

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Dean, Vice Chair**

**MEETING DATE:** Monday, April 4, 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	<b>SB 746</b> Altman (Similar CS/H 105)	Open House Parties; Provides that a person who violates the open house party statute a second or subsequent time commits a misdemeanor of the first degree. Provides that a person commits a misdemeanor of the first degree if the violation of the open house party statute causes or contributes to causing serious bodily injury or death. Provides criminal penalties.  RI 03/09/2011 Favorable CJ 03/28/2011 CJ 04/04/2011 BC	

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
<b>Secretary of Juvenile Justice</b>			
2	Walters, Wansley Hancock ()	Pleasure of Governor	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/SB 226</b> Children, Families, and Elder Affairs / Smith (Similar H 1143)	Human Services; Allows the national accreditation of human service providers to substitute for certain agency licensure and monitoring requirements. Requires a single lead agency to be responsible for monitoring human services delivery for designated populations. Requires agencies to provide an analysis of every new governmental mandate to an affected contractor before the mandate may be required or imposed, etc.  CF 03/22/2011 Fav/CS CJ 04/04/2011 GO BC	

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Criminal Justice

Monday, April 4, 2011, 3:15 —5:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 372</b> Bogdanoff (Compare CS/H 1379)	Pretrial Programs; Requires each pretrial release program established by ordinance of a county commission, by administrative order of a court, or by any other means in order to assist in the release of a defendant from pretrial custody to conform to the eligibility criteria set forth by the act. Preempts any conflicting local ordinances, orders, or practices. Requires that the defendant satisfy certain eligibility criteria in order to be assigned to a pretrial release program, etc.	CJ 03/22/2011 Temporarily Postponed CJ 03/28/2011 Not Considered CJ 04/04/2011 JU BC
5	<b>CS/SB 786</b> Judiciary / Diaz de la Portilla (Similar H 1089)	Landlord and Tenant; Provides that provisions governing residential tenancies do not apply to a person not legally entitled to occupy the premises.	JU 03/22/2011 Fav/CS CJ 04/04/2011 RC
6	<b>SB 834</b> Wise (Identical H 547)	Mentally Deficient and Mentally Ill Defendants; Defines the term "traumatic brain injury." Revises the definition of the term "mental illness."	CJ 04/04/2011 JU BC
7	<b>SB 846</b> Benacquisto (Identical H 595)	Prevention of Child Exploitation; Prohibits controlling or intentionally viewing any photograph, motion picture, exhibition, show, representation of an image, data, computer depiction, or other presentation that includes sexual conduct by a child. Provides penalties. Conforms provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act, etc.	CJ 04/04/2011 JU BC

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1168</b> Oelrich (Similar CS/H 409)	Public Records/Victim of a Sexual Offense; Exempts from public records requirements the dissemination of a photograph, videotape, or other image of any part of the body of a victim of a sexual offense which is made or broadcast by a video voyeur and which constitutes criminal investigation information or criminal intelligence information in an agency investigation. Provides a finding of public necessity, etc.	CJ 04/04/2011 JU GO
9	<b>SB 1328</b> Hays (Similar CS/H 677)	Public Records/Office of Financial Regulation; Provides a public records exemption for certain information provided to the Office of Financial Regulation on a confidential basis or developed as part of a multiagency investigation. Provides for future repeal and legislative review of the exemption under the Open Government Sunset Review Act. Provides a statement of public necessity.	BI 03/22/2011 Favorable CJ 04/04/2011 GO
10	<b>SB 1588</b> Latvala (Identical H 1333)	Licensed Security Officers; Provides that a person who engages in any activity for which a specified provision requires a license, but acts without having a license, commits a misdemeanor of the first degree. Authorizes the Department of Agriculture and Consumer Services to impose a civil penalty not to exceed a specified amount. Provides that a person who impersonates a security officer or other designated officer during the commission of a felony commits a felony of the second degree, etc.	CM 03/29/2011 Fav/1 Amendment CJ 04/04/2011 BC
11	<b>SB 1790</b> Storms	Driving Under the Influence; Prohibits a state or local law enforcement agency from operating a "no refusal" DUI checkpoint.	TR 03/22/2011 Favorable CJ 04/04/2011 JU

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>SB 1808</b> Diaz de la Portilla (Similar H 1449)	Assault or Battery ; Increases the mandatory minimum term of imprisonment for battery of a law enforcement officer or firefighter while possessing a firearm or destructive device. Increases the mandatory minimum term of imprisonment for such a battery while possessing a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.	CJ 04/04/2011 BC
13	<b>SB 1886</b> Wise (Identical H 1039)	Controlled Substances; Includes certain hallucinogenic substances on the list of controlled substances in Schedule I. Reenacts provisions relating to prohibited acts and penalties regarding controlled substances and the offense severity chart of the Criminal Punishment Code, to incorporate the amendment to s. 893.03, F.S., in references thereto.	CJ 04/04/2011 BC
14	<b>SB 1890</b> Storms (Compare CS/H 1277)	Sexual Predator Identifiers; Requires that a sexual predator supply the Internet identifier used by the sexual predator rather than the instant message name upon registration as a sexual predator. Prohibits a minor from intentionally or knowingly using an electronic communication device to transmit, distribute, or display a visual depiction of himself or herself which depicts nudity or for the minor to intentionally or knowingly possess a visual depiction of another minor that depicts nudity and is harmful to minors. Provides an exception. Provides criminal penalties, etc.	CJ 04/04/2011 JU BC
15	<b>SB 2010</b> Braynon (Similar CS/H 369, Compare H 4215, S 2018)	Faith- and Character-based Correctional Programs; Provides requirements for faith-and character-based programs. Deletes provisions relating to funding. Revises requirements for participation by inmates in such programs. Deletes provisions requiring the assignment of chaplains to community correctional centers, etc.	CJ 04/04/2011 BC

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Criminal Justice

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	<b>SB 2018</b> Braynon (Identical H 4215, Compare CS/H 369, S 2010)	Faith-based Prison Programs; Deletes a requirement that a specified percentage of inmates in such programs be within 36 months of release.  CJ      04/04/2011 BC	

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137026

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/28/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 32 - 35  
and insert:

(5) If a violation of subsection (2) causes or contributes to causing serious bodily injury, as defined in s. 316.1933, or death to the minor, or if the minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party, the violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.



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

And the title is amended as follows:

Delete line 9

and insert:

bodily injury or death to the minor, or causes or  
contributes to causing serious bodily injury or death  
to another person as a result of the minor's  
consumption of alcohol or drugs at the open house  
party; providing criminal penalties;

**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 746

INTRODUCER: Senator Altman

SUBJECT: Open House Parties

DATE: March 14, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young	Imhof	RI	<b>Favorable</b>
2.	Dugger	Cannon	CJ	<b>Pre-Meeting</b>
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill amends s. 856.015, F.S., to enhance the penalty against a person violating, for a second or subsequent time, the prohibition against knowingly hosting an open house party where alcohol or drugs are possessed or consumed by a minor without having taken reasonable steps to prevent such possession or consumption. The penalty increases from a second degree misdemeanor (punishable by up to 60 days in jail and/or a fine not exceeding \$500) to a first degree misdemeanor (punishable by up to one year in jail and/or a fine not exceeding \$1,000).

The bill further amends s. 856.015, F.S., to provide that anytime there is a violation of the open house party law that causes or contributes to causing serious bodily injury or death, it is also a misdemeanor of the first degree.

The bill provides a July 1, 2011 effective date.

This bill substantially amends section 856.015, of the Florida Statutes:

**II. Present Situation:**

Section 856.15, F.S., provides that it is a second degree misdemeanor for a person who has control of a residence to allow an open house party to take place at the residence if that person has knowledge that alcohol or drugs are being possessed or consumed by a minor and the person fails to take reasonable steps to prevent the possession or consumption.

