and expunction applications and information.
- Clarifies how a potential applicant can answer a "conviction" question on a job or licensing application concerning sealed or expunged records by specifying that a person may lawfully deny or fail to acknowledge the arrests and subsequent dispositions covered by the sealed or expunged record.
- Clarifies that no person can be liable for perjury when denying or failing to acknowledge the arrests and subsequent dispositions, including when asked on an employment application.
- Permits the contents of an expunged record to be disclosed to the subject of the record without requiring him or her to obtain a court order.
- Allows for a second sealing of a criminal record if the subject of the record has been crime-free for five years (meaning no subsequent arrests have occurred since the date of the court order for the initial criminal history record expunction or sealing). The current requirements and other provisions in the sealing and expunction statutes would continue to apply when seeking a second sealing under the bill.

Section 6: Effective Date

The bill provides an effective date of July 1, 2011.

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:**

The Florida Department of Law Enforcement estimated that \$498,525 in annual revenue would be generated from the certificate of eligibility fees. This was based on an estimated 6,647 new applications the department anticipates it will receive (\$75 per application x 6,647 additional applications each year).²⁶

B. Private Sector Impact:

The bill may have a positive fiscal impact by providing more job opportunities for convicted felons. That could reduce recidivism, thus reducing the direct costs of crime as well as costs of re-incarceration.

C. Government Sector Impact:

The Florida Department of Law Enforcement anticipates that additional resources will be required to handle the increased workload generated by the provision in the bill which allows persons to apply for a second criminal history records sealing. FDLE indicates that such costs may be \$145,006 in Fiscal Year 2011-12, and \$101,210 in Fiscal Years 2012-13, and 2013-14.²⁷

VI. Technical Deficiencies:

The bill allows for a second sealing of a criminal record if the subject of the record has been crime-free for five years. The bill adds this exception several places in s. 943.059, F.S. (see lines 476, 519, and 552); however, the exception is not added to substantially similar sections of law

²⁶ Florida Dep't of Law Enforcement, *Senate Bill 146 Relating to Ex-offenders/Licensing and Employment/Sealed Records*, (Jan. 28, 2011) (on file with the Senate Committee on Governmental Oversight and Accountability).

²⁷ *Id.*

within s. 943.0585, F.S. (see lines 184, 258, and 304). It is unclear if the exception needs to be added to s. 943.0585, F.S., which relates to court-ordered expunction of criminal history records.

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 March 9, 2011:

Removes an amendment to s. 768.096, F.S., that would have required an employer to review and consider the results of a criminal history background investigation and take certain steps consistent with the findings of the investigation in order to satisfy a statutory presumption against civil liability for negligent hiring.

- B. **Amendments:**

None.



381846

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Margolis) recommended the following:

Senate Amendment (with title amendment)

Delete lines 125 - 176.

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

And the title is amended as follows:

Delete lines 10 - 19

and insert:

providing an exception;

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 Criminal Justice Committee

BILL: SB 234

INTRODUCER: Senators Evers and Dockery

SUBJECT: Firearms - Open Carry

DATE: February 10, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 234 amends the concealed weapons license law to provide that a person who is in compliance with the concealed carry license requirements and limitations may carry such weapon openly in addition to carrying it in a concealed manner.

It also revises the definitions of places where a person may lawfully carry a weapon by deleting the prohibition against carrying a weapon on the property of colleges, universities, career centers and certain elementary and secondary schools.

The bill provides that a person who is licensed to carry a weapon or firearm shall not be prohibited from carrying it in or storing it in a vehicle for lawful purposes.

The bill allows the Department of Agricultural and Consumer Services to take the fingerprints that license applicants submit with their applications for licensure. This will provide applicants with an additional location where their prints can be taken.

The bill also amends Florida law regarding the transfer of firearms by Florida residents which occur in other states.

This bill substantially amends sections 790.06 and 790.065 and repeals section 790.28 of the Florida Statutes.

II. Present Situation:

Under current Florida law, it is lawful for a person to carry a *concealed* weapon without a concealed weapon license for purposes of lawful self-defense, so long as the weapon is limited to self-defense chemical spray, a nonlethal stun gun, a dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.¹

However, without licensure, carrying a different type of concealed weapon², electric weapon, or device other than one designed solely for defensive purposes is a first degree misdemeanor.³ Carrying a concealed firearm without proper licensure is a third degree felony offense.⁴

It is lawful for a person to *openly* carry a self-defense chemical spray, nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.⁵

Certain persons under particular circumstances are exempt from the limitations on the open carry of weapons in s. 790.053, F.S., and the concealed firearm carry licensure requirements in s. 790.06, F.S., when the weapons and firearms are lawfully owned, possessed and used. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;

¹ s. 790.01(4), F.S.

² A concealed weapon, under s. 790.001(3)(a), F.S., means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person. The weapons listed in this definition require licensure to carry them in a concealed manner.

³ s. 790.01(1), F.S.

⁴ s. 790.01(2), F.S.

⁵ s. 790.053, F.S.

- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and capital collateral regional counsel of the state, while actually carrying out official duties.⁶

Concealed Weapons Licensure

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants that qualify.⁷ Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.⁸

According to the FY 2009-2010 statistics, the DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.⁹

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;

⁶ s. 790.25(3), F.S.

⁷ s. 790.06(1), F.S.

⁸ *Id.*

⁹ http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf ; last visited February 11, 2011.

- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.¹⁰

Additionally, the applicant must attest that he or she is in compliance with the criteria contained in subsections (2) and (3) of s. 790.06, F.S.

Subsection (2) of s. 790.06, F.S., requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or

¹⁰ s. 790.06(1)-(5), F.S.

any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;

- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.¹¹

The DACS must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.¹²

The DACS shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.¹³

The DACS shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.¹⁴ The DACS shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.¹⁵

In addition, the DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in subsection (2);
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;

¹¹ s. 790.06(2), F.S.

¹² s. 790.06(3), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.¹⁶

Licenses must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹⁷ Failure to have proper documentation and display it upon demand is a second degree misdemeanor.¹⁸

A concealed weapon or firearms license does not authorize a person to carry a weapon or firearm in a concealed manner into:

- any place of nuisance as defined in s. 823.05, F.S.;
- any police, sheriff, or highway patrol station;
- any detention facility, prison, or jail;
- any courthouse;
- any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- any polling place;
- any meeting of the governing body of a county, public school district, municipality, or special district;
- any meeting of the Legislature or a committee thereof;
- any school, college, or professional athletic event not related to firearms;
- any school administration building;
- any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- any elementary or secondary school facility;
- any career center;
- any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- any place where the carrying of firearms is prohibited by federal law.

Any person who willfully violates any of the above-listed provisions commits a misdemeanor of the second degree.¹⁹

¹⁶ s. 790.06(10), F.S.

¹⁷ s. 790.790.06(1), F.S.

¹⁸ s. 790.06(1), F.S.

¹⁹ s. 790.06(12), F.S.

Firearms in Vehicles

It is lawful for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. The same is true for a legal long gun, without the need for encasement, when it is carried in the private conveyance for a lawful purpose.²⁰

“Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access.²¹ The term “readily accessible for immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.²²

Section 790.251, F.S., became law in 2008. It addressed the lawful possession of firearms in vehicles within the parking lots of businesses, and was commonly known as the “Guns at Work” law. The law was challenged quickly after its passage. The court recognized the Legislature’s authority to protect an *employee* from employment discrimination where the employee had a concealed carry license and kept a firearm in a vehicle at work. However, because of the statutory definitions of employer and employee, the court found a problem in the application of the law to *customers*.

The court’s reading of the statutory definitions led to this conclusion: a business which happened to employ a person with a concealed weapon license (who kept a firearm secured in his or her vehicle in the parking lot at work) would have been prohibited from expelling a customer who had a firearm in his or her car; a business without such an employee would have been free to expel such a customer. The court found that there was no rational basis for treating two similarly situated businesses differently just because one happened to employ someone with a concealed weapons license, therefore the state was enjoined from enforcing the part of the law that applied to customers.²³

Florida Residents Purchasing Shotguns and Rifles in Other States

In 1968, the Federal Gun Control Act (GCA) was enacted.²⁴ Among its many provisions was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector²⁵ to sell

²⁰ s. 790.25(5), F.S.

²¹ s. 790.001(17), F.S.

²² s. 790.001(16), F.S.

²³ *Florida Retail Federation v. Attorney General*, 576 F.Supp.2d 1281 (N.D.Fla. 2008).

²⁴ Pub. L. No. 90-618 (codified at 18 U.S.C. §§ 921-928).

²⁵ The term “importer” means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term “manufacturer” means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term “dealer” means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term “collector” means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be “licensed,” an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18.U.S.C. § 921.

or deliver any firearm²⁶ to any person who the licensee knew or had reasonable cause to believe did not reside in the state in which the licensee's place of business was located.²⁷ The GCA specified that this prohibition did not apply to the sale or delivery of a rifle²⁸ or shotgun²⁹ to a resident of a state contiguous to the state in which the licensee's place of business was located if:

- The purchaser's state of residence permitted such sale or delivery by law;
- The sale fully complied with the legal conditions of sale in both such contiguous states; and
- The purchaser and the licensee had, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that took place at a location other than at the licensee's premises.³⁰

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA's provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee's place of business was located.³¹ Florida's statute, s. 790.28, F.S., entitled "Purchase of rifles and shotguns in contiguous states," was enacted in 1979, and currently provides the following:

A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the Firearm Owners' Protection Act (FOPA) was enacted.³² FOPA amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.³³

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns. Florida has not revised or repealed its statute.

²⁶ 18 U.S.C. § 921 defines the term "firearm" as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.

²⁷ 18 U.S.C. § 922(b)(3) (1968).

²⁸ 18 U.S.C. § 921 defines the term "rifle" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

²⁹ 18 U.S.C. § 921 defines the term "shotgun" as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

³⁰ 18 U.S.C. § 922(b)(3) (1968).

³¹ See, e.g., O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.

³² Pub. L. No. 99-308.

³³ 18 U.S.C. §922(b)(3) (1986).

It should be noted federal-licensed firearms dealers, importers and manufacturers are required by the federal government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring the firearm.

III. Effect of Proposed Changes:

Senate Bill 234 provides that a person who holds a valid concealed weapon or firearm license, issued by the Department of Agriculture and Consumer Affairs (DACCS) under s. 790.06, F.S., may carry a weapon or firearm openly.

The bill specifically amends the definitions and limitations, found in s. 790.06(12), F.S., on where weapons or firearms can be carried by allowing a license-holder to carry a weapon or firearm within a career center, a college or university, and nonpublic elementary or secondary school facilities.

Also, the bill inserts a provision in s. 790.06(12), F.S., that specifically protects a licensed person from being prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

A person who carries a weapon or firearm into one of the prohibited locations set forth in subsection (12) of s. 790.06, F.S., or a person who prohibits a licensee from carrying or storing a firearm in a vehicle for lawful purposes, commits a second degree misdemeanor if they do so knowingly and willfully under the provisions of the bill.

The bill also authorizes the DACCS to take fingerprints from a license-applicant for inclusion with the application packet. This provides the applicant with an additional place to have their prints taken.

Section 790.28, F.S., is repealed by the bill. It is the provision that limits Florida residents to the purchase of rifles and shotguns in contiguous states. A paragraph is added by the bill to s. 790.065, F.S., in order to clarify that a licensed dealer's shotgun or rifle sale to a Florida resident in another state is subject only to the federal law and the law of the state wherein the transfer is made.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/09/2011	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete lines 91 - 167
and insert:

(b) A person licensed under this section shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

(c) This subsection does not modify the terms or conditions of s. 790.251(7).

(d) Any person who knowingly and willfully violates any provision of this subsection commits a misdemeanor of the second



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13 degree, punishable as provided in s. 775.082 or s. 775.083.

14 Section 2. Section 790.115, Florida Statutes, is amended to
15 read:

16 790.115 Possessing or discharging weapons or firearms at a
17 school-sponsored event or on school property prohibited;
18 penalties; exceptions.—

19 (1) A person who exhibits any sword, sword cane, firearm,
20 electric weapon or device, destructive device, or other weapon
21 as defined in s. 790.001(13), including a razor blade, box
22 cutter, or common pocketknife, except as authorized in support
23 of school-sanctioned activities, in the presence of one or more
24 persons in a rude, careless, angry, or threatening manner and
25 not in lawful self-defense, at a school-sponsored event or on
26 the grounds or facilities of any school, school bus, or school
27 bus stop, or within 1,000 feet of the real property that
28 comprises a public or private elementary school, middle school,
29 or secondary school, during school hours or during the time of a
30 sanctioned school activity, commits a felony of the third
31 degree, punishable as provided in s. 775.082, s. 775.083, or s.
32 775.084. This subsection does not apply to the exhibition of a
33 firearm or weapon on private real property within 1,000 feet of
34 a school by the owner of such property or by a person whose
35 presence on such property has been authorized, licensed, or
36 invited by the owner.

37 (2) (a) A person may ~~shall~~ not possess any firearm, electric
38 weapon or device, destructive device, or other weapon as defined
39 in s. 790.001(13), including a razor blade or box cutter, except
40 as authorized in support of school-sanctioned activities, at a
41 school-sponsored event or on the property of any school, school



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42 bus, or school bus stop; however, a person may carry a firearm:

43 1. In a case to a firearms program, class, or function that
44 ~~which~~ has been approved in advance by the principal or chief
45 administrative officer of the school as a program or class to
46 which firearms could be carried;

47 2. In a case to a career center having a firearms training
48 range; or

49 3. In a vehicle pursuant to s. 790.25(5); except that
50 school districts may adopt written and published policies that
51 waive the exception in this subparagraph for purposes of student
52 and campus parking privileges.

53
54 For the purposes of this section, the term "school" means any
55 preschool, elementary school, middle school, junior high school,
56 or secondary school, ~~career center, or postsecondary school,~~
57 whether public or nonpublic.

58 (b) A person who willfully and knowingly possesses any
59 electric weapon or device, destructive device, or other weapon
60 as defined in s. 790.001(13), including a razor blade or box
61 cutter, except as authorized in support of school-sanctioned
62 activities, in violation of this subsection commits a felony of
63 the third degree, punishable as provided in s. 775.082, s.
64 775.083, or s. 775.084.

65 (c)1. A person who willfully and knowingly possesses any
66 firearm in violation of this subsection commits a felony of the
67 third degree, punishable as provided in s. 775.082, s. 775.083,
68 or s. 775.084.