A second degree misdemeanor is punishable as provided under s. 775.082, F.S., or s. 775.083, F.S. Section 775.082, F.S., provides that a second degree misdemeanor is punishable by

incarceration for not longer than 60 days in jail.<sup>1</sup> Section 775.083, F.S., provides that a second degree misdemeanor can also be punishable by a fine of not more than \$500.<sup>2</sup>

Section 856.015(1), F.S., defines the following terms:

- “Open house party” means a social gathering at a residence;
- “Control” means the authority or ability to regulate, direct, or dominate;
- “Residence” means a home, apartment, condominium or other dwelling unit;
- “Minor” means a person not legally permitted by reason of age to possess alcoholic beverages; and
- “Person” means anyone 18 years of age or older.

It is unlawful for any person younger than 21 years of age to possess alcoholic beverages in the state of Florida.<sup>3</sup> This means that the penalties for holding an open house party where persons under the age of 21 possess or consume an alcoholic beverage applies to any person 18 years of age or older.

Section 856.015(3), F.S., provides an exemption for the use of alcoholic beverages at legally protected religious ceremonies or observances.

The prohibition requires the person in control of the residence have actual knowledge that a minor is in possession of or consuming an alcoholic beverage or drugs. Actual knowledge is defined as “direct and clear knowledge.”<sup>4</sup> As a result, it is not enough that the person in control of the residence should have known of the possession or consumption, but instead must have “direct and clear” knowledge of the possession or consumption by a minor.

Further, the statute provides that the person in control of the residence must take reasonable steps to prevent the possession or consumption by a minor of an alcoholic beverage or drugs. This includes reasonable steps once the person has actual knowledge that a minor possesses or is consuming an alcoholic beverage or drugs. The Florida Supreme Court discussed this provision and held that the “adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof.”<sup>5</sup>

Currently, s. 856.015, F.S., does not address the liability of a person in control of an open house party after a person leaves the open house party and causes death or serious bodily injury due to the possession or consumption of alcoholic beverages.

“Serious bodily injury” is defined by s. 316.1933(1)(b), F.S., to mean “an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

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<sup>1</sup> See s. 775.082(4)(b), F.S.

<sup>2</sup> See s. 775.083(1)(e), F.S.

<sup>3</sup> Section 562.111, F.S.

<sup>4</sup> Black's Law Dictionary (9th ed. 2009), knowledge (actual knowledge).

<sup>5</sup> See *State v. Manfredonia*, 649 So.2d 1388, 1391 (Fla. 1995).

**III. Effect of Proposed Changes:**

The bill amends subsection (4) of s. 856.015, F.S., to provide that a person who violates the prohibition for a second or subsequent time by knowingly hosting an open house party where minors possess or consume an alcoholic beverage or drugs and does not take reasonable steps to stop or prevent the action, is guilty of a misdemeanor of the first degree (punishable by up to one year in jail and/or a fine that does not exceed \$1,000<sup>6</sup>).

The bill also creates subsection (5) in s. 856.015, F.S., to provide that a person who violates the statute by knowingly hosting an open house party and that violation causes or contributes to causing serious bodily injury (as defined in s. 316.1933, F.S.) or death, is guilty of a misdemeanor of the first degree.

**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:**

There could be an indeterminate fiscal impact upon jails as a result of the enhanced misdemeanor penalties.

**VI. Technical Deficiencies:**

None.

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<sup>6</sup> See s. 775.082(4)(a) and s. 775.083(1)(d), 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.

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

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1300

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

I, Kurt S. Browning, Secretary of State,  
do hereby certify that

*Wansley Walters*

is duly appointed

**Secretary,**

**Department of Juvenile Justice**

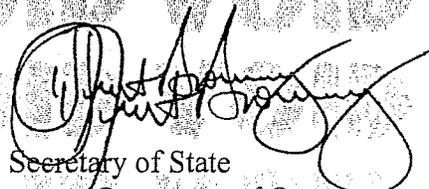
for a term beginning on the

First day of February, A.D., 2011,

to serve at the pleasure of the Governor

and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Eleventh day of February, A.D., 2011.*

  
Secretary of State  
Secretary of State



DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



**RICK SCOTT**  
GOVERNOR

RECEIVED  
2011 FEB -9 PM 3:10  
DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

February 8, 2011

Mr. Kurt S. Browning, Secretary  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 20.316, Florida Statutes:

Mrs. Wansley H. Walters

as Secretary of the Department of Juvenile Justice, succeeding Frank W. Peterman, subject to confirmation by the Senate. This appointment is effective February 1, 2011, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/jlw



9. Are you a United States citizen? Yes  No  If "No" explain:

If you are a naturalized citizen, date of naturalization: \_\_\_\_\_

10. Since what year have you been a continuous resident of Florida? 1956

11. Are you a registered Florida voter? Yes  No  If "Yes" list:

A. County of registration: Miami-Dade B. Current party affiliation: Democrat

12. Education

A. High School: Manatee High School Year Graduated: 1971  
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
<u>University of South Florida Tampa, Florida</u>	<u>1971-1975</u>	<u>BA Speech Communications</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes  No  If "Yes" list:

A. Dates of service: \_\_\_\_\_

B. Branch or component: \_\_\_\_\_

C. Date & type of discharge: \_\_\_\_\_

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
<u>No</u>			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
<u>Miami-Dade County Juvenile Services Department</u>	<u>County Department Juvenile Justice</u>	<u>Director</u>	<u>1997 - Present</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes  No   
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
<u>Latest: Director Juvenile Services Dept. (12 years)</u>	<u>Miami-Dade County</u>	<u>30 years w/ county</u>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I led the effort to open a Juvenile Assessment Center (JAC) in the mid 1990's. I went there as Director and led a ten year juvenile reform effort. I have served as Director as the facility moved from a bureau in Miami-Dade Police Department, to a separate County Department to a Juvenile Services Department.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes  No  If "Yes", list:

July 2008: Juvenile Justice: Mult-System Integration, Georgetown UNIV.  
June 2006: Driving Government Performance, Harvard UNIV. JFK School of Gov.  
April 2002: Academy for Strategic Mgmt., Inst. of Gov. Florida Intl University

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes  No  If "Yes", list:

Finalist - US Dept of Justice OJJDP Administrator position  
Speaker - National and International - Juvenile Justice  
Pioneer Award - Juvenile Justice - Mayor's Award "In the Company of Women", Miami, Florida

D. Identify all association memberships and association offices held by you that relate to this appointment:

Florida Juvenile Justice Association  
International Women's Forum  
Junior League of Miami

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes  No  If "Yes", list:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. A. Have you ever been elected or appointed to any public office in this state? Yes  No  If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

- (1) How frequently were meetings scheduled: \_\_\_\_\_
- (2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes  No  If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes  No  If "Yes", list:

- A. Title of office: \_\_\_\_\_ C. Reason for suspension: \_\_\_\_\_
- B. Date of suspension: \_\_\_\_\_ D. Result: Reinstated  Removed  Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes  No  If "Yes", list:

- A. Title of Office: \_\_\_\_\_
- B. Term of Appointment: \_\_\_\_\_
- C. Confirmation results: \_\_\_\_\_

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes  No  If "Yes", explain:

\_\_\_\_\_

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes  No  If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY*
Miami Dade County	Employer	Department Director Juvenile Services

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes  No  If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
Cliff Walters Consulting LLC	Husband	Principal	None
	Cliff Walters		

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes  No

A. Did you receive any compensation other than reimbursement for expenses? Yes  No

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
U.S. Congress	Miami-Dade County
U.S. Department of Justice	

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
George Kluck			
Mark Griesberg + Debbie			
Judge Martin Kain			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
Florida Juvenile Justice Assoc. (through Miami Dade County)	1201 Hays St, Tallahassee, FL 32301	N/A	1998 - Current
International Women's Forum	2120 L St. NW Wash DC 20037	N/A	2006 - Current
Junior League of Miami	713 Biltmore Way, Coral Gables, FL 33134	N/A	1984 - Current

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes  No  If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes  No

RECEIVED  
DEPARTMENT OF STATE  
2011 FEB -9 PM 3:10  
DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.



Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

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IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399  
(850) 245-0158

CERTIFICATION

RECEIVED  
DEPARTMENT OF STATE  
2011 FEB -9 PM 3:10

STATE OF FLORIDA, COUNTY OF

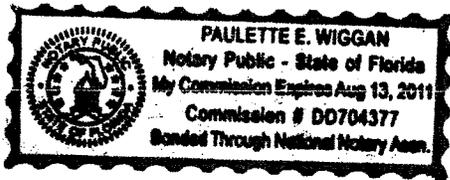
Before me, the undersigned Notary Public of Florida, personally appeared Wansley Walters, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

Wansley Walters  
Signature of Applicant-Affiant

Sworn to and subscribed before me  
this 27<sup>th</sup> day of January, 2011.

Paulette E. Wiggan  
Signature of Notary Public-State of Florida



PAULETTE E. WIGGAN  
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: August 13, 2011

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

(seal)

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED  
2011 FEB -9 PM 3:10  
FLORIDA STATE  
DIVISION OF ELECTIONS

STATE OF FLORIDA

County of Miami Dade

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Dept. of Juvenile Justice  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Mary Hank Walters  
Signature

Sworn to and subscribed before me this 31<sup>st</sup> day of January, 2011.



Paulette E. Wiggan  
Signature of Officer Administering Oath of Notary Public

PAULETTE E. WIGGAN  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

Street or Post Office Box

Wansley Walters  
Print name as you desire commission issued

City, State, Zip Code

Mary Walters  
Signature

**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 226

**INTRODUCER:** Committee on Children, Families, and Elder Affairs and Senators Smith and Gaetz

**SUBJECT:** Human Services Contracting

**DATE:** March 30, 2011      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	<b>Fav/CS</b>
2.	Clodfelter	Cannon	CJ	<b>Pre-Meeting</b>
3.			GO	
4.			BC	
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 creates s. 287.0576, F.S., relating to outsourced human services, and provides definitions. The bill requires that private accreditation standards be accepted in lieu of agency licensure requirements and requires a single agency to take the lead in developing policies and monitoring requirements for specified human services. The bill specifies duties for each lead agency, addresses material changes to contracts and corresponding contract amendments, provides that unexpended but disbursed funds carry over to the next year as cash flow, and requires agencies to accept and maintain electronic versions of mandated reports.

The bill requires the Department of Management Services (DMS) to recognize established electronic storage vaults and to promote the development, implementation, and maintenance of such vaults.

This bill creates section 287.0576, Florida Statutes.

## II. Present Situation:

### **Contracting and Outsourcing**

#### ***Background***

Privatization involves the provision of publicly funded services by nongovernmental entities. Privatization can take several forms, including the cessation of services by government, the outsourcing of services by government, the divestiture of government assets, and the use of public-private partnerships. Outsourcing has become a common approach to providing human services as states and localities face budget crises and struggle to ensure the same level of services with limited resources. Government is increasingly turning to nonprofit groups, community-based organizations, faith-based organizations, charitable agencies, and private-sector companies to provide human services.<sup>1</sup>

Although the terms “privatization” and “outsourcing” are often used interchangeably, the two service structures are different. With privatization, program infrastructure is transferred entirely from the government to another service provider. The government ceases to provide those services. With outsourcing, the government competitively contracts with a vendor to provide specific services. Most outsourced functions involve transferring responsibilities for the management, operation, upgrade, and maintenance of some infrastructure to the contracted vendor, with the government agency retaining a central role in program oversight.<sup>2</sup> The Florida Statutes define “outsource” as the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), F.S., in whole or in part, or an activity as defined in s. 216.011(1)(rr), F.S., while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.<sup>3</sup>

Many factors drive government to outsource the delivery of human services, including the desire to improve service, increase efficiency, and ensure cost-effectiveness. State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

#### ***Agency for Health Care Administration (AHCA)***

The Agency for Health Care Administration does not contract with providers of human services related to mental health, substance abuse, child welfare, or juvenile justice. The agency purchases and reimburses providers and managed care plans for these services. Currently, AHCA contracts with Medicaid managed care organizations (MCO) to offer plans that cover Medicaid mental health services for Medicaid eligible recipients. The MCOs then subcontract with mental health service providers to deliver these services.<sup>4</sup>

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<sup>1</sup> Bando, E. *Outsourcing the Delivery of Human Services*, Welfare Information Network, Issue Notes. Vol. 7, No. 12 October 2003. Available at: <http://76.12.61.196/publications/outsourcinghumanservicesIN.htm> (Last visited March 16, 2011.)

<sup>2</sup> *Id.*

<sup>3</sup> Section 287.05721(2), F.S.

<sup>4</sup> Agency for Health Care Administration. 2011 Bill Analysis and Economic Impact Statement, SB 226.

For Medicaid providers who are reimbursed on a fee-for-service basis, specialists in each Medicaid area office conduct the administrative monitoring. In addition, AHCA and the MCOs also monitor many providers to ensure quality of services.<sup>5</sup>

***Department of Children and Family Services (DCF)***

Section 20.19, and Chapters 287 and 402, F.S., require DCF whenever possible, in accordance with established program objectives and performance criteria, to contract for the provision of services by counties, municipalities, not-for-profit corporations, for-profit corporations, and other entities capable of providing needed services, if services so provided are more cost-efficient than those provided by the department.<sup>6</sup> In addition, the department conducts competitive procurements for child welfare services that have been outsourced pursuant to s. 409.1671, F.S.<sup>7</sup>

***Agency for Persons with Disabilities (APD)***

The Agency for Persons with Disabilities works in partnership with local communities and private providers to assist people who have developmental disabilities and their families. APD also provides assistance in identifying the needs of people with developmental disabilities for supports and services, and manages various Medicaid waivers.<sup>8</sup> While it is a provider of human services, APD is not included in the bill among the human services agencies.<sup>9</sup>

***Department of Health (DOH)***

The Department of Health currently interprets child welfare services as being those services associated with adoption and foster care. The only service that DOH has in this area is child protective services within the Division of Children's Medical Services (CMS).<sup>10</sup> Currently CMS performs the programmatic monitoring of approximately 23 child protection team contracts at an annual cost of \$31 million.<sup>11</sup>

***Payment Issues***

Current law provides payment procedures for invoices submitted to a state agency. Invoices must be filed with the Chief Financial Officer (CFO), recorded in the financial systems of the state, approved for payment by the agency, and filed with the CFO not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services. In the case of a

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<sup>5</sup> *Id.*

<sup>6</sup> Department of Children and Family Services, *Procurement and Contract Management, Contract Management System For Contractual Services*. CFOP 75-2. Available at: <http://www.dcf.state.fl.us/admin/publications/policies/075-2.pdf>. (Last visited March 16, 2011).

<sup>7</sup> Department of Children and Family Services. Staff Analysis and Economic Impact, SB 226, December 20, 2010.

<sup>8</sup> Prior to October, 2004, APD was the Developmental Disabilities Program Office within the Department of Children and Families.

<sup>9</sup> However, the background screening requirements and the reporting requirements of the bill will affect APD. Agency for Persons with Disabilities. 2011 Bill Analysis, SB 226, February 11, 2011.

<sup>10</sup> Section 39.303, F.S. provides that the Children's Medical Services Program at DOH shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection team in each of the service districts of DCF to supplement the assessment and protective supervision activities of DCF's family safety program. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The two departments are required to maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs.