69 2. A person who stores or leaves a loaded firearm within
70 the reach or easy access of a minor who obtains the firearm and



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71 commits a violation of subparagraph 1. commits a misdemeanor of
72 the second degree, punishable as provided in s. 775.082 or s.
73 775.083; except that this does not apply if the firearm was
74 stored or left in a securely locked box or container or in a
75 location which a reasonable person would have believed to be
76 secure, or was securely locked with a firearm-mounted push-
77 button combination lock or a trigger lock; if the minor obtains
78 the firearm as a result of an unlawful entry by any person; or
79 to members of the Armed Forces, National Guard, or State
80 Militia, or to police or other law enforcement officers, with
81 respect to firearm possession by a minor which occurs during or
82 incidental to the performance of their official duties.

83 (d) A person who discharges any weapon or firearm while in
84 violation of paragraph (a), unless discharged for lawful defense
85 of himself or herself or another or for a lawful purpose,
86 commits a felony of the second degree, punishable as provided in
87 s. 775.082, s. 775.083, or s. 775.084.

88 (e) The penalties of this subsection do ~~shall~~ not apply to
89 persons licensed under s. 790.06. Persons licensed under s.
90 790.06 shall be punished as provided in s. 790.06(12), except
91 that a licenseholder who unlawfully discharges a weapon or
92 firearm on school property as prohibited by this subsection
93 commits a felony of the second degree, punishable as provided in
94 s. 775.082, s. 775.083, or s. 775.084.

95 (3) This section does not apply to any law enforcement
96 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
97 (8), (9), or (14).

98 (4) Notwithstanding s. 985.24, s. 985.245, or s. 985.25(1),
99 any minor under 18 years of age who is charged under this



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100 section with possessing or discharging a firearm on school
101 property shall be detained in secure detention, unless the state
102 attorney authorizes the release of the minor, and shall be given
103 a probable cause hearing within 24 hours after being taken into
104 custody. At the hearing, the court may order that the minor
105 continue to be held in secure detention for a period of 21 days,
106 during which time the minor shall receive medical, psychiatric,
107 psychological, or substance abuse examinations pursuant to s.
108 985.18, and a written report shall be completed.

109 Section 3. Section 790.28, Florida Statutes, is repealed.

110 Section 4. Subsection (1) of section 790.065, Florida
111 Statutes, is amended to read:

112 790.065 Sale and delivery of firearms.—

113 (1) (a) A licensed importer, licensed manufacturer, or
114 licensed dealer may not sell or deliver from her or his
115 inventory at her or his licensed premises any firearm to another
116 person, other than a licensed importer, licensed manufacturer,
117 licensed dealer, or licensed collector, until she or he has:

118 1. (a) Obtained a completed form from the potential buyer or
119 transferee, which form shall have been promulgated by the
120 Department of Law Enforcement and provided by the licensed
121 importer, licensed manufacturer, or licensed dealer, which shall
122 include the name, date of birth, gender, race, and social
123 security number or other identification number of such potential
124 buyer or transferee and has inspected proper identification
125 including an identification containing a photograph of the
126 potential buyer or transferee.

127 2. (b) Collected a fee from the potential buyer for
128 processing the criminal history check of the potential buyer.



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129 The fee shall be established by the Department of Law
130 Enforcement and may not exceed \$8 per transaction. The
131 Department of Law Enforcement may reduce, or suspend collection
132 of, the fee to reflect payment received from the Federal
133 Government applied to the cost of maintaining the criminal
134 history check system established by this section as a means of
135 facilitating or supplementing the National Instant Criminal
136 Background Check System. The Department of Law Enforcement
137 shall, by rule, establish procedures for the fees to be
138 transmitted by the licensee to the Department of Law
139 Enforcement. All such fees shall be deposited into the
140 Department of Law Enforcement Operating Trust Fund, but shall be
141 segregated from all other funds deposited into such trust fund
142 and must be accounted for separately. Such segregated funds must
143 not be used for any purpose other than the operation of the
144 criminal history checks required by this section. The Department
145 of Law Enforcement, each year prior to February 1, shall make a
146 full accounting of all receipts and expenditures of such funds
147 to the President of the Senate, the Speaker of the House of
148 Representatives, the majority and minority leaders of each house
149 of the Legislature, and the chairs of the appropriations
150 committees of each house of the Legislature. In the event that
151 the cumulative amount of funds collected exceeds the cumulative
152 amount of expenditures by more than \$2.5 million, excess funds
153 may be used for the purpose of purchasing soft body armor for
154 law enforcement officers.

155 3.(e) Requested, by means of a toll-free telephone call,
156 the Department of Law Enforcement to conduct a check of the
157 information as reported and reflected in the Florida Crime



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158 Information Center and National Crime Information Center systems
159 as of the date of the request.

160 4.~~(d)~~ Received a unique approval number for that inquiry
161 from the Department of Law Enforcement, and recorded the date
162 and such number on the consent form.

163 (b) However, if the person purchasing, or receiving
164 delivery of, the firearm is a holder of a valid concealed
165 weapons or firearms license pursuant to the provisions of s.
166 790.06 or holds an active certification from the Criminal
167 Justice Standards and Training Commission as a "law enforcement
168 officer," a "correctional officer," or a "correctional probation
169 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or
170 (9), ~~the provisions of~~ this subsection does ~~de~~ not apply.

171 (c) This subsection does not apply to the purchase, trade,
172 or transfer of rifles or shotguns by a resident of this state
173 when the resident makes such purchase, trade, or transfer from a
174 licensed importer, licensed manufacturer, or licensed dealer in
175 another state.

176 Section 5. This act shall take effect upon becoming a law.

177
178 ===== T I T L E A M E N D M E N T =====

179 And the title is amended as follows:

180 Delete lines 16 - 23

181 and insert:

182 purposes; providing that a provision limiting the
183 scope of a license to carry a concealed weapon or
184 firearm does not modify certain exceptions to
185 prohibited acts with respect to a person's right to
186 keep and bear arms in motor vehicles for certain



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187 purposes; amending s. 790.115, F.S., relating to the
188 prohibition against possessing or discharging weapons
189 or firearms at a school-sponsored event or on school
190 property; revising the definition of the term
191 "school"; repealing s. 790.28, F.S., relating to the
192 purchase of rifles and shotguns in contiguous states;
193 amending s. 790.065, F.S.; providing that specified
194 provisions do not apply to certain firearms
195 transactions by a resident of this state which take
196 place in another state; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
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The Committee on Criminal Justice (Evers) recommended the following:

1 **Senate Substitute for Amendment (180224) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsection (1) of section 790.053, Florida
7 Statutes, is amended to read:

8 790.053 Open carrying of weapons.—

9 (1) Except as otherwise provided by law and in subsection
10 (2), it is unlawful for any person to openly carry on or about
11 his or her person any firearm or electric weapon or device,
12 except as provided in s. 790.06(1). It shall not be a violation



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13 of this section for a person who is licensed to carry a
14 concealed firearm, and who is lawfully carrying it in a
15 concealed manner, to accidentally or inadvertently display the
16 firearm to the ordinary sight of another person so long as the
17 firearm is not displayed in a rude, angry, or threatening
18 manner.

19 Section 2. Subsection (1), paragraph (h) of subsection (2),
20 paragraph (c) of subsection (5), and subsection (12) of section
21 790.06, Florida Statutes, are amended to read:

22 790.06 License to carry concealed weapon or firearm.—

23 (1) The Department of Agriculture and Consumer Services is
24 authorized to issue licenses to carry concealed weapons or
25 concealed firearms to persons qualified as provided in this
26 section. Each such license must bear a color photograph of the
27 licensee. For the purposes of this section, concealed weapons or
28 concealed firearms are defined as a handgun, electronic weapon
29 or device, tear gas gun, knife, or billie, but the term does not
30 include a machine gun as defined in s. 790.001(9). Such licenses
31 shall be valid throughout the state for a period of 7 years from
32 the date of issuance. Any person in compliance with the terms of
33 such license may carry a concealed weapon or concealed firearm
34 notwithstanding ~~the provisions of s. 790.01,~~ or may carry openly
35 as set forth in paragraphs (a) - (c) of this subsection,
36 notwithstanding s. 790.053. The licensee must carry the license,
37 together with valid identification, at all times in which the
38 licensee is in actual possession of a concealed weapon or
39 firearm and must display both the license and proper
40 identification upon demand by a law enforcement officer. A
41 violation ~~Violations of the provisions~~ of this subsection shall



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42 constitute a noncriminal violation with a penalty of \$25,
43 payable to the clerk of the court.

44 (a) Carrying openly requires that the firearm be secured by
45 the carrier in a Level 2 security holster.

46 (b) Carrying openly requires that the carrier display his
47 or her license to carry a concealed firearm in a clear sleeve on
48 or near the holster in such a manner as to be visible.

49 (c) Carrying openly requires the carrier to have
50 demonstrated competence with a firearm and firearm retention as
51 provided in paragraph (2) (h).

52 (2) The Department of Agriculture and Consumer Services
53 shall issue a license if the applicant:

54 (h) Demonstrates competence with a firearm and firearm
55 retention by any one of the following:

56 1. Completion of any hunter education or hunter safety
57 course approved by the Fish and Wildlife Conservation Commission
58 or a similar agency of another state;

59 2. Completion of any National Rifle Association firearms
60 safety or training course;

61 3. Completion of any firearms safety or training course or
62 class available to the general public offered by a law
63 enforcement, junior college, college, or private or public
64 institution or organization or firearms training school,
65 utilizing instructors certified by the National Rifle
66 Association, Criminal Justice Standards and Training Commission,
67 or the Department of Agriculture and Consumer Services;

68 4. Completion of any law enforcement firearms safety or
69 training course or class offered for security guards,
70 investigators, special deputies, or any division or subdivision



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71 of law enforcement or security enforcement;

72 5. Presents evidence of equivalent experience with a
73 firearm through participation in organized shooting competition
74 or military service;

75 6. Is licensed or has been licensed to carry a firearm in
76 this state or a county or municipality of this state, unless
77 such license has been revoked for cause; or

78 7. Completion of any firearms training or safety course or
79 class conducted by a state-certified or National Rifle
80 Association certified firearms instructor;

81
82 A photocopy of a certificate of completion of any of the courses
83 or classes; or an affidavit from the instructor, school, club,
84 organization, or group that conducted or taught said course or
85 class attesting to the completion of the course or class by the
86 applicant; or a copy of any document which shows completion of
87 the course or class or evidences participation in firearms
88 competition shall constitute evidence of qualification under
89 this paragraph; any person who conducts a course pursuant to
90 subparagraph 2., subparagraph 3., or subparagraph 7., or who, as
91 an instructor, attests to the completion of such courses, must
92 maintain records certifying that he or she observed the student
93 safely handle and discharge the firearm;

94 (5) The applicant shall submit to the Department of
95 Agriculture and Consumer Services:

96 (c) A full set of fingerprints of the applicant
97 administered by a law enforcement agency or the Division of
98 Licensing of the Department of Agriculture and Consumer
99 Services.



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100 (12) (a) A ~~No~~ license issued under ~~pursuant to~~ this section
101 does not shall authorize any person to carry a concealed weapon
102 or firearm into:

103 1. Any place of nuisance as defined in s. 823.05;

104 2. Any police, sheriff, or highway patrol station;

105 3. Any detention facility, prison, or jail;

106 4. Any courthouse;

107 5. Any courtroom, except that nothing in this section would
108 preclude a judge from carrying a concealed weapon or determining
109 who will carry a concealed weapon in his or her courtroom;

110 6. Any polling place;

111 7. Any meeting of the governing body of a county, public
112 school district, municipality, or special district;

113 8. Any meeting of the Legislature or a committee thereof;

114 9. Any school, college, or professional athletic event not
115 related to firearms;

116 10. Any public elementary or secondary school facility or
117 administration building;

118 11. Any portion of an establishment licensed to dispense
119 alcoholic beverages for consumption on the premises, which
120 portion of the establishment is primarily devoted to such
121 purpose; ~~any elementary or secondary school facility; any career~~
122 ~~center; any college or university facility unless the licensee~~
123 ~~is a registered student, employee, or faculty member of such~~
124 ~~college or university and the weapon is a stun gun or nonlethal~~
125 ~~electric weapon or device designed solely for defensive purposes~~
126 ~~and the weapon does not fire a dart or projectile;~~

127 12. The inside of the passenger terminal and sterile area
128 of any airport, provided that no person shall be prohibited from



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129 carrying any legal firearm into the terminal, which firearm is
130 encased for shipment for purposes of checking such firearm as
131 baggage to be lawfully transported on any aircraft; or

132 13. Any place where the carrying of firearms is prohibited
133 by federal law.

134 (b) A person licensed under this section shall not be
135 prohibited from carrying or storing a firearm in a vehicle for
136 lawful purposes.

137 (c) This subsection does not modify the terms or conditions
138 of s. 790.251(7).

139 (d) Any person who knowingly and willfully violates any
140 provision of this subsection commits a misdemeanor of the second
141 degree, punishable as provided in s. 775.082 or s. 775.083.

142 Section 3. Section 790.115, Florida Statutes, is amended to
143 read:

144 790.115 Possessing or discharging weapons or firearms at a
145 school-sponsored event or on school property prohibited;
146 penalties; exceptions.-

147 (1) A person who exhibits any sword, sword cane, firearm,
148 electric weapon or device, destructive device, or other weapon
149 as defined in s. 790.001(13), including a razor blade, box
150 cutter, or common pocketknife, except as authorized in support
151 of school-sanctioned activities, in the presence of one or more
152 persons in a rude, careless, angry, or threatening manner and
153 not in lawful self-defense, at a school-sponsored event or on
154 the grounds or facilities of any public school, school bus, or
155 school bus stop, or within 1,000 feet of the real property that
156 comprises a public ~~or private~~ elementary school, middle school,
157 or secondary school, during school hours or during the time of a



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158 sanctioned school activity, commits a felony of the third
159 degree, punishable as provided in s. 775.082, s. 775.083, or s.
160 775.084. This subsection does not apply to the exhibition of a
161 firearm or weapon on private real property within 1,000 feet of
162 a school by the owner of such property or by a person whose
163 presence on such property has been authorized, licensed, or
164 invited by the owner.

165 (2) (a) A person may ~~shall~~ not possess any firearm, electric
166 weapon or device, destructive device, or other weapon as defined
167 in s. 790.001(13), including a razor blade or box cutter, except
168 as authorized in support of school-sanctioned activities, at a
169 school-sponsored event or on the property of any public school,
170 school bus, or school bus stop; however, a person may carry a
171 firearm:

172 1. In a case to a firearms program, class, or function that
173 ~~which~~ has been approved in advance by the principal or chief
174 administrative officer of the school as a program or class to
175 which firearms could be carried;

176 2. In a case to a career center having a firearms training
177 range; or

178 3. In a vehicle pursuant to s. 790.25(5); except that
179 school districts may adopt written and published policies that
180 waive the exception in this subparagraph for purposes of student
181 and campus parking privileges.

182
183 For the purposes of this section, the term "school" means any
184 public preschool, elementary school, middle school, junior high
185 school, or secondary school, ~~career center, or postsecondary~~
186 ~~school, whether public or nonpublic.~~



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187 (b) A person who willfully and knowingly possesses any
188 electric weapon or device, destructive device, or other weapon
189 as defined in s. 790.001(13), including a razor blade or box
190 cutter, except as authorized in support of school-sanctioned
191 activities, in violation of this subsection commits a felony of
192 the third degree, punishable as provided in s. 775.082, s.
193 775.083, or s. 775.084.

194 (c)1. A person who willfully and knowingly possesses any
195 firearm in violation of this subsection commits a felony of the
196 third degree, punishable as provided in s. 775.082, s. 775.083,
197 or s. 775.084.

198 2. A person who stores or leaves a loaded firearm within
199 the reach or easy access of a minor who obtains the firearm and
200 commits a violation of subparagraph 1. commits a misdemeanor of
201 the second degree, punishable as provided in s. 775.082 or s.
202 775.083; except that this does not apply if the firearm was
203 stored or left in a securely locked box or container or in a
204 location which a reasonable person would have believed to be
205 secure, or was securely locked with a firearm-mounted push-
206 button combination lock or a trigger lock; if the minor obtains
207 the firearm as a result of an unlawful entry by any person; or
208 to members of the Armed Forces, National Guard, or State
209 Militia, or to police or other law enforcement officers, with
210 respect to firearm possession by a minor which occurs during or
211 incidental to the performance of their official duties.

212 (d) A person who discharges any weapon or firearm while in
213 violation of paragraph (a), unless discharged for lawful defense
214 of himself or herself or another or for a lawful purpose,
215 commits a felony of the second degree, punishable as provided in



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216 s. 775.082, s. 775.083, or s. 775.084.

217 (e) The penalties of this subsection do ~~shall~~ not apply to
218 persons licensed under s. 790.06. Persons licensed under s.
219 790.06 shall be punished as provided in s. 790.06(12), except
220 that a licenseholder who unlawfully discharges a weapon or
221 firearm on school property as prohibited by this subsection
222 commits a felony of the second degree, punishable as provided in
223 s. 775.082, s. 775.083, or s. 775.084.

224 (3) This section does not apply to any law enforcement
225 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
226 (8), (9), or (14).

227 (4) Notwithstanding s. 985.24, s. 985.245, or s. 985.25(1),
228 any minor under 18 years of age who is charged under this
229 section with possessing or discharging a firearm on school
230 property shall be detained in secure detention, unless the state
231 attorney authorizes the release of the minor, and shall be given
232 a probable cause hearing within 24 hours after being taken into
233 custody. At the hearing, the court may order that the minor
234 continue to be held in secure detention for a period of 21 days,
235 during which time the minor shall receive medical, psychiatric,
236 psychological, or substance abuse examinations pursuant to s.
237 985.18, and a written report shall be completed.

238 Section 4. Section 790.28, Florida Statutes, is repealed.

239 Section 5. Subsection (1) of section 790.065, Florida
240 Statutes, is amended to read:

241 790.065 Sale and delivery of firearms.—

242 (1) (a) A licensed importer, licensed manufacturer, or
243 licensed dealer may not sell or deliver from her or his
244 inventory at her or his licensed premises any firearm to another



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245 person, other than a licensed importer, licensed manufacturer,
246 licensed dealer, or licensed collector, until she or he has:

247 1.~~(a)~~ Obtained a completed form from the potential buyer or
248 transferee, which form shall have been promulgated by the
249 Department of Law Enforcement and provided by the licensed
250 importer, licensed manufacturer, or licensed dealer, which shall
251 include the name, date of birth, gender, race, and social
252 security number or other identification number of such potential
253 buyer or transferee and has inspected proper identification
254 including an identification containing a photograph of the
255 potential buyer or transferee.

256 2.~~(b)~~ Collected a fee from the potential buyer for
257 processing the criminal history check of the potential buyer.
258 The fee shall be established by the Department of Law
259 Enforcement and may not exceed \$8 per transaction. The
260 Department of Law Enforcement may reduce, or suspend collection
261 of, the fee to reflect payment received from the Federal
262 Government applied to the cost of maintaining the criminal
263 history check system established by this section as a means of
264 facilitating or supplementing the National Instant Criminal
265 Background Check System. The Department of Law Enforcement
266 shall, by rule, establish procedures for the fees to be
267 transmitted by the licensee to the Department of Law
268 Enforcement. All such fees shall be deposited into the
269 Department of Law Enforcement Operating Trust Fund, but shall be
270 segregated from all other funds deposited into such trust fund
271 and must be accounted for separately. Such segregated funds must
272 not be used for any purpose other than the operation of the
273 criminal history checks required by this section. The Department



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274 of Law Enforcement, each year prior to February 1, shall make a
275 full accounting of all receipts and expenditures of such funds
276 to the President of the Senate, the Speaker of the House of
277 Representatives, the majority and minority leaders of each house
278 of the Legislature, and the chairs of the appropriations
279 committees of each house of the Legislature. In the event that
280 the cumulative amount of funds collected exceeds the cumulative
281 amount of expenditures by more than \$2.5 million, excess funds
282 may be used for the purpose of purchasing soft body armor for
283 law enforcement officers.

284 3.(e) Requested, by means of a toll-free telephone call,
285 the Department of Law Enforcement to conduct a check of the
286 information as reported and reflected in the Florida Crime
287 Information Center and National Crime Information Center systems
288 as of the date of the request.

289 4.(d) Received a unique approval number for that inquiry
290 from the Department of Law Enforcement, and recorded the date
291 and such number on the consent form.

292 (b) However, if the person purchasing, or receiving
293 delivery of, the firearm is a holder of a valid concealed
294 weapons or firearms license pursuant to the provisions of s.
295 790.06 or holds an active certification from the Criminal
296 Justice Standards and Training Commission as a "law enforcement
297 officer," a "correctional officer," or a "correctional probation
298 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or
299 (9), ~~the provisions of~~ this subsection does ~~de~~ not apply.

300 (c) This subsection does not apply to the purchase, trade,
301 or transfer of rifles or shotguns by a resident of this state
302 when the resident makes such purchase, trade, or transfer from a



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303 licensed importer, licensed manufacturer, or licensed dealer in
304 another state.

305 Section 6. This act shall take effect upon becoming a law.

306

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

308 And the title is amended as follows:

309 Delete everything before the enacting clause
310 and insert:

311 A bill to be entitled
312 An act relating to firearms; amending s. 790.053,
313 F.S.; providing that person in compliance with the
314 terms of a concealed carry license is not in violation
315 of s. 790.053(1), F.S. when the concealed firearm is
316 accidentally or inadvertently displayed to the
317 ordinary sight of another person; amending s. 790.06,
318 F.S.; providing that a person in compliance with the
319 terms of a concealed carry license may carry openly
320 notwithstanding specified provisions; providing for
321 compliance to certain requirements in order to
322 lawfully carry a firearm openly; allowing the Division
323 of Licensing of the Department of Agriculture and
324 Consumer Services to take fingerprints from concealed
325 carry license applicants; limiting a prohibition on
326 carrying a concealed weapon or firearm into an
327 elementary or secondary school facility, career
328 center, or college or university facility to include
329 only a public elementary or secondary school facility
330 or administration building; providing that concealed
331 carry licensees shall not be prohibited from carrying



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332 or storing a firearm in a vehicle for lawful purposes;
333 amending s. 790.115, F.S., relating to the prohibition
334 against possessing or discharging weapons or firearms
335 at a school-sponsored event or on school property;
336 revising the definition of the term "school";
337 repealing s. 790.28, F.S., relating to the purchase of
338 rifles and shotguns in contiguous states; amending s.
339 790.065, F.S.; providing that specified provisions do
340 not apply to certain firearms transactions by a
341 resident of this state which take place in another
342 state; providing an effective date.



563520

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dockery) recommended the following:

1 **Senate Amendment to Substitute Amendment (245176) (with**
2 **title amendment)**

3
4 Delete lines 116 - 133

5 and insert:

6 10. Any elementary or secondary school facility or
7 administration building;

8 11. Any career center;

9 12. Any college or university facility unless the licensee
10 is a registered student, employee, or faculty member of such
11 college or university and the weapon is a stun gun or nonlethal
12 electric weapon or device designed solely for defensive purposes



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13 and the weapon does not fire a dart or projectile;

14 13. Any portion of an establishment licensed to dispense
15 alcoholic beverages for consumption on the premises, which
16 portion of the establishment is primarily devoted to such
17 purpose; ~~any elementary or secondary school facility; any career~~
18 ~~center; any college or university facility unless the licensee~~
19 ~~is a registered student, employee, or faculty member of such~~
20 ~~college or university and the weapon is a stun gun or nonlethal~~
21 ~~electric weapon or device designed solely for defensive purposes~~
22 ~~and the weapon does not fire a dart or projectile;~~

23 14. The inside of the passenger terminal and sterile area
24 of any airport, provided that no person shall be prohibited from
25 carrying any legal firearm into the terminal, which firearm is
26 encased for shipment for purposes of checking such firearm as
27 baggage to be lawfully transported on any aircraft; or

28 15. Any place where the carrying of firearms is prohibited
29 by federal law.

30
31
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete lines 325 - 330

35 and insert:

36 carry license applicants; providing that concealed

37

38 Delete lines 333 - 336.



519268

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dockery) recommended the following:

Senate Amendment to Substitute Amendment (245176)

Delete lines 142 - 237.

1
2
3



973004

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Evers) recommended the following:

1 **Senate Amendment to Substitute Amendment (245176) (with**
2 **title amendment)**

3
4 Delete lines 6 - 93
5 and insert:

6 Section 1. Subsection (1), paragraph (c) of subsection (5),
7 and subsection (12) of section 790.06, Florida Statutes, are
8 amended to read:

9 790.06 License to carry concealed weapon or firearm.—

10 (1) The Department of Agriculture and Consumer Services is
11 authorized to issue licenses to carry concealed weapons or
12 concealed firearms to persons qualified as provided in this



973004

13 section. Each such license must bear a color photograph of the
14 licensee. For the purposes of this section, concealed weapons or
15 concealed firearms are defined as a handgun, electronic weapon
16 or device, tear gas gun, knife, or billie, but the term does not
17 include a machine gun as defined in s. 790.001(9). Such licenses
18 shall be valid throughout the state for a period of 7 years from
19 the date of issuance. Any person in compliance with the terms of
20 such license may carry a concealed weapon or concealed firearm
21 notwithstanding ~~the provisions of s. 790.01,~~ or may carry openly
22 notwithstanding s. 790.053. The licensee must carry the license,
23 together with valid identification, at all times in which the
24 licensee is in actual possession of a concealed weapon or
25 firearm and must display both the license and proper
26 identification upon demand by a law enforcement officer. A
27 violation ~~Violations of the provisions~~ of this subsection shall
28 constitute a noncriminal violation with a penalty of \$25,
29 payable to the clerk of the court.

30
31 ===== T I T L E A M E N D M E N T =====

32 And the title is amended as follows:

33 Delete lines 312 - 322

34 and insert:

35 An act relating to firearms; amending s. 790.06, F.S.;

36 providing that a person in compliance with the terms

37 of a concealed carry license may carry openly

38 notwithstanding specified provisions; allowing the

39 Division

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 Criminal Justice Committee

BILL: SB 464

INTRODUCER: Senator Latvala

SUBJECT: Assault or Battery of a Law Enforcement Officer

DATE: February 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.			TR	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill codifies an existing alert program that was created by executive order in 2008. This type of program often goes by the name “blue alert,” though the precise name of the current Florida program is the Florida Law Enforcement Officer (LEO) Alert Plan.

Under the bill, at the request of an authorized person employed at a law enforcement agency, the Florida Department of Law Enforcement (FDLE), in cooperation with the Department of Highway Safety and Motor Vehicles (DHSMV) and the Department of Transportation (DOT), is required to activate the emergency alert system and issue a blue alert if a law enforcement officer has been killed, suffered serious bodily injury, has been assaulted with a deadly weapon, or is missing while in the line of duty under circumstances evidencing concern for the officer. The bill specifies other conditions that must be met before the alert may issue and when the alert issues. It also creates an exception for display of traffic emergency information in lieu of blue alert information.

This bill creates the following section of the Florida Statutes: 784.071.

II. Present Situation:

It appears that Florida was the first state to implement a “blue alert” program,¹ which goes by the name Florida Law Enforcement Officer (LEO) Alert Plan. According to FDLE staff, to activate the alert, the following four criteria must be met:

- The offender(s) killed or critically injured a law enforcement officer.
- The law enforcement agency’s investigation must conclude that the offender(s) pose a serious public risk.
- There must be a detailed description of the offender’s vehicle, including tag or partial tag, to broadcast to the public.
- The activation must be recommended by the local law enforcement agency of jurisdiction.²

The FDLE has provided the following additional information regarding the Florida program:

On May 5, 2008, Florida Governor Charlie Crist signed Executive Order Number 08-81 establishing the Florida Law Enforcement Officer (LEO) Alert Plan. This plan, which uses some of the technologies employed in an Amber Alert, was established in response to the increasing number of law enforcement officers in the state who were killed or injured in the line of duty. In some of these cases, the offender or offenders used vehicles to flee and attempt to escape.

Under this plan, the Florida Department of Law Enforcement (FDLE), the Florida Department of Transportation (FDOT), and the Department of Highway Safety and Motor Vehicles’ Florida Highway Patrol (FHP) will immediately broadcast important information about an offender(s) who has seriously injured or killed a law enforcement officer.

The information will be broadcast through dynamic highway message signs and other appropriate notification methods to increase the chances of capturing the suspect(s) responsible for injuring or killing a law enforcement officer.

To activate a LEO Alert, the following steps must occur in this order:

1. The local law enforcement agency of jurisdiction will call FDLE’s Florida Fusion Center (FFC) desk at 850-410-7645. This LEO Alert point of contact is manned 24 hours a day, seven days a week.
2. FDLE’s on-call supervisor will work with the investigating agency to offer assistance, ensure the activation criteria have been met and determine if the alert will be displayed regionally or statewide.

¹ U.S. Senator Benjamin Cardin, Maryland’s Blue Alert System can support, protect law enforcement officers nationwide, *The Sentinel Newspapers* (Maryland), December 9, 2010 (<http://www.thesentinel.com/pgs/cardin-blue-alert-system>) (last accessed on February 28, 2011).

² E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated March 1, 2011.