<sup>11</sup> Department of Health. 2011 Bill Analysis, Economic Statement and Fiscal Note, SB 226, January 7, 2011.

dispute, the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed.<sup>12</sup>

### ***Document Vaults***

Section 287.0585, F.S., relating to the coordination of contracted services, establishes duties and responsibilities for DCF, APD, DOH, the Department of Elderly Affairs (DOEA), and the Department of Veterans' Affairs (DVA), and service providers under contract to those agencies. A single lead administrative coordinator for each contract service provider must be designated and the lead coordinator is required to maintain an accessible electronic file of up-to-date administrative and fiscal documents, including, but not limited to, corporate documents, membership records, audits, and monitoring reports. DCF reports that agencies are in the process of implementing this "document vault" for providers that would fall within "health and human services."<sup>13</sup>

### ***Background Screening***

The Florida Legislature in 1995 created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons, including children, the elderly, and the disabled. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

To address these issues, the legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations.<sup>14</sup> Background screening requirements vary depending upon job classifications and populations of clients served.

The Federal Bureau of Investigation (FBI) has only authorized Florida agencies to share FBI screening information with other Florida agencies if both agencies are using the information for the same purpose. For example, the FBI has authorized DCF to share information with APD, but does not allow these agencies to share their screening information with AHCA.<sup>15</sup> This means that AHCA could share the fact that the person was cleared by the background screening, but cannot share the actual content of the criminal history record.<sup>16</sup>

## **III. Effect of Proposed Changes:**

### **Definitions**

The bill defines the term "financial impact" as an increase in reasonable costs of 5 percent or more in the annual aggregate payment to a contractor performing a contract for the outsourcing of human services.

The bill defines the term "human services" to mean services related to mental health, substance abuse, child welfare, or juvenile justice.

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<sup>12</sup> s. 215.422, F.S.

<sup>13</sup> Department of Children and Family Services. Staff Analysis and Economic Impact, SB 226, December 20, 2010.

<sup>14</sup> Chapter 2010-114, L.O.F.

<sup>15</sup> Agency for Persons with Disabilities. 2011 Bill Analysis, SB 226, February 11, 2011.

<sup>16</sup> Florida Department of Law Enforcement. 2011 Bill Analysis, SB 226, March 30, 2011.

The bill also defines the term “new governmental mandate” as a statutory requirement, administrative rule, regulation, assessment, executive order, judicial order, or other governmental requirement, or an agency policy, that was not in effect when a contract for the outsourcing of human services was originally entered into and that directly imposes an obligation on the contractor to take, or to refrain from taking, an action in order to fulfill its contractual obligation.

### **Outsourced Human Services**

The bill contains provisions that intend to create a more stable business environment for contractors providing outsourced human services related to mental health, substance abuse, child welfare, or juvenile justice and to ensure accountability, eliminate duplication, and improve efficiency with respect to the provision of such services.

The bill provides that accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JACHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), and the Council on Accreditation shall be accepted by state agencies in lieu of the agency’s facility licensure onsite review and administrative requirements, and as a substitute for the state agency’s licensure, administrative, and program monitoring requirements. The bill provides that accreditation for administrative requirements satisfies the administrative requirements for licensure during the period of time that the accreditation is effective.

The bill also provides that an agency may continue to inspect and monitor the contractor as necessary with respect to reimbursement issues, complaints investigations and suspected problems, and compliance with federal and state laws not covered by accreditation.

The bill requires each state agency that has been designated by the federal government or state law as the authorized state entity with respect to the provision of a defined human service population to be the lead agency for the provision of all related human services. By October 1, 2011, each lead agency is required to:

- Develop a common monitoring protocol that must be used by all agencies serving the same population;
- Implement a plan to coordinate monitoring activities related to the delivery of services to the populations being served by multiple state agencies;
- Adopt rules that guide the delivery of service across the jurisdictions of multiple state agencies serving the same population and coordinate all monitoring activities;
- Provide for a master list of core required documents for contract monitoring purposes and provide for the submission or posting of such documents by each contractor; and
- If the same information or documentation is required by more than one agency, develop a common form to be used by all agencies requesting that information or documentation.

The bill requires that a department or agency must accept all mandated reports and invoices from human services contractors electronically, and allow all required core documents to be posted in secure electronic storage. The Department of Management Services (DMS) is required to recognize electronic document vaults established for the purpose of storing, delivering, and retrieving documents required in monitoring and regulatory review processes. To the greatest extent possible, the department shall promote the development, implementation, and maintenance of such vaults by service providers or provider trade associations. If a contractor

uses such storage, the department or agency must have access to the electronic storage in order to monitor required documents, and shall by rule or contract require the contractor to deposit documents requested by the agency in such storage.

The bill also requires that contracts to outsource human services related to mental health, substance abuse, child welfare, and juvenile justice must:

- Provide that if a material change to the scope of the contract is imposed upon a service provider and compliance with such change will have a material adverse financial impact on the service provider, the contracting agency shall negotiate a contract amendment with the service provider to increase the maximum obligation amount or unit price of the contract to offset the material adverse financial impact of the change if the service provider furnishes evidence to the contracting agency of such material adverse financial impact along with a request to renegotiate the contract based on the proposed change;
- Provide for an annual cost of living adjustment that reflects increases in the cost of living index, subject to appropriation;
- Ensure that payment will be made on all items not under dispute and that payment will not be withheld on undisputed issues pending the resolution of disputed issues; and
- Provide that any disbursed funds that remain unexpended during the contract term be considered as authorized revenue for the purposes of cash flow and continuation of the contract.

The bill also provides:

- When a contractor is aggrieved by the refusal or failure of a governmental unit to negotiate a contract amendment to remedy a material adverse financial impact of a new governmental mandate pursuant to this section, this constitutes an agency action for the purposes of chapter 120, F.S.
- Each agency that contracts for the provision of specified human services must prepare a comprehensive list of all contract requirements, mandated reports, outcome measures, and other requirements of a provider and submit the list annually to the Governor.
- State agencies shall provide an analysis of every new governmental mandate, form, or procedure required of a service provider under a contract for the outsourcing of human services which was not in effect when the contract was originally entered into. The analysis must identify the cost to the provider of any new requirements and must be transmitted to the provider before any new mandate, form, or procedure may be used or implemented. The analysis must also include a fiscal impact statement with respect to each new form, procedure, or mandate required or imposed.

### **Background Screening**

The bill provides that Level 2 background screening conducted for one lead agency shall satisfy the screening requirements for all agencies requiring such screening.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.<sup>17</sup> Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion."<sup>18</sup> The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.<sup>19</sup>

The bill requires agencies to accept "national accreditation of human services providers" notwithstanding any other provision of law, which appears to be a delegation problem on its face, since it requires the unfixed standards of a private entity to substitute for and supplant the Legislature's duty to determine the law.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

**AHCA** reports that a reduction in administrative monitoring may reduce provider costs.

**DCF** reports that there may be a fiscal impact on the private sector but it is impossible to measure that impact at this time.

<sup>17</sup> *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991).

<sup>18</sup> *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).

<sup>19</sup> *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 363 (Fla. 1st DCA 1985).

**APD** reports that providers and some APD consumers may realize some savings if Level 2 background screenings for one lead agency will satisfy the requirements for all agency screenings.

**C. Government Sector Impact:**

**Agency for Health Care Administration**

ACHA reports that under the current definition of outsourced contracts, provisions of the bill would not impose a fiscal impact on the agency. If the intent of the bill is to apply the new provisions to all contracted health related services, then AHCA's existing contracts with Medicaid managed care plans would have to be amended to add the new requirements which may result in significant fiscal issues if the agency must comply with new mandates and funds have not been appropriated to cover the cost.

**Department of Children and Family Services**

DCF reports that the provisions of the bill will result in an increased workload and duplicative tasks for the department which will result in an unknown fiscal impact. DCF has not provided an estimate of how the bill will impact workload or duplicative tasks.