3. FDLE will work with the investigating agency to prepare information for public release, including suspect and/or vehicle information, as well as agency contact information.
4. FDLE will contact the Florida Highway Patrol's Orlando Regional Communications Center (ORCC) to send the LEO Alert. The ORCC communications supervisor will relay that information to other regional communication centers where the activation is taking place.
5. FDLE will contact FDOT's Orlando Regional Transportation Management Center to develop the message content using the FDOT-approved template which includes vehicle information, tag number and other identifiers.
6. FDOT will display the message until the offender(s) is captured or for a maximum of six hours. The alert will be displayed on dynamic highway message signs on all requested highways unless a traffic emergency occurs, which requires a motorist safety message to be displayed. FDOT also will record a LEO Alert message on the 511 system when the LEO Alert is activated.
7. The same activation steps will be used if there is revised vehicle information or a broadcast area is changed.
8. Once FDLE is notified that the offender(s) has been captured, FDLE will contact the appropriate parties to cancel the alert. FHP then will notify its other offices of the cancellation.

Each activation will be reviewed by a committee of state agency partners and law enforcement representatives to ensure that criteria and goals are met and that each activation took place in a timely fashion.³

According to information provided by the Officer Down Memorial Page, Inc.,⁴ there have been 9 line-of-duty deaths of Florida law enforcement officers in 2011 and 6 of those deaths were the result of gunfire.⁵ According to FDLE staff, no alerts have issued since the program's inception.⁶ As previously noted, more is required than an officer's death by gunfire to activate an alert. It should also be noted that every line-of-duty death case is different. Some may involve gunfire, while others may not. Cases may not involve the use of a vehicle by the offender or vehicle information may not be available. In some cases, the suspect is quickly apprehended or is shot or killed. Further, the alert must be recommended by the local law enforcement agency of jurisdiction.

³ Analysis of SB 464, Florida Department of Law Enforcement, February 2, 2011.

⁴ The Officer Down Memorial Page, Inc. (ODMP) is a non-profit organization whose mission is to honor law enforcement officers killed in the line of duty and their families. The ODMP also provides statistical information about and profiles of these officers.

⁵ <http://www.odmp.org/search.php> (last accessed on February 28, 2011).

⁶ E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated March 1, 2011.

III. Effect of Proposed Changes:

The bill creates s. 784.071, F.S., which codifies an existing blue alert program that was created by executive order in 2008. Under the bill, at the request of an authorized person employed at a law enforcement agency, the FDLE, in cooperation with the DHSMV and the DOT, is required to activate the emergency alert system and issue a blue alert if all of following conditions are met:

- A law enforcement officer has been killed, suffered serious bodily injury, has been assaulted with a deadly weapon, or is missing while in the line of duty under circumstances evidencing concern for the officer.
- The suspect has fled the scene of the offense.
- The law enforcement agency investigating the offense determines that the suspect poses an imminent threat to the public or to other law enforcement officers.
- A detailed description of the suspect's vehicle, or other means of escape, or the license plate of the suspect's vehicle is available for broadcasting.
- Dissemination of available information to the public may help avert further harm or assist in the apprehension of the suspect.
- If the law enforcement officer is missing, there is sufficient information available relating to the officer's last known location and physical description, and the description of any vehicle involved, including the license plate number or other identifying information, to be broadcast to the public and other law enforcement agencies, which could assist in locating the missing officer.

The bill provides that the blue alert shall be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the dynamic message signs that are located along the state's highways.

The bill also provides that it is not a violation of this new section to display on a highway message sign information pertaining to a traffic emergency if one arises in lieu of displaying blue alert information on the sign.

The effective date of the bill is October 1, 2011.

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:

Since there is already an existing blue alert program, it appears unlikely that the codification of this program would have any additional impact on private entities involved in the alert, such as television and radio stations broadcasting the alert.

C. Government Sector Impact:

According to the FDLE, “[t]here is no fiscal impact associated with this legislation. This bill codifies an existing program (Law Enforcement Officer Alert) created by Executive Order Number 08-81 in 2008.”⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

For comparison purposes, the criteria for activating a blue alert in Texas (the second state to adopt a blue alert program) are similar to Florida’s criteria. Texas requires the following:

- A law enforcement officer must have been killed or seriously injured by an offender.
- The investigating law enforcement agency must determine that the offender poses a serious risk or threat to the public and other law enforcement personnel.
- A detailed description of the offender’s vehicle, vehicle tag, or partial tag must be available for broadcast to the public.
- The investigating law enforcement agency of jurisdiction must recommend activation of the Blue Alert to the State Operations Center (Texas Division of Emergency Management).⁸

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

⁷ Analysis of SB 464, Florida Department of Law Enforcement, February 2, 2011.

⁸ Blue Alert Request Form, Texas Department of Public Safety (<http://www.txdps.state.tx.us/InternetForms/Forms/TDEM-52.pdf>) (last accessed on March 1, 2011).

B. Amendments:

None.

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

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 Criminal Justice Committee

BILL: SB 496

INTRODUCER: Senator Margolis

SUBJECT: Ocean Lifeguards

DATE: March 2, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Currently, s. 784.07, F.S., provides for the reclassification of the misdemeanor or felony degree of specified assault and battery offenses when those offenses are committed against law enforcement officers, firefighters, and other specified persons engaged in the lawful performance of their duties. The bill adds ocean lifeguards to the list of specified persons, which would increase the maximum sentence that can be imposed for specified assault or battery offenses committed against an ocean lifeguard in the same manner as if those offenses were committed against a law enforcement officer or firefighter.

This bill substantially amends s. 784.07, F.S. This bill also makes conforming changes by amending ss. 453.04, 901.15, 943.051, and 985.11, F.S., and reenacting s. 921.022(3)(d), F.S.

II. Present Situation:

Ocean Lifeguards

Senate Criminal Justice Committee staff contacted staff of the Miami-Dade Fire Rescue Department's Ocean Rescue Bureau for background information on ocean lifeguards. According to Bureau staff, personnel of agencies certified by the United States Lifesaving Association will have minimum uniform training necessary to perform as an ocean lifeguard. Non-certified agency personnel and personnel employed by private entities (such as hotels and beach clubs) will likely have similar minimum training. Training of some ocean lifeguards may be more extensive than this minimum training. For example, Bureau personnel "are certified paramedics, Emergency Medical Technicians, and instructors in CPR, First Aid, SCUBA, Search and Recovery, and Basic Life Support. They work in conjunction with the Miami-Dade Police

Department, City of Miami, and City of Key Biscayne, when necessary.”¹ Some personnel may be certified law enforcement officers (e.g., Career Lifeguards employed by Volusia County’s Beach Patrol).² Training may also be geographically specific (e.g., rescues near piers). Bureau staff indicated that “lawful duties” may extend beyond rescue and safety duties (e.g., assisting in the enforcement of park regulations). Bureau staff also indicated that assaults and batteries on ocean lifeguards do occur. Fights break out on beaches and lifeguards can be injured providing assistance to persons injured in the fighting (law enforcement called to the scene are not always immediately available). Lifeguards also encounter drunk and unstable persons on beaches who sometimes commit acts of violence against the lifeguards during these encounters.

Reclassification of Assault and Battery Offenses/Section 784.07, F.S.

Section 784.07(2), F.S., provides that when a person is charged with knowingly committing assault,³ aggravated assault,⁴ battery,⁵ or aggravated battery⁶ against a law enforcement officer,⁷ firefighter,⁸ emergency medical care provider,⁹ traffic accident investigation officer, certain nonsworn law enforcement personnel, law enforcement explorer,¹⁰ traffic infraction enforcement officer,¹¹ parking enforcement specialist,¹² public transit employee or agent,¹³ licensed security

¹ See <http://www.miamidade.gov/MDFR/releases/07-04-09-ocean-rescue.asp> (last accessed on March 3, 2011).

² See <http://volusia.org/beach/guard.htm> (last accessed on March 3, 2011).

³ An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. s. 784.011, F.S.

⁴ An aggravated assault is an assault with a deadly weapon without intent to kill or with intent to commit a felony. s. 784.021, F.S.

⁵ A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. s. 784.03, F.S.

⁶ An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. s. 784.045, F.S.

⁷ “Law enforcement officer” includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; officer of the Parole Commission; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement. s. 784.07(1)(d), F.S.

⁸ “Firefighter” means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires. s. 784.07(1)(b), F.S.

⁹ “Emergency medical care provider” means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under ch. 401, F.S., who is engaged in the performance of his or her duties. The term “emergency medical care provider” also includes physicians, employees, agents, or volunteers of hospitals as defined in ch. 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital’s emergency department or the security thereof. s. 784.07(1)(a), F.S.

¹⁰ “Law enforcement explorer” means any person who is a current member of a law enforcement agency’s explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents. s. 784.07(1)(c), F.S.

¹¹ s. 316.640, F.S.

¹² s. 316.640, F.S.

officer,¹⁴ or security officer employed by the board of trustees of a community college while the law enforcement officer, firefighter, etc., is engaged in the lawful performance of his or her duties, the assault or battery offense is reclassified as follows:

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

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is 60 days in a county jail; for a first degree misdemeanor, it is 1 year in a county jail; for a third degree felony, it is 5-years state imprisonment; for a second degree felony, it is 15-years state imprisonment; and for a first degree felony, it is generally 30-years state imprisonment.¹⁵ Fines imposed in lieu of or in addition to incarceration or imprisonment escalate with increasing misdemeanor or felony degree.¹⁶ The offense severity ranking level of applicable reclassified felony offenses is as follows: reclassified battery: Level 4; reclassified aggravated assault: Level 6; and reclassified aggravated battery: Level 7.¹⁷

III. Effect of Proposed Changes:

Currently, s. 784.07, F.S., provides for the reclassification of the misdemeanor or felony degree of specified assault and battery offenses when those offenses are committed against law enforcement officers, firefighters, and other specified persons engaged in the lawful performance of their duties. The bill adds ocean lifeguards to the list of specified persons, which would increase the maximum sentence that can be imposed for specified assault or battery offenses committed against an ocean lifeguard in the same manner as if those offenses were committed against a law enforcement officer or firefighter (see “Present Situation” section of this analysis for specific information).

The reclassification occurs as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.

¹³ “Public transit employees or agents” mean bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l), F.S. s. 784.07(1)(e), F.S.

¹⁴ s. 493.6101, F.S.

¹⁵ s. 775.082, F.S.

¹⁶ See s. 775.083.

¹⁷ s. 921.0022(3)(d), (f), and (g), F.S. Sentence points accrue based upon the ranking of a non-capital felony offense with higher-level offenses accruing more sentence points than lower-ranking offenses. These points along with points accrued for additional and prior offenses and other factors are entered into a statutorily-derived mathematical calculation to determine the lowest permissible sentence.

- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

The bill defines “ocean lifeguard” as a lifeguard employed along the coastal or intracoastal beaches and shores of the state to help prevent injury or drowning of persons.

The bill also makes conforming changes by amending ss. 453.04, 901.15, 943.051, and 985.11, F.S., and reenacting s. 921.022(3)(d), F.S.

The effective date of the bill is October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the bill will have a potentially insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

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 Criminal Justice Committee

BILL: SB 514

INTRODUCER: Senator Garcia

SUBJECT: Vehicle Crashes Involving Death

DATE: February 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that a person who is arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of leaving the scene of an accident, racing on highways, driving under the influence (DUI), or felony driving while license suspended, revoked, canceled, or disqualified¹ must be held in custody until first appearance for a bail determination. This change prevents judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. It also prevents local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

The bill substantially amends section 316.027 and reenacts section 921.0022 of the Florida Statutes.

II. Present Situation:

Duty to Remain at the Scene of an Accident

Section 316.027(1)(b), F.S., provides that the driver of any vehicle involved in a crash occurring on public or private property that results in the death of any person must immediately stop the vehicle at the scene of the crash (or as close as possible) and remain at the scene until he or she

¹ Under s. 322.34(2), F.S., for example, the first and second convictions of knowingly driving while license suspended, revoked, canceled, or disqualified are classified as second- and first-degree misdemeanors, respectively. However, a third or subsequent conviction under the statute is classified as a third-degree felony.

has fulfilled the requirements of s. 316.062, F.S.² Any person who willfully violates this provision commits a first-degree felony.³

First Appearance and Bond

Section 901.02, F.S., provides that a law enforcement officer may arrest a person who commits a crime if the officer obtains an arrest warrant signed by a judge. At the time of the issuance of the warrant, the judge may set a bond amount⁴ or, in some circumstances,⁵ require that the arrestee be held until first appearance for determination of bail.⁶ A person arrested on a warrant with a predetermined bond amount may immediately bond out of jail following an arrest by posting the bond amount.

Current law requires the state to bring an arrestee before a judge for a first appearance within 24 hours of arrest.⁷ At first appearance, a judge determines if there is probable cause to hold the arrestee, provides the arrestee notice of the charges, and advises the arrestee of his or her rights. If an arrestee is eligible for bail, the judge conducts a hearing in accordance with s. 903.046, F.S.

A law enforcement officer may arrest a person who commits a felony without a warrant if the officer reasonably believes a felony has been committed.⁸ In this case, the arrestee is generally held until first appearance for a determination of probable cause and bail. In some jurisdictions, a bond schedule with predetermined bond amounts for certain offenses is agreed to and provided by judicial officers to the county detention facility. If an arrestee meets the requirements of the bond schedule, the arrestee may bond out of jail for the predetermined bond amount. This eliminates the need for an arrestee to make a first appearance before a judge.

III. Effect of Proposed Changes:

The bill is named the “Ashley Nicole Valdes Act.” It requires a person who has been arrested for failure to stop a vehicle at the scene of an accident involving death to be held in custody for the court to set bail at first appearance if the person has previously been convicted of leaving the scene of an accident, racing on highways, DUI, or felony driving while his or her license is

² Section 316.062, F.S., provides that a driver of a vehicle involved in a crash resulting in death or injury or damage to any vehicle or other property driven or attended by any person must provide his or her name, address, and vehicle registration number, and also a driver’s license, to a police officer or other person involved in the crash. The driver of any vehicle involved in a crash must report the incident to the nearest police department.

³ A first-degree felony is punishable by imprisonment up to 30 years and a maximum \$10,000 fine under ss. 775.082(3)(b), 775.083(1)(b), and 775.084, F.S.

⁴ A bond amount can also include the amount of “no bond.” A defendant is held with no bond if a warrant is issued for an offense where the defendant has committed a dangerous crime, there is a substantial probability the defendant committed the crime, the facts of the crime indicate the defendant has a disregard for the safety of the community, and the defendant poses such a harm to the community that no conditions of release can reasonably protect the community (e.g., homicide, robbery, sexual battery). Section 907.041(4)(c)5., F.S.