In addition, in relation to the Substance Abuse Program Office, the bill is unclear as to whether the exception for accredited agencies would also extend to the licensing fees collected as part of the licensing process. If the accreditation exception was approved, and licensing fees not collected as part of accreditation requirements, the state would lose licensure revenue each year.

**Department of Health**

DOH reports that requiring contracts to outsource human services to provide a cost of living adjustment would result in a fiscal impact on the department. For example, if the cost of living increased by 1 percent, then there would be a potential for the child protection team contracts to increase by \$310,000. DOH reports that the cost increase not accompanied by an increase in services might be contrary to the provisions of s. 215.425, F.S., relating to the prohibition of extra compensation claims.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The constitutional problem with delegating legislative authority as described in new s. 287.0575(2)(a), F.S., is discussed in Other Constitutional Issues, above, but this provision also presents practical issues. If the three private accreditation entities have different accreditation standards, there will be a lack of uniformity in standards. It is also unclear what "administrative requirements" are to be supplanted by the private accreditations.

Lines 101-103 of the bill give authority to a "lead agency" to "adopt rules that guide the delivery of service across the jurisdictions of multiple state agencies...." This provision may conflict with

statutory grants of rulemaking authority to individual agencies, and may lead to uncertainty as to which agency has authority for what rule.

Lines 134-148 require that a contract to outsource human services must have a provision that material changes that have a financial impact on a provider must result in a contract amendment to increase the payment to the contractor. This provision may be susceptible to differing interpretations, since “material change” is not defined, and though “financial impact” is defined in the bill, it includes a reference to “reasonable costs,” which isn’t defined.

The **Department of Children and Family Services** has raised a number of issues with the provisions of the bill including, but not limited to:

- Not every contracted service supplied by DCF necessarily falls within the category of “outsourced” and therefore the department would have considerable difficulty in providing clear operational instructions to employees. Examples of “outsourced” human services would be lead agencies under Section 409.1671, F.S., and managing entities under Section 394.9082, F.S. If the intent is to address only providers of outsourced services, then the number of affected providers is limited. On the other hand, if the intent is to address all providers of human services, then there are numerous types of providers that would be covered by the legislation.
- National accreditation typically only requires an onsite review every 3 years. In some cases the particular service purchased from a provider does not fall under national accreditation. The provider as an entity may not have accreditation over all programs for which it provides services to the DCF. The national accreditation would not provide assurance that the services paid for were delivered, and that the health, safety and welfare of the department’s clients is not compromised.
- When considering the provisions of the bill related to substitution of accreditation for “programmatically monitoring,” DCF is required to continue to operate a statewide quality assurance (QA) system pursuant to title IV-B and IV-E of the Social Security Act. In order for Florida to receive federal funding, regulations require the state to develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children. States must also implement standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children and operate an identifiable quality assurance system. The Federal Administration for Children and Families has confirmed that Florida will be out of compliance if there is not a QA system in place.
- Subsection (3) of the bill requires that the agency designated at the state or federal level as the authorized entity for a defined human service population be the “lead agency” for all human services to that population. While subsection (3) does not specifically duplicate the requirements of the statute that would immediately precede it in statutory order,<sup>20</sup> the requirements of the two sections overlap significantly. Section 287.0575, F.S., already contains a statutory scheme for designating a lead state agency when multiple agencies contract with a single provider for “health and human services” and makes that lead agency responsible for establishing a coordinated schedule for administrative and fiscal monitoring,

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<sup>20</sup> s. 287.0575, F.S.

and establishing and maintaining a unified set of documents to be used by the multiple agencies.

- DCF has had experience in consolidating monitoring coordination efforts, which have proven to be unsuccessful and time intensive. Ultimately, each agency defaults to its own monitoring. Specifically, the Substance Abuse Program Office worked with AHCA, DJJ, and the Department of Corrections to develop a Unified Substance Abuse Monitoring Tool. While progress was made, a considerable amount of staff effort is required to implement consolidating monitoring tools.<sup>21</sup>

#### **Agency for Persons with Disabilities**

APD reports potential issues with the background screening provisions in the bill. The bill does not specify how agencies should resolve disqualifying offenses that are unique to their individual screening requirements. According to the FDLE, the FBI allows an agency to share the fact that a person was cleared by the background screening, but cannot share the actual content of the criminal history record.<sup>22</sup>

The **Department of Health** has raised a number of concerns with provisions of the bill including:

- Section 287.001, F.S., provides that all contracts must be awarded equitably and economically. The bill would give preference to some providers due to the cost of living provision.
- The bill requires the lead agency to develop a common monitoring protocol and it is unclear whether this is in addition to, or it supplants, the requirements of s. 287.0575(4), F.S., relating to the coordination of contracted services.
- Provisions of the bill appear to conflict with s. 287.0575, F.S., relating to the coordination of contracted services due to the fact that the bill limits monitoring activities on providers of human services accredited by JAHCO, CARF, and COA. Section 287.0575 F.S., does not provide for exceptions.
- The bill provides that unexpended contract funds will carry forward to the next contract cycle, which may conflict with some federal grant directives that require all unexpended funds to be returned.

The **Department of Health** and the **Agency for Persons with Disabilities** report the potential for increased litigation against the departments and agencies as a result of the provision of the bill that gives contractors additional administrative hearing rights related to the negotiation of contracts.

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<sup>21</sup> Department of Children and Family Services, Staff Analysis and Economic Impact, SB 226. December 10, 2010.

<sup>22</sup> Florida Department of Law Enforcement. 2011 Bill Analysis, SB 226, March 30, 2011.

**VIII. Additional Information:**

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

**CS by Children, Families, and Elder Affairs on March 22, 2011:**

Removes the provision in the bill that required the Social Services Estimating Conference to develop information related to mental health, substance abuse, child welfare, and juvenile justice services.

- B. **Amendments:**

None.

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

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217026

LEGISLATIVE ACTION

Senate

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House

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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. Eligibility criteria for government-funded  
pretrial release.-

(1) It is the policy of this state that only defendants who  
are indigent and therefore qualify for representation by the  
public defender are eligible for government-funded pretrial  
release. Further, it is the policy of this state that, to the  
greatest extent possible, the resources of the private sector be



217026

13 used to assist in the pretrial release of defendants. It is the  
14 intent of the Legislature that this section not be interpreted  
15 to limit the discretion of courts with respect to ordering  
16 reasonable conditions for pretrial release for any defendant.  
17 However, it is the intent of the Legislature that government-  
18 funded pretrial release be ordered only as an alternative to  
19 release on a defendant's own recognizance or release by the  
20 posting of a surety bond.

21 (2) A pretrial release program established by an ordinance  
22 of the county commission, an administrative order of the court,  
23 or by any other means in order to assist in the release of  
24 defendants from pretrial custody is subject to the eligibility  
25 criteria set forth in this section. These eligibility criteria  
26 supersede and preempt all conflicting local ordinances, orders,  
27 or practices. Each pretrial release program shall certify  
28 annually, in writing, to the chief circuit court judge, that it  
29 has complied with the reporting requirements of s. 907.043(4),  
30 Florida Statutes.

31 (3) A defendant is eligible to receive government-funded  
32 pretrial release only by order of the court after the court  
33 finds in writing upon consideration of the defendant's affidavit  
34 of indigence that the defendant is indigent or partially  
35 indigent as set forth in Rule 3.111, Florida Rules of Criminal  
36 Procedure, and that the defendant has not previously failed to  
37 appear at any required court proceeding. A defendant may not  
38 receive a government-funded pretrial release if the defendant's  
39 income is above 300 percent of the then-current federal poverty  
40 guidelines prescribed for the size of the household of the  
41 defendant by the United States Department of Health and Human



217026

42 Services, unless the defendant is receiving Temporary Assistance  
43 for Needy Families-Cash Assistance, poverty-related veterans'  
44 benefits, Supplemental Security Income (SSI), food stamps, or  
45 Medicaid.

46 (4) If a defendant seeks to post a surety bond pursuant to  
47 a bond schedule established by administrative order as an  
48 alternative to government-funded pretrial release, the defendant  
49 shall be permitted to do so without any interference or  
50 restriction by a pretrial release program.

51 (5) This section does not prohibit the court from:

52 (a) Releasing a defendant on the defendant's own  
53 recognizance.

54 (b) Imposing upon the defendant any additional reasonable  
55 condition of release as part of release on the defendant's own  
56 recognizance or the posting of a surety bond upon a finding of  
57 need in the interest of public safety, including, but not  
58 limited to, electronic monitoring, drug testing, substance abuse  
59 treatment, or attending a batterers' intervention program.

60 (6) In lieu of using a government-funded program to ensure  
61 the court appearance of any defendant, a county may reimburse a  
62 licensed surety agent for the premium costs of a surety bail  
63 bond that secures the appearance of an indigent defendant at all  
64 court proceedings if the court establishes a bail bond amount  
65 for the indigent defendant.

66 Section 2. This act shall take effect October 1, 2011.

67  
68 ===== T I T L E A M E N D M E N T =====

69 And the title is amended as follows:

70 Delete everything before the enacting clause



217026

71 and insert:

72                   A bill to be entitled  
73           An act relating to pretrial programs; providing state  
74           policy and legislative intent; requiring each pretrial  
75           release program established by ordinance of a county  
76           commission, by administrative order of a court, or by  
77           any other means in order to assist in the release of a  
78           defendant from pretrial custody to conform to the  
79           eligibility criteria set forth in the act; preempting  
80           any conflicting local ordinances, orders, or  
81           practices; requiring that the defendant satisfy  
82           certain eligibility criteria in order to be assigned  
83           to a pretrial release program; providing that the act  
84           does not prohibit a court from releasing a defendant  
85           on the defendant's own recognizance or imposing any  
86           other reasonable condition of release on the  
87           defendant; authorizing a county to reimburse a  
88           licensed surety agent for the premium costs of a bail  
89           bond for the pretrial release of an indigent defendant  
90           under certain circumstances; providing an effective  
91           date.



650300

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment to Amendment (217026) (with title amendment)**

Between lines 65 and 66  
insert:

(7) The income eligibility limitations applicable to government-funded pretrial release programs apply only to those counties with a population equal to or greater than 350,000 persons.

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



650300

13 And the title is amended as follows:  
14       Delete line 90  
15 and insert:  
16       under certain circumstances; providing that the income  
17       eligibility limitations applicable to government-  
18       funded pretrial release programs apply only to certain  
19       specified counties; providing an effective



330632

LEGISLATIVE ACTION

Senate

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House

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

1           **Senate Amendment to Amendment (217026) (with title**  
2 **amendment)**

3  
4  
5           Between lines 65 and 66  
6 insert:

7           (7) A defendant who is not otherwise eligible for  
8 government-funded pretrial release under subsection (3) is  
9 eligible for government-funded pretrial release 24 hours after  
10 the defendant's arrest.

11  
12 ===== T I T L E   A M E N D M E N T =====



330632

13 And the title is amended as follows:

14 Delete line 90

15 and insert:

16 under certain circumstances; providing that a  
17 defendant who is not otherwise eligible for  
18 government-funded pretrial release becomes eligible  
19 for government-funded pretrial release 24 hours after  
20 the defendant's arrest; providing an effective



879544

LEGISLATIVE ACTION

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

1           **Senate Amendment to Amendment (217026) (with title**  
2 **amendment)**

3  
4  
5           Between lines 65 and 66  
6 insert:

7           (7) This section does not prohibit a law enforcement  
8 officer or a code enforcement officer authorized under s.  
9 162.23, Florida Statutes, from issuing a notice to appear in  
10 lieu of jail.

11  
12 ===== T I T L E   A M E N D M E N T =====



879544

13 And the title is amended as follows:  
14       Delete line 90  
15 and insert:  
16       under certain circumstances; providing that the act  
17       does not prohibit a law enforcement officer or a code  
18       enforcement officer from issuing a notice to appear in  
19       lieu of jail; providing an effective

**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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 372

INTRODUCER: Senator Bogdanoff

SUBJECT: Pretrial Programs

DATE: March 15, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			BC	
4.				
5.				
6.				

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**I. Summary:**

Senate Bill 372 creates an undesignated new section of Florida Statutes that would implement statutory eligibility criteria for defendants admitted to the county pretrial release programs.

The bill sets forth a state policy that only indigent defendants who qualify for the appointment of the public defender are eligible for participation in pretrial release programs.

The policy that private entities be used to assist defendants in pretrial release, to the greatest possible extent, is also set forth in the bill

The bill expresses the intent of the Legislature that the bill not be interpreted to restrict courts from placing reasonable conditions on a defendant who is being released from custody by the court.

The state requires locally-created pretrial release programs to adhere to the indigency eligibility requirement of the bill and preempts all conflicting local ordinances, practices, or (court) orders.

The court must find a defendant indigent, in writing, pursuant to the procedures set forth in Florida Rule of Criminal Procedure 3.111, and order that the defendant is eligible to participate in a pretrial release program.

The bill prohibits interference by a pretrial release program when a defendant seeks to post a surety bond set forth in a predetermined bond schedule.

The bill declares that a county may reimburse a licensed surety agent for the costs of a bail bond that secures the appearance of the defendant at all court proceedings in lieu of utilizing the services of a local pretrial release program.

The bill creates an undesignated section of the Florida Statutes.

## II. Present Situation:

Article I, section 14 of the Florida Constitution provides that unless a person is charged with a capital offense or one punishable by life and “the proof of guilt is evident or the presumption great,” every person *shall be entitled* to pretrial release on reasonable conditions. If, however, no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.<sup>1</sup>

Section 907.041(3), F.S., sets forth the Legislature’s intention that there be a presumption in favor of nonmonetary release for any person who is granted release *unless* such person is charged with a dangerous crime. Subsection (4) of the same section of law defines the term “dangerous crime” for purposes of pretrial release.<sup>2</sup>

When a person is arrested and appears before the court at First Appearance, the court must determine whether the defendant should remain in custody or grant the defendant’s release pending the outcome of the charges. The decision is, practically-speaking, based upon consideration of the nature of the charges (and whether the court finds probable cause for the arrest), the defendant’s criminal history, his or her ties to the community, whether he or she presents a flight risk, and the safety of the victim and community at large.

The court has certain options available with regard to a person’s release at first appearance. These are:

- Release on own Recognizance (ROR) allows defendants to be released from jail based on their promise to return for mandatory court appearances. Defendants released on recognizance are not required to post a bond and are not supervised.
- Posting bond is a monetary requirement to ensure that defendants appear in court when required. A defendant whom the court approves for this release must post a cash bond to the court or arrange for a surety bond through a private bondsman. Defendants typically pay a nonrefundable fee to the bondsman of 10 percent of the bond required by the court for release. If the defendant does not appear, the bondsman is responsible for paying the entire

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<sup>1</sup> Art. I, section 14, Constitution of Florida.

<sup>2</sup> Section 907.041(4), F.S., defines the term “dangerous crime” to include arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking or aggravated stalking; act of domestic violence; home invasion robbery; act of terrorism; manufacturing any substances in violation of ch. 893; and attempting or conspiring to commit any of the aforementioned crimes.

amount. As such, bondsmen have a vested interest in ensuring that their clients attend their court dates and do not abscond. Bondsmen are not required to supervise a defendant.