⁵ For example, s. 741.2901(3), F.S., provides that a defendant arrested for domestic violence shall be held in custody until brought before the court for admittance to bail under ch. 903, F.S. At first appearance, the court must consider the safety of the victim if the defendant is released.

⁶ Section 903.046, F.S., provides criteria a judge may consider in determining a bail amount.

⁷ Fla. R. Crim. P. 3.130(a) and s. 903.046, F.S.

⁸ Section 901.15(3), F.S.

suspended, revoked, canceled, or disqualified.⁹ This change prevents judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. It also prevents local jurisdictions from placing the offense on a bond schedule with predetermined bond amounts.

The bill also reenacts s. 921.0022(3)(g), F.S., the Criminal Punishment Code, for the purpose of incorporating the bill's amendments to a reference in that statute.

The bill provides an effective date of October 1, 2011.

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:

The bill may have an impact on those who violate this statute, as they will assume the potential personal financial effects of being held in jail until first appearance for a bail determination (e.g., lost wages).

C. Government Sector Impact:

There may be a potential jail bed impact since defendants arrested under the provisions of the bill will be required to remain in jail until first appearance. However, because first appearance must occur within 24 hours of arrest, any impact is likely to be minimal.

VI. Technical Deficiencies:

None.

⁹ Leaving accident scene (ss. 316.027 and 316.061, F.S.); racing on highways (s. 316.191, F.S.); DUI (s. 316.193, F.S.); driving while license is suspended, revoked, canceled, or disqualified (s. 322.34, F.S.).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

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 Criminal Justice Committee

BILL: SB 600

INTRODUCER: Criminal Justice Committee

SUBJECT: Reenactment of Public Record Exemption/Certain Specified Personal Information of DJJ Direct Care Employees

DATE: February 25, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the Department of Juvenile Justice (DJJ), their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The personal information includes home addresses, telephone numbers, photographs, spouse’s places of employment, and children’s schools and daycare locations.

This bill reenacts sub-subparagraph i. of section 119.071(4)(d)1. of the Florida Statutes.

II. Present Situation:

Public Access

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Paragraphs (a) and (c) of Section 24, Art. I of the State Constitution provide the following:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the

legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(c) This section shall be self-executing. The Legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law. . . . Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

Florida's Public Records Law

Florida's public records law is contained in ch. 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record¹ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to

¹ s. 119.011(1), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

² s. 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

³ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

⁵ Article I, s. 24(c) of the State Constitution.

accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁸

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Current Exemptions in Section 119.071(4)(d)1., F.S.

The Legislature has enacted exemptions from the public records law for the home addresses, telephone numbers, social security numbers, photographs, spouse's places of employment, and schools and daycare locations of the children of the following agency personnel (active and former):

- Law enforcement;
- Correctional and correctional probation officers;
- Certain personnel at the Department of Children and Family Services;
- Department of Health personnel;
- Department of Revenue personnel;
- Certified firefighters;
- Justices, judges, magistrates, administrative law judges and child support hearing officers;
- Code enforcement officers;
- Guardians ad litem;
- Local government agent and water management district human resources administrators;
- Department of Juvenile Justice personnel;
- Local and statewide prosecuting attorneys; and
- Public defenders, criminal conflict and civil regional counsel, and their assistants.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁷ s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Article 1, s. 24(c) of the State Constitution.

⁹ Attorney General Opinion 85-62, August 1, 1985.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla.1991).

The particular DJJ employees that the exemption applies to include the following direct care employees (and their spouses and children):

- juvenile probation officers
- juvenile probation supervisors
- detention superintendents
- assistant detention superintendents
- senior juvenile detention officers
- juvenile detention officer supervisors
- juvenile detention officers
- house parents I and II
- house parent supervisors
- group treatment leaders
- group treatment leader supervisors
- social service counselors
- rehabilitation therapists

The exemption was created in 2006 for these DJJ direct care employees and their families. It will expire on October 2, 2011, unless the Legislature reviews and reenacts it pursuant to the Open Government Sunset Review Act under s. 119.15, F.S.

The Senate Criminal Justice professional staff reviewed the public record exemption created in s. 119.071(4)(d)1.i., F.S., during the 2010 interim and recommends that it be reenacted. According to the DJJ, the exempted records contain information that is of a sensitive, personal nature concerning those DJJ employees who have direct contact and provide care and supervision to juvenile offenders from the time of their arrest until they are released back into society.

The DJJ states that it is paramount to the safety of these employees and their families that their personal information remain exempted. Direct care employees and their families are subject to the same risk of threats and reprisals from juveniles, their families and gang members as those who work in law enforcement, corrections, and the court system. For instance, the children of these employees are subjected to this risk if they attend the same school or ride the same bus as the juvenile offender, the offender's family or friends. Additionally, the DJJ asserts that providing easier access to the employee's personal information will interfere in the department's administration of the juvenile justice system by jeopardizing the workplace safety of its employees.

III. Effect of Proposed Changes:

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the DJJ, their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The personal information covers home addresses, telephone numbers, photographs, spouse's places of employment, and children's schools and daycare locations.

The covered direct care employees include the following: juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, social service counselors, and rehabilitation therapists.

The bill will take effect October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill incorporates the DJJ's recommendation that the exemption language covering specified direct care employees be updated to reflect several technical position title reclassifications that have occurred since the exemption was created.

It also incorporates the First Amendment Foundation's recommendation to narrow the exemption by requiring the covered employees, prior to the exemption taking effect, to provide a written statement indicating that they have made reasonable efforts to protect the exempted information from being accessible through other means available to the public.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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 Criminal Justice Committee

BILL: SB 602

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Biometric Identification Information

DATE: February 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Section 119.071(5)(g), F.S., exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of the exemption (July 1, 2006).¹ Biometric identification information consists of any record of friction ridge detail, fingerprints, palm prints, and footprints.

This exemption is subject to review under s. 119.15, F.S., the Open Government Sunset Review Act, and will sunset on October 2, 2011, unless saved from repeal through reenactment by the Legislature. The bill reenacts the exemption. The bill does not expand the scope of the existing public records and meetings exemptions, so it does not require a two-thirds vote.

This bill reenacts section 119.071(5)(g) of the Florida Statutes.

II. Present Situation:

Constitutional Requirements Regarding Public Records

Article I, section 24 of the Florida Constitution, as it relates to records, provides that every person has the right to inspect or copy any public record that is made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by the Florida Constitution. This section is self-executing. The Legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of this section provided such law: (1) states with

¹ Section 3, ch. 2006-181, L.O.F.

specificity the public necessity justifying the exemption and is no broader than necessary; (2) contains only exemptions from the requirements of this section and provisions governing the enforcement of this section; and (3) relates to one subject. A bill enacting an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Legislature is also required by this section to enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the Legislature may adopt rules governing enforcement of this section in relation to records of the legislative branch.

The Public Records Act

The general purpose of the Public Records Act (ch. 119, F.S.) is to open public records to allow Florida's citizens to discover the actions of their government.² The act specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency³ records are available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁴

The Florida Supreme Court has interpreted this definition to encompass "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."⁵ Materials which "are not, in themselves, intended as final evidence of the knowledge to be recorded" are not public records.⁶ "It is impossible to lay down a definition of general application that identifies all items subject to disclosure under the act. Consequently, the classification of items which fall midway on the spectrum of clearly public records on the one end and clearly not public records on the other will have to be determined on a case-by-case basis."⁷

² See *Christy v. Palm Beach County Sheriff's Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997).

³ The term "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

⁴ Section 119.011(12), F.S.

⁵ *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc.*, 379 So.2d 633, 640 (Fla.1980).

⁶ *Id.*

⁷ *Id.*

There is a difference between records the Legislature has made exempt from public inspection and those made confidential and exempt. If the Legislature makes a record confidential and exempt, the exempted record may not be released by an agency to anyone other than to the persons or entities designated by law.

The Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act, establishes a process for the review and repeal or reenactment of public records exemptions. The act provides that in the fifth year after enactment of a new exemption or substantial amendment⁸ of an existing exemption, the exemption is repealed on October 2nd of the fifth year, unless the Legislature reenacts the exemption.⁹ An exemption may be created, revised, or maintained only if it serves an identifiable public purpose and is no broader than necessary to meet the public purpose it serves.¹⁰ An identifiable public purpose is served if the exemption meets one the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety;¹¹ or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹²

The Legislature must also consider the following as part of the sunset review process:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹³

⁸ An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption. s. 119.15(4)(b), F.S.

⁹ Section 119.15(3), F.S.

¹⁰ Art. I, s. 24(c), Fla. Const; s. 119.15(6), F.S.

¹¹ Only information that would identify the individuals may be exempted for this purpose.

¹² Section 119.15(6)(b), F.S.

¹³ Section 119.15(6)(a), F.S.

Biometric Identification Exemption (s. 119.071(5), F.S.)

In 2006, the Legislature created s. 119.071(5)(g), F.S.,¹⁴ which exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of this exemption (July 1, 2006).¹⁵ Biometric identification information consists of any record of friction ridge detail, fingerprints, palm prints, and footprints.

The Legislature provided the following statement of public necessity for enacting the exemption:

The Legislature finds that it is a public necessity that biometric identification information held by an agency before, on, or after the effective date of this exemption be made exempt from public records requirements. Biometric identification information is used to verify the identity of persons and by its very nature involves matters uniquely related to individual persons. The use of multiple methods of biometric identification is a growing technology in detecting and solving crime, in preventing identity theft, and in providing enhanced levels of security in agency and other operations. Given existing technological capabilities for duplicating, enhancing, modifying, and transferring records, the availability of biometric identification information creates the opportunity for improper, illegal, or otherwise harmful use of such information. At the same time, use of biometric identification information by agencies is a useful and increasingly valuable tool. Thus, the Legislature finds that it is a public necessity to protect biometric identification information held by an agency before, on, or after the effective date of this act.¹⁶

Section 119.071(5)(g), F.S., stands repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature. *The Florida Department of Law Enforcement (FDLE), one of the agencies most affected by retention or repeal of the exemption, recommends retention of the exemption. Senate professional staff concurs with this recommendation.*

The FDLE indicates that the identifiable public purpose or goal of the exemption in s. 119.071(5)(g), F.S., is to prevent fingerprints and other biometric identification information from being used for improper purposes, such as identity theft and fraud as well as security breaches.¹⁷ Disclosure of the information also has the potential to hinder, compromise, or prevent criminal intelligence gathering, a criminal investigation, or a criminal prosecution, if the information were used, for example, to create phony or altered fingerprint cards or create false evidence of fingerprint impressions at a crime scene. The efficient and effective administration of the FDLE would be significantly impaired by public disclosure because the biometric identification information could be demanded for an unlawful purpose. An agency cannot inquire as to the purpose or proposed use for which an entity makes a public records request.

Persons most uniquely affected by the exemption (as opposed to the general public) are those persons whose fingerprints have been submitted to an agency for any reason, which includes

¹⁴ Ch. 2006-181, L.O.F.

¹⁵ Section 3, ch. 2006-181, L.O.F.

¹⁶ Section 2, ch. 2006-181, L.O.F.

¹⁷ Response of the FDLE to the *Senate Committee on Criminal Justice Open Government Sunset Review Questionnaire to the Florida Department of Law Enforcement*, dated September 22, 2010 (on file with the Senate Committee on Criminal Justice). All information in the remainder of the "Present Situation" section of this analysis is from this source, unless otherwise indicated.

arrest prints and applicant prints (i.e., criminal history background checks for employment, licensing, name change, sealing/expungement, eligibility, etc.). Other forms of biometric identification may be taken as latent lifts from a crime scene.

Fingerprints are taken and submitted to the FDLE by agencies and fingerprint scanning services. These fingerprints may be inked impressions or electronic submissions, which include applicant prints, arrest prints (from criminal justice agencies), or latent lifts from crime scenes.¹⁸ Applicant prints are taken as required or authorized by law; arrest prints and latent lifts are taken as needed for criminal justice purposes. Arrest prints and, as authorized, applicant prints are stored in the Automated Fingerprint Identification System (AFIS) authorized under s. 943.05(2), F.S.¹⁹

The purposes for which the FDLE collects, receives, maintains, or shares the biometric identification information covered by the exemption include:

- Positive identification, usually against criminal records;
- Criminal justice or forensic purposes (e.g., latent lifts are compared to known standards for crime scene analysis and to identify unknown, missing, and deceased persons);
- Employment or licensing background checks; and
- As otherwise required by law (e.g., for comparison with criminal records).

The FDLE shares arrest prints and latent lifts with other criminal justice agencies (covered by the exemption) for criminal justice purposes. These receiving agencies also protect against public disclosure of the biometric identification information.

Other law enforcement agencies may retain copies of the fingerprints of persons the agencies have arrested or booked. Other criminal justice agencies which have local AFIS maintain arrest fingerprints. Crime scene fingerprints (and other biometric identification information) are collected and maintained as part of criminal investigations and may be shared with other agencies that engage in forensic identification as well as prosecution of criminal defendants. Courts may collect fingerprints to identify judgments in criminal cases.

Federal law prohibits public disclosure of the biometric identification information in s. 119.071(5)(g), F.S., to the extent such information is considered a part of a national criminal history record.²⁰

According to the FDLE, the biometric identification information exempted pursuant to s. 119.07(5)(g), F.S., is also protected to a limited extent by s. 937.028(1), F.S., which applies only to “fingerprints [which] have been taken for the purpose of identifying a child, in the event a child becomes missing.” Biometric identification information associated with a criminal investigation may be protected as active criminal investigative information under s. 119.07(2)(c)1., F.S. Arrest fingerprints which identify the subject of a criminal history record

¹⁸ The FDLE indicates that the fingerprints and other biometric identification information are not readily obtainable by alternative means.

¹⁹ Pursuant to s. 943.051(4), F.S., criminal history records must be based on fingerprints.

²⁰ Florida Attorney General Opinion 99-01 (January 6, 1999) and 28 C.F.R. § 20.33.

that has been expunged or sealed are confidential pursuant to s. 943.0585(4) and s. 943.059(4), F.S. The FDLE states that these described exemptions do not duplicate s. 119.07(5)(g), F.S., but serve different and distinct purpose. Consequently, these exemptions do not appear appropriate to merge.

Senate professional staff have reviewed these exemptions and other exemptions and none of them appear to be appropriate for merger or repeal (as clearly being duplicative of or completely subsumed within the exemption in s. 119.07(5)(g), F.S.).

III. Effect of Proposed Changes:

The bill reenacts s. 119.071(5)(g), F.S., which exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of this exemption (July 1, 2006). The biometric identification information consists of the following information:

- Any record of friction ridge detail;
- Fingerprints;
- Palm prints; and
- Footprints.

The bill does not expand the scope of the existing public records and meetings exemptions, so it does not require a two-thirds vote.

The effective date of the bill is October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, section 24 of the Florida Constitution permits the Legislature to provide by general law for the exemption of open meetings and for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.

If a reenactment of an exemption does not expand the scope of the exemption, it does not require a new repealer date, public necessity statement, or a two-thirds vote.²¹ It is only when the exemption is expanded (i.e., more records are exempt, records are exempt for a longer period of time, etc.) that these three requirements come into play, because that is tantamount to creating a new exemption.

²¹ See Art. I, s. 24(c), Fla. Const., and s. 119.15, F.S.

The reenactment of the exemption in s. 119.071(5)(g), F.S., does not expand the exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.

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 Criminal Justice Committee

BILL: SB 604

INTRODUCER: Criminal Justice Committee

SUBJECT: Open Government Sunset Review of Section 790.0601, F.S., Personal Identifying Information of Applicant or Licensee, Concealed Weapon or Firearm

DATE: February 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill reenacts a public records exemption for “personal identifying information” contained in records maintained by the Department of Agriculture and Consumer Services (DACCS) concerning applicants for and recipients of a concealed weapons permit. The bill provides that the exempt information may be provided with the written consent of the applicant, upon written request of a law enforcement agency, or by court order upon a showing of good cause.

The bill reenacts section 790.0601 of the Florida Statutes.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created

thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law¹ specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge....”²

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995³ establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”⁴

Section 119.15(6)(a), F.S.,⁵ requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹ Chapter 119, F.S.

² *Shevin. Byron, Hairless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

³ Section 119.15, F.S.

⁴ Section 119.15(3)(b), F.S.

⁵ Formerly s. 119.15(4)(a), F.S. (as revised by s. 37, ch. 2005-251, L.O.F.).

An exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government, and the purpose cannot be accomplished without the exemption:

- The exemption “[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption “[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.”
- The exemption “[p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”⁶

Exempt Personal Identifying Information

Social Security numbers,⁷ credit and debit cards,⁸ and bank account⁹ information are exempt from public disclosure. Additionally, personal information contained in a motor vehicle record that identifies the subject in the record is exempt from disclosure.¹⁰ Exempt information includes driver’s license and identification card numbers.¹¹

Concealed Weapons License

A concealed weapon is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.¹² The Department of Agriculture and Consumer Services (DACS) is statutorily authorized to issue a license to carry a concealed weapon to those applicants who qualify.¹³

There is no other governmental agency that collects this particular information from applicants, and it cannot be obtained by the public from another source. The information is not protected by another exemption, nor do multiple exemptions for the same type of information exist.

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.071(5)(a)3, F.S.

⁸ Section 119.071(5)(b), F.S.

⁹ *Id.*

¹⁰ Section 119.0712(2), F.S.

¹¹ *Id.*

¹² Section 790.06(1), F.S.

¹³ *Id.*

attesting to the applicant's completion of a firearms course, and a full frontal view color photograph¹⁴ of the applicant.¹⁵ The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.¹⁶

There are currently over 750,000 valid license-holders in Florida.¹⁷ It is these persons whose personal information is currently protected by the public records exemption under review.

In Chapter 2006-102, Laws of Florida, which created the exemption, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. Section 2 of the 2006 chapter law states:

Section 2. The Legislature finds that it is a public necessity that the personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing of the Department of Agriculture and Consumer Services be made confidential and exempt from public records requirements, with certain exceptions. The carrying of a concealed weapon in the state by members of the general public requires an individual to obtain a license from the Department of Agriculture and Consumer Services. The applicant for a license to carry a concealed weapon or firearm must state that he or she seeks a concealed weapon or firearms license as a means of lawful self-defense. The knowledge that someone has applied for or received a license to carry a concealed weapon or firearm can very easily lead to the conclusion that the applicant or licensee has in fact armed himself or herself. This knowledge defeats the purpose behind the authorization to carry a concealed weapon or firearm. If the applicant or licensee had intended for the general public to know he or she was carrying a weapon or firearm, he or she would have applied for a regular weapon or firearms permit rather than a license to carry a concealed weapon or firearm. The Legislature has found in prior legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second

¹⁴ The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

¹⁵ Section 790.06(5), F.S.

¹⁶ Section 790.06(4), F.S.

¹⁷ "Concealed Weapon / Firearm Summary Report," viewed September 21, 2010
http://licgweb.doacs.state.fl.us/stats/cw_monthly.html.

Amendment right to keep and bear arms as guaranteed under the United States Constitution. Release of personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm could be used to harass an innocent person based solely on that person's exercised right to carry a concealed weapon or firearm. Further, such information could be used and has been used to identify individuals who have obtained a license to carry a concealed weapon or firearm for the purpose of making the identity of the applicant or licensee publicly available via traditional media and the Internet. Once again, such public disclosure contradicts the purpose of carrying a concealed weapon or firearm. Therefore, the Legislature finds that the personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to chapter 790, Florida Statutes, must be held confidential and exempt from public records requirements.

The above-referenced statement of public purpose conveys the 2006 Legislature's concern with protecting information of a sensitive personal nature concerning individuals. Although not directly stated, the language adopted by the Legislature invokes personal safety issues tied to the Department of Agriculture and Consumer Services divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a *concealed* firearm or weapon and *making public* that individual's *personally identifying information*. The inference that can be drawn from the statement of public purpose is that it is a *matter of personal safety* that an individual who carries a concealed firearm or weapon *keep the weapon's very presence out of the public view or scrutiny*, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

III. Effect of Proposed Changes:

This bill reenacts s. 790.0601, F.S., to provide a public record exemption for "personal identifying information" contained in records that are maintained by DACS concerning applicants for a license to carry a concealed weapon or individuals who have already received a concealed weapons permit. However, this information may be released:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon written request by law enforcement in connection with an active criminal investigation.

This bill reenacts the exemption by deleting its repeal date of October 2, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill reenacts a public records exemption to protect identifying information maintained by the Department of Agriculture and Consumer Services of applicants for and recipients of a concealed weapons permit.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.

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 Criminal Justice Committee

BILL: CS/SB 618

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Juvenile Justice

DATE: March 9, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes are as follows.

The bill repeals the definition of “serious or habitual juvenile offender program” (SHOP) in s. 985.03(48), F.S., the legislative intent language relating to SHOP in s. 985.02(5), F.S., and the statute implementing this program in s. 985.47, F.S. It repeals two statutes implementing the intensive residential treatment program for offenders under 13 years of age (JR.SHOP) in ss. 985.483 and 985.486, F.S. The definition of “training school” is also repealed in s. 985.02(56), F.S.

References in s. 985.494, F.S., to SHOP, JR. SHOP, the early delinquency intervention program (EDIP), and the sheriff’s training and respect (STAR) programs (formerly known as juvenile boot camps) are also deleted under the bill. Instead of listing these specific prerequisite programs, the bill provides that a child adjudicated delinquent for a felony (or a child who has a withheld felony adjudication) must complete two different high risk residential commitment programs as a prerequisite to being placed in a maximum risk residential program.

The bill deletes references to the STAR program in s. 985.445, F.S., which authorizes a residential commitment to a STAR program if a child is adjudicated delinquent for committing grand theft auto.

In addition to repealing these obsolete programs, the bill also repeals an unnecessary statute, s. 985.636, F.S., relating to inspectors within the Inspector General's Office being sworn law enforcement officers, if the Secretary of the DJJ deems it necessary to enforce criminal law and conduct criminal investigations relating to state operated facilities.

Finally, the last two sections of the bill repeal obsolete references to the Juvenile Justice Standards and Training Commission (Commission) which provided staff development and training until it expired in 2001 and the DJJ took over those duties. The bill codifies current practice by specifying that the DJJ is responsible for staff development and training.

This bill amends sections 985.494 and 985.66, Florida Statutes. The bill repeals sections 985.02(5), 985.03(48), 985.03(56), 985.445, 985.47, 985.48(8), 985.483, 985.486, 985.636, Florida Statutes. It also makes conforming changes to sections 985.0301, 985.47, and 985.565, Florida Statutes.

II. Present Situation:

There are several statutes relating to the serious or habitual juvenile offender program (SHOP) and the intensive residential treatment program for offenders under 13 years of age (JR. SHOP). Section 985.03(48), F.S., provides a definition of SHOP by citing to the program created in s. 985.47, F.S. The cited section specifies the requirements of a SHOP program. Moreover, legislative intent language relating to SHOP exists in s. 985.02(5), F.S. Similarly, two statutes exist that implement JR.SHOPs in ss. 985.483 and 985.486, F.S.

Section 985.494, F.S., provides that a child adjudicated delinquent for a felony (or a child who has an adjudication of delinquency withheld for a felony) must be committed to a SHOP or a JR. SHOP, if such child has participated in an early delinquency intervention program (EDIP) and has completed a sheriff's training and respect (STAR) program (formerly known as juvenile boot camp).

Additionally, such child must be committed to a maximum risk residential program, if he or she has participated in an EDIP, has completed a STAR program and a SHOP or JR. SHOP. The length of stay in a maximum risk commitment program is for an indeterminate period of time; however, it may not exceed the maximum imprisonment that an adult would serve for that offense.¹

This section of law also allows the court to consider an equivalent program of similar intensity as being comparable to one of these specified programs when committing a child to an appropriate program under this statute.²

¹ Section 985.494(1)(b), F.S.

² Section 985.494(2), F.S.

The definition of “training school” is contained in s. 985.03(56), F.S., to include the Arthur G. Dozier School and the Eckerd Youth Development Center. According to the DJJ, the training schools no longer exist as a category in the DJJ residential programs. Residential programs are now categorized by restrictiveness levels.³

Section 985.445, F.S., provides the court with discretion to place a child adjudicated delinquent for committing a first or second grand theft auto into a STAR program. Upon a third adjudication, however, the court is required to place that child into a STAR program. The statute also requires the court to order such child to complete a specified number of community service hours (at least 50 for a first adjudication, 100 for the second adjudication, and 250 for the third adjudication).

According to the DJJ, there have been no operational STAR programs since 2008. The department also states that the SHOP and JR. SHOPS have been underutilized for the past several years. Because maximum and high risk programs currently serve the most serious offenders, the DJJ states it no longer needs the SHOP and JR. SHOP designations.⁴ In 1996, according to the DJJ, the SHOPS were reclassified from maximum risk to high risk programs but the statutory admission criteria remained unchanged. In reviewing the records of children admitted to the SHOPS in FY 07-08, the DJJ found that 12.3 percent of the 24 children admitted did not meet the statutory criteria. Similarly, 10 percent of the 20 children admitted to the JR. SHOPS did not meet that criteria.⁵

Section 985.636, F.S., relating to the Inspector General’s Office, authorizes the Secretary of the DJJ to designate inspectors holding a law enforcement certification as law enforcement officers within the Inspector General’s Office. This designation is only for the purpose of enforcing any criminal law and conducting any investigation involving a state-operated program that falls under the department’s jurisdiction. However, according to the DJJ, this law is unnecessary because the department has never had sworn law enforcement officers.

Section 985.66, F.S., prescribes standards for the juvenile justice training academies, establishes the Juvenile Justice Training Trust Fund, and creates the Juvenile Justice Standards and Training Commission (Commission) under the DJJ. The legislative purpose of the statute is to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff.⁶ Section 985.48(8), F.S., also requires the Commission to establish a training program to manage and provide services to juvenile sexual offenders in juvenile sexual offender programs. However, the Commission expired on June 30, 2001 because it was not reenacted by the Legislature.⁷ After that, the DJJ took over the training duties of the Commission.⁸

³ Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

⁴ 2011 Department of Juvenile Justice Legislative Priority Paper, updated on March 4, 2011 (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

⁵ Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

⁶ Section 985.66(1), F.S.

⁷ Section 985.66(9), F.S.

III. Effect of Proposed Changes:

The bill repeals numerous sections and provisions containing obsolete language in ch. 985, F.S., to more accurately reflect current practices within the Department of Juvenile Justice (DJJ). The specific provisions which the bill deletes are as follows.

The bill repeals the following provisions relating to serious or habitual juvenile offender programs (SHOP): the definition of SHOP in s. 985.03(48), F.S., the SHOP legislative intent language in s. 985.02(5), F.S., and the statute implementing SHOP in s. 985.47, F.S. It repeals two statutes implementing the intensive residential treatment program for offenders under 13 years of age (JR.SHOP) in ss. 985.483 and 985.486, F.S.

The bill deletes references in s. 985.494, F.S., to the SHOPS, JR. SHOPS, EDIPs, and the STAR programs (formerly known as juvenile boot camp). Instead of listing these specific prerequisite programs, the bill provides that a child adjudicated delinquent for committing a felony (or a child who has a withheld felony adjudication) must complete two different high risk residential commitment programs as a prerequisite to being placed in a maximum risk residential program.

The bill also deletes references to the STAR program in s. 985.445, F.S., which authorizes a residential commitment to a STAR program if a child is adjudicated delinquent for committing grand theft auto. The bill accomplishes this by repealing s. 985.445, F.S. Finally, the bill makes conforming changes to several statutes referencing this repealed section of law.

The definition of “training school” is repealed in s. 985.02(56), F.S.

The bill also repeals an unnecessary statute, s. 985.636, F.S., which allows certain inspectors within the DJJ’s Inspector General’s Office to be deemed certified law enforcement officers by the Secretary of the DJJ. (According to the DJJ, the department has never had sworn law enforcement officers.)⁹

Finally, the bill amends s. 985.66, F.S., by deleting obsolete references to the Juvenile Justice Standards and Training Commission (which sunset on June 30, 2001) and authorizing the DJJ to continue providing staff development and training to department program staff. It also amends s. 985.48, F.S., to conform to these changes by deleting references to the provision requiring the Commission to establish a training program to manage juvenile sexual offenders.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸ Department of Juvenile Justice 2011 Agency Proposal (on file with the Senate Criminal Justice Committee in Tallahassee, Florida.)

⁹ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, there is no fiscal impact to the department.¹⁰

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 Criminal Justice on March 9, 2011:

Incorporates the original bill’s “repealer” provisions as well as repeals additional outdated provisions related to the following:

- Serious or habitual juvenile offender programs (SHOPs) and intensive residential treatment programs for offenders under 13 year of age (JR. SHOPs);
- Sheriff’s Training and Respect programs;
- Definition of “training schools”;
- Inspectors within the Inspector General’s Office being sworn law enforcement officers when deemed necessary by the Secretary of DJJ; and
- Juvenile Justice Standards and Training Commission.

¹⁰ *Id.*

B. Amendments:

None.

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



344220

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) of section 985.02, Florida Statutes, is repealed.

Section 2. Subsection (48) of section 985.03, Florida Statutes, is repealed.