- Pretrial release programs<sup>3</sup> supervise approved defendants. The programs do so through phone contacts, visits, and/or electronic monitoring until the defendant's case is disposed or until the defendant's supervision is revoked. Defendants generally are released into a pretrial release program without paying a bond, although this is not always the case. According to the OPPAGA report, judges in 23 of the 28 counties that have pretrial release programs may require defendants to post a bond *and* participate in a pretrial release program<sup>4</sup>, perhaps providing the defendants with an extra layer of accountability to the court. Defendants may be assigned to the program by a judge or selected for participation by the program. There are no pretrial release program eligibility criteria in the Florida Statutes – each county develops its own criteria for determining who is eligible for its pretrial release program.

Prior to a defendant being released to a pretrial release program, the program must certify to the court that it has investigated or otherwise verified:

- The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;
- The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and
- Other facts necessary to assist the court in its determination of the indigency of the accused and whether the accused should be released under the supervision of the program.<sup>5</sup>

### **Pretrial Release Programs in Florida**

Currently there are 28 local pretrial release programs in Florida. Section 907.044, F.S., requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct annual studies to evaluate the effectiveness and cost efficiency of pretrial release programs in the state. The county pretrial release programs are required to submit annual reports to OPPAGA by March 31 of every year which OPPAGA uses to gather the data for OPPAGA's annual evaluation of the programs. The OPPAGA report issued in December of 2010 analyzed the programs' performance for the 2009 calendar year. There are four primary questions OPPAGA must consider in conducting its annual study.

*How are Florida's Pretrial Release Programs Funded?* None of the programs receive state general revenue funding. The programs are initiated, administrated, and funded at the county government level. The counties that operate these programs determine their budgets, funding sources and the scope of the programs' services.<sup>6</sup>

<sup>3</sup> Section 907.043(2)(b), F.S., defines the term "pretrial release program" as an entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants.

<sup>4</sup> For example, 85-90% of Polk County defendants who participated in local pretrial release programs also paid a bond, while 42% did so in Broward County, 60% in Osceola County, and 24% of Palm Beach County defendants in the pretrial release program also paid a bond. *Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*; OPPAGA Report No. 10-66, issued December 2010, including Appendices and Supplemental Materials and Exhibits on file with the Senate Criminal Justice Committee. See Exhibit 2, page 3.

<sup>5</sup> s. 907.041(3)(b), F.S.

<sup>6</sup> OPPAGA Report 10-66, December 2010.

Five of the 28 programs have sought and received grant funding. Twelve programs charge fees to defendants participating in the program. Two of those counties (Leon and Palm Beach) require payment of cost of supervision which is used to help pay for the pretrial release programs. Some counties collect fees for urinalysis, electronic monitoring, GPS monitoring or telephone monitoring. These fees and costs are paid to vendors such as laboratories or other service providers and some portion of the funds may be deposited as county general revenue.<sup>7</sup>

*What is the nature of the criminal charges of defendants in pretrial release programs?* Although OPPAGA is expected to report this data, it is not generally collected by the programs in either the content or the form that s. 907.044, F.S., requires OPPAGA to analyze.

Section 907.043, F.S., requires that data be gathered and reported on a *weekly* basis by the pretrial release programs in a register held in the office of the local clerk of the circuit court. Section 907.043(3)(b)6., F.S., requires weekly program reporting of “*the charges* filed against and the case numbers of defendants accepted into the pretrial release program.”

Subsection (4) of the same statute, which contains the *annual* reporting requirements to OPPAGA by the programs, does not contain a component that is similar to either the weekly component nor the component OPPAGA must analyze.<sup>8</sup>

Due to the dissimilarity in reporting requirements, OPPAGA has only been able to report on seven county programs regarding this particular measure. Of those seven, one county reported that approximately 70 percent of its participants had prior violent felonies. The other six counties reported a much larger number of participants with no prior violent felonies.<sup>9</sup>

*How many defendants served by pretrial release programs were issued warrants for failing to appear in court or were arrested while in the program?* Two counties reported that no warrants were issued for defendants participating in their programs for failure to appear in court. At the other end of the spectrum, Miami-Dade reported that of 16,342 participants, 1,861 (11.4%) had warrants issued for their failure to appear.<sup>10</sup>

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<sup>7</sup> *Id.* Appendix B.

<sup>8</sup> Section 907.043(4)(b), F.S. requires the following:

1. The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program.
2. The operating and capital budget of each pretrial release program receiving public funds.
3. The percentage of the pretrial release program's total budget representing receipt of public funds; the percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program; the amount of fees paid by defendants to the pretrial release program.
4. The number of persons employed by the pretrial release program.
5. The number of defendants assessed and interviewed for pretrial release.
6. The number of defendants recommended for pretrial release.
7. The number of defendants for whom the pretrial release program recommended against nonsecured release.
8. The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.
9. The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court.
10. The name and case number of each person granted nonsecured release who: failed to attend a scheduled court appearance; was issued a warrant for failing to appear; was arrested for any offense while on release through the pretrial release program; and any additional information deemed necessary by the governing body to assess the performance and cost efficiency of the pretrial release program.

<sup>9</sup> *Pretrial Release Programs' Data Collection Methods and Requirements Could Improve*; OPPAGA Report issued December 2010, page 3.

<sup>10</sup> *Id.* page 4. See also Appendix A.

It should be noted that because of the ambiguity in the statutory language, persons who were arrested for failure to appear might be counted in both of the two categories this question is meant to analyze: a warrant may have been issued for failure to appear *and* the person may have been *arrested* on that warrant for failure to appear.

*Are pretrial release programs complying with statutory reporting requirements?* Apparently because of the ambiguous and problematic statutory language (discussed above), OPPAGA has had challenges collecting the data that Office needs to complete a thorough analysis.

All of the data elements do not apply to all of the programs. There is variation among the county programs in areas such as whether the program selects its participants, whether the program makes release recommendations to the court, or even whether pretrial services personnel attend First Appearance. Therefore, data elements like ‘the number of defendants recommended for pretrial release’<sup>11</sup> simply may not have a response.

Another problem encountered in the reporting process has been the restrictions by federal law on public access to national criminal history records and the Florida Department of Law Enforcement’s determination that the statute cannot authorize the dissemination of that information. This restriction resulted in most programs not providing the criminal history information required by s. 907.043(3)(b)7., F.S.<sup>12</sup>

*OPPAGA suggested several possibilities to assist the programs in reporting and allowing OPPAGA to compile a more complete report each year.* The OPPAGA report suggests statutory revisions that should lead to better data reporting and analysis in the future if they are enacted. It should be remembered, however, that the county pretrial release programs cannot be directly compared to other pretrial release options (bond and ROR) without comparative data on those other release options.<sup>13</sup>

### **Determination of Indigency**

In Florida, a person who is arrested and before the court at First Appearance is likely to have the public defender appointed to represent he or she, if only temporarily for the purposes of the First Appearance hearing, unless the arrest is on a minor misdemeanor offense which is unlikely to result in a loss of liberty.

With the defendant placed under oath, a court generally inquires about whether the defendant can afford to hire a lawyer, and may question the defendant regarding employment and property ownership. If the court is satisfied that the defendant is most likely indigent based upon the answers given, an application seeking appointment of the public defender is signed by the defendant at that time. Some jurisdictions may complete the application process in a different manner, but if the defendant is incarcerated it is the responsibility of the public defender to assist the defendant in the application process.<sup>14</sup>

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<sup>11</sup> s. 907.043(4)(b)6., F.S.

<sup>12</sup> OPPAGA Report 10-66, page 4.

<sup>13</sup> *Id.* page 4-6 See also Appendix D.

<sup>14</sup> s. 27.52(1), F.S.