Section 3. Subsection (56) of section 985.03, Florida Statutes, is repealed.

Section 4. Section 985.47, Florida Statutes, is repealed.



344220

13 Section 5. Section 985.483, Florida Statutes, is repealed.
14 Section 6. Section 985.486, Florida Statutes, is repealed.
15 Section 7. Section 985.636, Florida Statutes, is repealed.
16 Section 8. Section 985.494, Florida Statutes, is amended to
17 read:
18 985.494 Commitment programs for juvenile felony offenders.—
19 (1) Notwithstanding any other law and regardless of the
20 child's age, a child who is adjudicated delinquent, or for whom
21 adjudication is withheld, for an act that would be a felony if
22 committed by an adult, shall be committed to:
23 ~~(a) A program for serious or habitual juvenile offenders~~
24 ~~under s. 985.47 or an intensive residential treatment program~~
25 ~~for offenders less than 13 years of age under s. 985.483, if the~~
26 ~~child has participated in an early delinquency intervention~~
27 ~~program and has completed a sheriff's training and respect~~
28 ~~program.~~
29 ~~(b) a maximum-risk residential program, if the child has~~
30 ~~completed two different high-risk residential commitment~~
31 ~~programs participated in an early delinquency intervention~~
32 ~~program, has completed a sheriff's training and respect program,~~
33 ~~and has completed a program for serious or habitual juvenile~~
34 ~~offenders or an intensive residential treatment program for~~
35 ~~offenders less than 13 years of age. The commitment of a child~~
36 to a maximum-risk residential program must be for an
37 indeterminate period, but may not exceed the maximum term of
38 imprisonment that an adult may serve for the same offense.
39 (2) In committing a child to the appropriate program, the
40 court may consider an equivalent program of similar intensity as
41 being comparable to a program required under subsection (1).



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42 Section 9. Section 985.445, Florida Statutes, is repealed.

43 Section 10. Paragraph (c) of subsection (5) of section
44 985.0301, Florida Statutes, is amended to read:

45 985.0301 Jurisdiction.—

46 (5)

47 (c) Notwithstanding ss. 743.07 and 985.455(3), and except
48 as provided in s. 985.47, the term of the commitment must be
49 until the child is discharged by the department or until he or
50 she reaches the age of 21 years. Notwithstanding ss. 743.07,
51 985.435, 985.437, 985.439, 985.441, ~~985.445~~, 985.455, and
52 985.513, and except as provided in this section and s. 985.47, a
53 child may not be held under a commitment from a court under s.
54 985.439, s. 985.441(1)(a) or (b), ~~s. 985.445~~, or s. 985.455
55 after becoming 21 years of age.

56 Section 11. Subsection (2) of section 985.47, Florida
57 Statutes, is amended to read:

58 985.47 Serious or habitual juvenile offender.—

59 (2) DETERMINATION.—After a child has been adjudicated
60 delinquent under s. 985.35, the court shall determine whether
61 the child meets the criteria for a serious or habitual juvenile
62 offender under subsection (1). If the court determines that the
63 child does not meet such criteria, ss. 985.435, 985.437,
64 985.439, 985.441, ~~985.445~~, 985.45, and 985.455 shall apply.

65 Section 12. Paragraph (b) of subsection (4) of section
66 985.565, Florida Statutes, is amended to read:

67 985.565 Sentencing powers; procedures; alternatives for
68 juveniles prosecuted as adults.—

69 (4) SENTENCING ALTERNATIVES.—

70 (b) *Juvenile sanctions*.—For juveniles transferred to adult



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71 court but who do not qualify for such transfer under s.
72 985.556(3) or s. 985.557(2)(a) or (b), the court may impose
73 juvenile sanctions under this paragraph. If juvenile sentences
74 are imposed, the court shall, under this paragraph, adjudge the
75 child to have committed a delinquent act. Adjudication of
76 delinquency shall not be deemed a conviction, nor shall it
77 operate to impose any of the civil disabilities ordinarily
78 resulting from a conviction. The court shall impose an adult
79 sanction or a juvenile sanction and may not sentence the child
80 to a combination of adult and juvenile punishments. An adult
81 sanction or a juvenile sanction may include enforcement of an
82 order of restitution or probation previously ordered in any
83 juvenile proceeding. However, if the court imposes a juvenile
84 sanction and the department determines that the sanction is
85 unsuitable for the child, the department shall return custody of
86 the child to the sentencing court for further proceedings,
87 including the imposition of adult sanctions. Upon adjudicating a
88 child delinquent under subsection (1), the court may:

89 1. Place the child in a probation program under the
90 supervision of the department for an indeterminate period of
91 time until the child reaches the age of 19 years or sooner if
92 discharged by order of the court.

93 2. Commit the child to the department for treatment in an
94 appropriate program for children for an indeterminate period of
95 time until the child is 21 or sooner if discharged by the
96 department. The department shall notify the court of its intent
97 to discharge no later than 14 days prior to discharge. Failure
98 of the court to timely respond to the department's notice shall
99 be considered approval for discharge.



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100 3. Order disposition under ss. 985.435, 985.437, 985.439,
101 985.441, ~~985.445~~, 985.45, and 985.455 as an alternative to
102 youthful offender or adult sentencing if the court determines
103 not to impose youthful offender or adult sanctions.
104

105 It is the intent of the Legislature that the criteria and
106 guidelines in this subsection are mandatory and that a
107 determination of disposition under this subsection is subject to
108 the right of the child to appellate review under s. 985.534.

109 Section 13. Section 985.66, Florida Statutes, is amended to
110 read:

111 985.66 Juvenile justice training academies; staff
112 development and training; ~~Juvenile Justice Standards and~~
113 ~~Training Commission~~; Juvenile Justice Training Trust Fund.—

114 (1) LEGISLATIVE PURPOSE.—In order to enable the state to
115 provide a systematic approach to staff development and training
116 for judges, state attorneys, public defenders, law enforcement
117 officers, school district personnel, and juvenile justice
118 program staff that will meet the needs of such persons in their
119 discharge of duties while at the same time meeting the
120 requirements for the American Correction Association
121 accreditation by the Commission on Accreditation for
122 Corrections, it is the purpose of the Legislature to require the
123 department to establish, maintain, and oversee the operation of
124 juvenile justice training academies in the state. The purpose of
125 the Legislature in establishing staff development and training
126 programs is to foster better staff morale and reduce
127 mistreatment and aggressive and abusive behavior in delinquency
128 programs; to positively impact the recidivism of children in the



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129 juvenile justice system; and to afford greater protection of the
130 public through an improved level of services delivered by a
131 professionally trained juvenile justice program staff to
132 children who are alleged to be or who have been found to be
133 delinquent.

134 (2) STAFF DEVELOPMENT ~~JUVENILE JUSTICE STANDARDS AND~~
135 ~~TRAINING COMMISSION.~~-

136 ~~(a) There is created under the Department of Juvenile~~
137 ~~Justice the Juvenile Justice Standards and Training Commission,~~
138 ~~hereinafter referred to as the commission. The 17 member~~
139 ~~commission shall consist of the Attorney General or designee,~~
140 ~~the Commissioner of Education or designee, a member of the~~
141 ~~juvenile court judiciary to be appointed by the Chief Justice of~~
142 ~~the Supreme Court, and 14 members to be appointed by the~~
143 ~~Secretary of Juvenile Justice as follows:~~

144 ~~1. Seven members shall be juvenile justice professionals: a~~
145 ~~superintendent or a direct care staff member from an~~
146 ~~institution; a director from a contracted community-based~~
147 ~~program; a superintendent and a direct care staff member from a~~
148 ~~regional detention center or facility; a juvenile probation~~
149 ~~officer supervisor and a juvenile probation officer; and a~~
150 ~~director of a day treatment or conditional release program. No~~
151 ~~fewer than three of these members shall be contract providers.~~

152 ~~2. Two members shall be representatives of local law~~
153 ~~enforcement agencies.~~

154 ~~3. One member shall be an educator from the state's~~
155 ~~university and community college program of criminology,~~
156 ~~criminal justice administration, social work, psychology,~~
157 ~~sociology, or other field of study pertinent to the training of~~



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158 ~~juvenile justice program staff.~~

159 ~~4. One member shall be a member of the public.~~

160 ~~5. One member shall be a state attorney, or assistant state~~
161 ~~attorney, who has juvenile court experience.~~

162 ~~6. One member shall be a public defender, or assistant~~
163 ~~public defender, who has juvenile court experience.~~

164 ~~7. One member shall be a representative of the business~~
165 ~~community.~~

166

167 ~~All appointed members shall be appointed to serve terms of 2~~
168 ~~years.~~

169 ~~(b) The composition of the commission shall be broadly~~
170 ~~reflective of the public and shall include minorities and women.~~
171 ~~The term "minorities" as used in this paragraph means a member~~
172 ~~of a socially or economically disadvantaged group that includes~~
173 ~~blacks, Hispanics, and American Indians.~~

174 ~~(c) The Department of Juvenile Justice shall provide the~~
175 ~~commission with staff necessary to assist the commission in the~~
176 ~~performance of its duties.~~

177 ~~(d) The commission shall annually elect its chairperson and~~
178 ~~other officers. The commission shall hold at least four regular~~
179 ~~meetings each year at the call of the chairperson or upon the~~
180 ~~written request of three members of the commission. A majority~~
181 ~~of the members of the commission constitutes a quorum. Members~~
182 ~~of the commission shall serve without compensation but are~~
183 ~~entitled to be reimbursed for per diem and travel expenses as~~
184 ~~provided by s. 112.061 and these expenses shall be paid from the~~
185 ~~Juvenile Justice Training Trust Fund.~~

186 ~~(e) The department powers, duties, and functions of the~~



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187 ~~commission shall be to:~~

188 (a)1. Designate the location of the training academies;
189 develop, implement, maintain, and update the curriculum to be
190 used in the training of juvenile justice program staff;
191 establish timeframes for participation in and completion of
192 training by juvenile justice program staff; develop, implement,
193 maintain, and update job-related examinations; develop,
194 implement, and update the types and frequencies of evaluations
195 of the training academies; approve, modify, or disapprove the
196 budget for the training academies, and the contractor to be
197 selected to organize and operate the training academies and to
198 provide the training curriculum.

199 (b)2. Establish uniform minimum job-related training
200 courses and examinations for juvenile justice program staff.

201 (c)3. Consult and cooperate with the state or any political
202 subdivision; any private entity or contractor; and with private
203 and public universities, colleges, community colleges, and other
204 educational institutions concerning the development of juvenile
205 justice training and programs or courses of instruction,
206 including, but not limited to, education and training in the
207 areas of juvenile justice.

208 (d)4. Enter into ~~With the approval of the department, make~~
209 ~~and enter into such~~ contracts and agreements with other
210 agencies, organizations, associations, corporations,
211 individuals, or federal agencies as ~~the commission determines~~
212 ~~are~~ necessary in the execution of the its powers of the
213 department or the performance of its duties.

214 ~~5. Make recommendations to the Department of Juvenile~~
215 ~~Justice concerning any matter within the purview of this~~



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216 ~~section.~~

217 (3) JUVENILE JUSTICE TRAINING PROGRAM.—The department
218 ~~commission~~ shall establish a certifiable program for juvenile
219 justice training pursuant to this section, and all department
220 program staff and providers who deliver direct care services
221 pursuant to contract with the department shall be required to
222 participate in and successfully complete the department-approved
223 ~~commission-approved~~ program of training pertinent to their areas
224 of responsibility. Judges, state attorneys, and public
225 defenders, law enforcement officers, and school district
226 personnel may participate in such training program. For the
227 juvenile justice program staff, the department ~~commission~~ shall,
228 based on a job-task analysis:

229 (a) Design, implement, maintain, evaluate, and revise a
230 basic training program, including a competency-based
231 examination, for the purpose of providing minimum employment
232 training qualifications for all juvenile justice personnel. All
233 program staff of the department and providers who deliver
234 direct-care services who are hired after October 1, 1999, must
235 meet the following minimum requirements:

236 1. Be at least 19 years of age.

237 2. Be a high school graduate or its equivalent as
238 determined by the department ~~commission~~.

239 3. Not have been convicted of any felony or a misdemeanor
240 involving perjury or a false statement, or have received a
241 dishonorable discharge from any of the Armed Forces of the
242 United States. Any person who, after September 30, 1999, pleads
243 guilty or nolo contendere to or is found guilty of any felony or
244 a misdemeanor involving perjury or false statement is not



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245 eligible for employment, notwithstanding suspension of sentence
246 or withholding of adjudication. Notwithstanding this
247 subparagraph, any person who pled nolo contendere to a
248 misdemeanor involving a false statement before October 1, 1999,
249 and who has had such record of that plea sealed or expunged is
250 not ineligible for employment for that reason.

251 4. Abide by all the provisions of s. 985.644(1) regarding
252 fingerprinting and background investigations and other screening
253 requirements for personnel.

254 5. Execute and submit to the department an affidavit-of-
255 application form, adopted by the department, attesting to his or
256 her compliance with subparagraphs 1.-4. The affidavit must be
257 executed under oath and constitutes an official statement under
258 s. 837.06. The affidavit must include conspicuous language that
259 the intentional false execution of the affidavit constitutes a
260 misdemeanor of the second degree. The employing agency shall
261 retain the affidavit.

262 (b) Design, implement, maintain, evaluate, and revise an
263 advanced training program, including a competency-based
264 examination for each training course, which is intended to
265 enhance knowledge, skills, and abilities related to job
266 performance.

267 (c) Design, implement, maintain, evaluate, and revise a
268 career development training program, including a competency-
269 based examination for each training course. Career development
270 courses are intended to prepare personnel for promotion.

271 (d) The department ~~commission~~ is encouraged to design,
272 implement, maintain, evaluate, and revise juvenile justice
273 training courses, or to enter into contracts for such training



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274 courses, that are intended to provide for the safety and well-
275 being of both citizens and juvenile offenders.

276 (4) JUVENILE JUSTICE TRAINING TRUST FUND.—

277 (a) There is created within the State Treasury a Juvenile
278 Justice Training Trust Fund to be used by the department ~~of~~
279 ~~Juvenile Justice~~ for the purpose of funding the development and
280 updating of a job-task analysis of juvenile justice personnel;
281 the development, implementation, and updating of job-related
282 training courses and examinations; and the cost of ~~commission-~~
283 ~~approved~~ juvenile justice training courses; ~~and reimbursement~~
284 ~~for expenses as provided in s. 112.061 for members of the~~
285 ~~commission and staff.~~

286 (b) One dollar from every noncriminal traffic infraction
287 collected pursuant to ss. 318.14(10)(b) and 318.18 shall be
288 deposited into the Juvenile Justice Training Trust Fund.

289 (c) In addition to the funds generated by paragraph (b),
290 the trust fund may receive funds from any other public or
291 private source.

292 (d) Funds that are not expended by the end of the budget
293 cycle or through a supplemental budget approved by the
294 department shall revert to the trust fund.

295 (5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.—
296 The number, location, and establishment of juvenile justice
297 training academies shall be determined by the department
298 ~~commission.~~

299 (6) SCHOLARSHIPS AND STIPENDS.—

300 (a) By rule, the department ~~commission~~ shall establish
301 criteria to award scholarships or stipends to qualified juvenile
302 justice personnel who are residents of the state who want to



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303 pursue a bachelor's or associate in arts degree in juvenile
304 justice or a related field. The department shall handle the
305 administration of the scholarship or stipend. The Department of
306 Education shall handle the notes issued for the payment of the
307 scholarships or stipends. All scholarship and stipend awards
308 shall be paid from the Juvenile Justice Training Trust Fund upon
309 vouchers approved by the Department of Education and properly
310 certified by the Chief Financial Officer. Prior to the award of
311 a scholarship or stipend, the juvenile justice employee must
312 agree in writing to practice her or his profession in juvenile
313 justice or a related field for 1 month for each month of grant
314 or to repay the full amount of the scholarship or stipend
315 together with interest at the rate of 5 percent per annum over a
316 period not to exceed 10 years. Repayment shall be made payable
317 to the state for deposit into the Juvenile Justice Training
318 Trust Fund.

319 (b) The department ~~commission~~ may establish the scholarship
320 program by rule ~~and implement the program on or after July 1,~~
321 ~~1996.~~

322 (7) ADOPTION OF RULES.—The department ~~commission~~ shall
323 adopt rules as necessary to carry out the provisions of this
324 section.

325 (8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK
326 MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of
327 Risk Management of the Department of Financial Services is
328 authorized to insure a private agency, individual, or
329 corporation operating a state-owned training school under a
330 contract to carry out the purposes and responsibilities of any
331 program of the department. The coverage authorized herein shall



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332 be under the same general terms and conditions as the department
333 is insured for its responsibilities under chapter 284.

334 ~~(9) The Juvenile Justice Standards and Training Commission~~
335 ~~is terminated on June 30, 2001, and such termination shall be~~
336 ~~reviewed by the Legislature prior to that date.~~

337 Section 14. Subsection (8) of section 985.48, Florida
338 Statutes, is repealed.

339 Section 15. This act shall take effect July 1, 2011.

340
341 ===== T I T L E A M E N D M E N T =====

342 And the title is amended as follows:

343
344 Delete everything before the enacting clause
345 and insert:

346 A bill to be entitled
347 An act relating to juvenile justice; repealing ss.
348 985.02(5), 985.03(48), 985.03(56), 985.47, 985.483,
349 985.486, and 985.636, F.S., relating to, respectively,
350 legislative intent for serious or habitual juvenile
351 offenders in the juvenile justice system, definitions
352 of terms for a training school and the serious or
353 habitual juvenile offender program, the serious or
354 habitual juvenile offender program in the juvenile
355 justice system, the intensive residential treatment
356 program for offenders less than 13 years of age, and
357 the designation of persons holding law enforcement
358 certification within the Office of the Inspector
359 General to act as law enforcement officers; amending
360 s. 985.494, F.S.; requiring a child who is adjudicated



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361 delinquent, or for whom adjudication is withheld, to
362 be committed to a maximum-risk residential program for
363 an act that would be a felony if committed by an adult
364 if the child has completed two different high-risk
365 residential commitment programs; repealing s. 985.445,
366 F.S., relating to cases involving grand theft of a
367 motor vehicle committed by a child; amending ss.
368 985.0301, 985.47, and 985.565, F.S.; conforming
369 references to changes made by the act; amending s.
370 985.66, F.S.; removing all references to the Juvenile
371 Justice Standards and Training Commission; requiring
372 the Department of Juvenile Justice to be responsible
373 for staff development and training; specifying the
374 duties and responsibilities of the department for
375 staff development and training; removing obsolete
376 provisions to conform to changes made by the act;
377 repealing s. 985.48(8), F.S., relating to activities
378 of the Juvenile Justice Standards and Training
379 Commission with respect to training and treatment
380 services for juvenile sexual offenders; providing an
381 effective date.

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 Criminal Justice Committee

BILL: SB 664

INTRODUCER: Senator Benacquisto

SUBJECT: Missing Person Investigations/Silver Alert

DATE: March 1, 2011

REVISED: 03/09/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/1 amendment
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill provides that the Florida Department of Law Enforcement (FDLE), other agencies, and specified entities and persons who are responsible for complying with a request to release Silver Alert information are immune from civil liability for damages for complying in good faith with the request and presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert information pertaining to the missing person.

The bill adds specific reference to a missing adult who meets the criteria for activation of the Silver Alert Plan to the definition of “missing endangered person” and adds reference to the Silver Alert Plan to several statutory provisions relevant to reporting information on missing endangered persons.

The bill also specifies that only a law enforcement agency having jurisdiction over the case may submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

This bill substantially amends the following sections of the Florida Statutes: 937.0201, 937.021, and 937.022.

II. Present Situation:

Silver Alert

Florida's Silver Alert Plan was created by Executive Order Number 08-211, effective October 8, 2008.¹ The FDLE, the Department of Transportation, the Department of Motor Vehicles and Highway Safety's Highway Patrol, local law enforcement agencies, other agencies and entities, and the media collaborate on a standardized and coordinated response to implement the system, which is intended to aid local law enforcement in the rescue or recovery of a missing elderly person who suffers from irreversible deterioration of intellectual faculties.² The plan recognizes that the most effective response to a missing senior citizen leverages community resources for the search to augment the investigative response by the local law enforcement agency. The plan further acknowledges Silver Alerts should be activated through the investigating local law enforcement agency which is in the best position to notify the media and disseminate the information through avenues such as neighborhood telephone alerts and other technologies the agency may have to communicate with its citizens.³

Under current law, the FDLE considers a person who meets the criteria for a state Silver Alert to be a "missing endangered adult," as defined in s. 937.021, F.S.,⁴ though the definition does not specifically mention persons who meet Silver Alert criteria. The criteria for a Silver Alert are as follows:

- The missing person must be age 60 or older and present a clear indication that the individual has an irreversible deterioration of intellectual faculties, or under extraordinary circumstances when a person age 18 to 59 has irreversible deterioration of intellectual faculties and law enforcement has determined the individual lacks the capacity to consent, and that the use of dynamic message signs may be the only possible way to rescue the missing person.
- Local law enforcement has already activated a local or regional alert by contacting media outlets.
- The law enforcement agency's investigation has concluded that the disappearance poses a credible threat to the person's safety.
- A description of the vehicle and a tag number is available and has been verified by local law enforcement.
- The local law enforcement agency has entered the missing person into the Florida Crime Information Center and issued a statewide "Be On the Look Out" (BOLO) to other law enforcement/911 centers.

¹ See <http://elderaffairs.state.fl.us/english/notices/Oct08/govsilveralert.pdf> (last accessed on March 2, 2011).

² See <http://www.fmcdf.org/foundation-history.htm> (last accessed on March 1, 2011).

³ Except as otherwise indicated, most of the information regarding Silver Alert is from the following resources on the FDLE's website: <http://www.fdle.state.fl.us/MCICSearch/SilverAlerts.asp>, <http://www.fdle.state.fl.us/Content/News/October-2008/Governor-Crist-Signs-Executive-Order-Creating-Silv.aspx>, and <http://www.fdle.state.fl.us/MCICSearch/Documents/SilverAlertFAQ.pdf> (last accessed on March 1, 2011).

⁴ Analysis of SB 664, Florida Department of Law Enforcement, February 28, 2011.

Only a law enforcement agency may activate a Silver Alert. Local law enforcement will take a report of a missing person, issue a Silver Alert if the criteria are met, and notify the FDLE if the person is driving a vehicle. The local law enforcement agency determines how long a Silver Alert remains activated.

Dynamic message signs are activated regionally or statewide when criteria are met. If road signs are used, they remain activated for a maximum of 6 hours, unless the missing elderly person is rescued or the Department of Transportation is otherwise instructed. To maintain integrity of the system and not dilute its effectiveness, the road signs will be used primarily for persons with irreversible deterioration of intellectual faculties 60 years and older. However, road signs may be used in rare instances when that is the only viable method to locate a missing person under the age of 60 who otherwise meet criteria.

The Emergency Alert System (EAS) is not used for Silver Alerts. The EAS is restricted to child abductions, and is not used for any other cases involving missing children. However, just like with Missing Child Alerts, television and radio stations are notified and the information can be broadcasted to the viewing or listening public. The local law enforcement agency is responsible for contacting local and regional media outlets. Media outlets have the option on whether or not to broadcast Silver Alert information.

According to the FDLE, since the program's inception, the department has issued 283 Silver Alerts with 42 direct recoveries as a result of the alerts.⁵

Missing Person Investigations/Chapter 937, F.S.

Chapter 937, F.S., covers missing person investigations. Terminology relevant to the chapter is defined in s. 937.0201, F.S. Section 937.021, F.S., addresses a number of matters relating to missing persons investigations such as requirements for written policies, filing and acceptance of reports, civil immunity from damages for good faith compliance with alert requests, etc. Section 937.022, F.S., creates a Missing Endangered Persons Information Clearinghouse and specifies its organization and duties, who may submit information, and type of information submitted. Other sections of the chapter deal with birth records, student records, fingerprints, and dental records of missing children (respectively, s. 937.024, F.S., s. 936.025, F.S., s. 937.028, F.S., and s. 937.071, F.S.).

Section 937.0201(4), F.S., defines a "missing endangered person" as a missing child,⁶ a missing adult⁷ younger than 26 years of age, or a missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity. The term has relevance to a "missing endangered person report," which is a report prepared on a form prescribed by the FDLE by rule for use by the public and law enforcement agencies in reporting information to the Missing Endangered Persons Information Clearinghouse about a missing

⁵ E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated March 2, 2011.

⁶ A "missing child" is a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency. s. 937.021(3), F.S.

⁷ A "missing adult" is a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency. s. 937.021(2), F.S.

endangered person.⁸ *The definition of “missing endangered person” does not specifically mention a person who meets the criteria for activation of the Silver Alert Plan.*

Section 937.021(5)(a), F.S., provides that, upon receiving a request to record, report, transmit, display, or release Amber Alert or Missing Child Alert information from the law enforcement agency having jurisdiction over the missing child, the FDLE as the state Amber Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in s. 202.11; F.S., or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Amber Alert or Missing Child Alert information pertaining to such child.

Section 937.021(5)(b), F.S., contains an immunity provision that is almost identical to s. 937.021(5)(a), F.S., but pertains to complying with a request to provide information on a missing adult. *Compliance with a request to release Silver Alert information is not specifically mentioned in any immunity provision.*

Section 937.021(5)(c), F.S., provides that the presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction, or if the Amber Alert, Missing Child Alert, or missing adult information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect. *Silver Alert is not specifically referenced in paragraph (5)(c).*

Section 937.021(5)(c), F.S., provides that neither subsection (5) nor any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert, Missing Child Alert, or missing adult information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information. *Silver Alert is not specifically referenced in paragraph (5)(c).*

III. Effect of Proposed Changes:

The bill amends the definition of “missing endangered person” in s. 937.0201, F.S., to specifically include within this definition a missing adult who meets the criteria for activation of a Silver Alert.⁹

The bill amends s. 937.021, F.S., to do the following:

⁸ s. 937.021(5), F.S.

⁹ The FDLE states that, “[w]hile the Department considers those who meet the criteria for activation of a Silver Alert covered under provisions for missing endangered adults as defined in 937.0201(c), there is no objection to specific inclusion of these persons as an identified subset as proposed in SB 664. The Department has been named state Silver Alert coordinator (lines 66-67) and while appropriate, it should be noted that if federal legislation is passed that defines a Silver Alert coordinator, there may be additional responsibilities that the clearinghouse would have to take on to fulfill this role.” Analysis of SB 664, Florida Department of Law Enforcement, February 28, 2011.

- Provide that, upon receiving a request to record, report, transmit, display, or release Silver Alert information from the law enforcement agency having jurisdiction over the missing adult, the FDLE as the state Silver Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in s. 202.11, F.S.; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert information pertaining to the missing adult.
- Provide that the presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction, or if the Silver Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.
- Provide that no provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Silver Alert information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.

The bill also amends s. 937.022, F.S., to provide that only the law enforcement agency having jurisdiction over the case may submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

The effective date of the bill is July 1, 2011.

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:

Since there is already an existing Silver Alert program, it appears unlikely that the bill would have any additional impact on private entities involved in the alert, such as television and radio stations broadcasting the alert.

C. Government Sector Impact:

According to the FDLE, “[t]he proposed legislation would have little impact on the Department as statewide Silver Alerts have been issued since 2008,” and will not impact state agencies for the same reason.¹⁰

VI. Technical Deficiencies:

The FDLE has indicated some concerns with language found at lines 121-125 of the bill. Those lines provide that only the law enforcement agency having jurisdiction over the case may submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

The FDLE states:

[T]he Department would recommend minor verbiage changes to ensure that the clear intent of the legislation is realized. While it is clear that this line is mirrored on the verbiage for submission of missing endangered persons reports, instructions for submissions of such cases is already covered in F.S. 937.0223. Furthermore, “Silver Alert report” would be confusing nomenclature as the Department does not collect reports of Silver Alerts. Additionally, local law enforcement agencies can and do issue local Silver Alerts for persons who do not meet criteria for State activation, particularly for those travelling on foot who studies show can be expected to be located within a quarter-mile of where they were last seen, and when it is believed that community assistance will help to bring the person home safely. More precise phrasing, and a recommendation should the decision be made to keep this provision, would be to replace the words “submit a Silver Alert report to the clearinghouse” in line 122 with “make a request for the activation of a state Silver Alert to the clearinghouse[.]”¹¹

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.

¹⁰ Analysis of SB 664, Florida Department of Law Enforcement, February 28, 2011.

¹¹ *Id.*

B. Amendments:

Barcode 901184 by Criminal Justice on March 9, 2011:

Provides that only a law enforcement agency having jurisdiction over the case may make a request to the Missing Endangered Persons Information Clearinghouse for activation of Silver Alert if criteria for activation are met.

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



901184

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/09/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 121 - 125
and insert:

4. Only the law enforcement agency having jurisdiction over the case may make a request to the clearinghouse for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

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

And the title is amended as follows:



901184

13 Delete line 14
14 and insert:
15 request that the clearinghouse activate a state Silver
16 Alert