The application seeking appointment of the public defender is submitted to the clerk of the court, with a \$50 application fee, for verification of the information required in the application.<sup>15</sup> The clerk also considers the following:

- A person is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI).
- There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.
- The clerk conducts a review of the property records for the county in which the applicant resides and the motor vehicle title records of the state to identify any property interests of the applicant.<sup>16</sup>

The clerk then determines whether the applicant is indigent or not indigent. The determination of indigent status is a ministerial act of the clerk and not a decision based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk by Florida Statute.<sup>17</sup>

As previously mentioned, if the clerk of the court has not made a determination of indigent status at the time a person requests appointment of a public defender, most likely at First Appearance or possibly Arraignment, the court shall make a preliminary determination of indigent status, pending further review by the clerk, and may, by court order, appoint a public defender, the office of criminal conflict and civil regional counsel, or private counsel on an interim basis.<sup>18</sup>

The Florida Rules of Criminal Procedure define indigency and set forth the procedures the court must follow in appointing counsel to represent the indigent.

“Indigent” shall mean a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family; “partially indigent” shall mean a person unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person's family.

Before appointing a public defender, the court shall: (A) inform the accused that, if the public defender or other counsel is appointed, a lien for the services rendered by counsel may be imposed as provided by law; (B) make inquiry into the financial status of the accused in a manner not inconsistent with the guidelines established by section 27.52, Florida Statutes. The accused shall respond to the inquiry under oath; (C) require the

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<sup>15</sup> s. 27.52(1)(a), F.S.

<sup>16</sup> s. 27.52(2)(a), F.S.

<sup>17</sup> s. 27.52(2)(d), F.S.

<sup>18</sup> s. 27.52(3), F.S.

accused to execute an affidavit of insolvency as required by section 27.52, Florida Statutes.<sup>19</sup>

Indigency is not a requirement for participation in Florida's pretrial release programs.

### **III. Effect of Proposed Changes:**

Senate Bill 372 creates an undesignated new section of Florida Statutes that would implement statutory eligibility criteria for defendants admitted to the county pretrial release programs.

The bill sets forth a state policy that only indigent defendants who qualify for the appointment of the public defender are eligible for participation in pretrial release programs.

The policy that private entities be used to assist defendants in pretrial release, to the greatest possible extent, is also set forth in the bill.

The bill expresses the intent of the Legislature that the bill not be interpreted to restrict courts from placing reasonable conditions on a defendant who is being released from custody by the court.

The state requires locally-created pretrial release programs to adhere to the indigency eligibility requirement of the bill and preempts all conflicting local ordinances, practices, or (court) orders.

The court must find a defendant indigent, in writing, pursuant to the procedures set forth in Florida Rule of Criminal Procedure 3.111, and order that the defendant is eligible to participate in a pretrial release program.

The bill prohibits interference by a pretrial release program when a defendant seeks to post a surety bond set forth in a predetermined bond schedule. This is generally an option at the jail prior to First Appearance, in limited cases. Some pretrial release programs have personnel at local jails during the night performing intake and interviews of people who are arrested.

The bill clarifies that the court is not prohibited from releasing a defendant from custody with or without any reasonable conditions of release.

The bill declares that a county may reimburse a licensed surety agent for the costs of a bail bond that secures the appearance of the defendant at all court proceedings - if the court establishes a bond amount for an indigent defendant – in lieu of using a “governmental program” to ensure the defendant's appearance.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>19</sup> Rule 3.111(b)(4)-(5), Fl.R.Crim.P.

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 Demand For Private Surety Bond Services Will Likely Increase**

Since current local pretrial release programs in this state are available to defendants regardless of their financial status, this bill will likely increase the number of pretrial detainees who pay for a commercial bond in order to be released from jail. Consequently, bail bondsmen are likely to see an increase in revenue if the bill becomes law.

**More Non-Indigent Defendants Will Pay the Private Sector Rather Than the Public Sector For Release from Jail**

Non-indigent defendants who were previously eligible for a local pretrial release program will not be eligible under the bill and must post a commercial bond to be released from jail. If these non-indigent defendants are unable to post a bond, then they will remain incarcerated until the disposition of their criminal charges. For those defendants who do post a bond, insufficient information on the cost of bonds, participant fees, and program costs makes it difficult to ascertain whether the total costs to the affected defendants will be higher or lower as a result of this bill.

**Vendors Who Provide Supervision Services to Pretrial Release Participants Will Lose Revenue**

Six of the 28 pretrial release programs contract with vendors for GPS and electronic monitoring, drug and alcohol testing, kiosk reporting, and other services rendered to defendants.<sup>20</sup> These services are fully or partially supported by program participant fees. If this bill passes and the eligibility criteria for the pretrial release program is narrowed to only indigents, these contractual services will likely decline because the sheer number of participants will be less and because indigent defendants will be less likely to afford these types of supervision and support services.

It should be noted that bondsmen are not required to supervise defendants but have a vested interest in making sure their clients keep their court dates and do not abscond. Judges in many circuits require defendants who post bond to also be supervised by a

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<sup>20</sup> Program Survey Responses from 2010 OPPAGA Annual Report. Counties include: Alachua, Broward, Charlotte, Escambia, Orange, and Osceola.

pretrial release program and receive these contractual services as an added layer of accountability. Effective pretrial release programs supervise the defendants and decrease the likelihood of reoffending and enhance public safety. If this bill passes and the eligibility criteria for the pretrial release program is narrowed to indigents, this additional layer of accountability and public safety will not be available to the judge for those non-indigent defendants.

**C. Government Sector Impact:**

All of the state's pretrial release programs are funded from county funds, grants, and participant fees. According to OPPAGA, the pretrial release program budgets vary greatly, ranging from \$60,000 in Bay County to \$5.3 million in Broward County. None of the 28 programs in Florida receive state general revenue. Consequently, there is no direct fiscal impact from the state's perspective. However, county governments anticipate an indeterminant but significant negative fiscal impact if this bill becomes law.

**Jail Population May Be Impacted**

According to OPPAGA, jail population and occupancy rates vary widely throughout the state and there appears to be no correlation between a counties' occupancy rate and whether or not they have a local pretrial release program. The potential impact of this bill on the states' local jail population is difficult to predict in any scientific way or with any measure of certainty because of a multitude of factors. As a result of this bill, some defendants who are ineligible to participate in pretrial release programs will instead have to post a bond to gain pretrial release. Some defendants will have the ability to immediately post a bond. Others may ultimately post a bond, but may spend additional time in jail while accumulating the funds to do so. For these reasons, counties may see an increase in their jail population and need for jail beds. The potential jail impact is indeterminant and highly dependent upon what portion of the non-indigent defendants have the resources to post bond and how long they stay in jail until they are able to make the financial arrangements for their release.

On April 15, 2010, the Criminal Justice Impact Conference (CJIC) determined that Senate Bill 782 from the 2010 Session, which is similar to this bill, would have an indeterminate prison bed impact on the Department of Corrections. CJIC commented that the state prison bed impact was based on an anticipated increase in the county jail population, which they found was also indeterminate. This bill, SB 372, has yet to be scheduled for a CJIC.

According to the Association of Counties, all of the 28 pretrial release programs in the state serve non-indigent defendants.<sup>21</sup> It can be expected that the greatest impact from this bill may be experienced in the counties that have pretrial programs who admit a large percentage of non-indigents like Okaloosa, Broward and Sarasota.

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<sup>21</sup> The percentage of pretrial release participants who are non-indigent varies from program to program, with a high of 56% in Sarasota to a low of 10% in Escambia.

It is important to note that the Pasco County jail population did not increase after it abolished its pretrial program in February of 2009.<sup>22</sup> Advocates of this bill point to the Pasco County experience as an indicator that this bill will not cause an increase in the county jail population. Despite the Pasco County experience, the counties and some representatives from law enforcement predict that this bill could potentially lead to an indeterminate but significant number of more pretrial detainees remaining incarcerated for longer periods of time in the local jail.

**Collection of Participant Fees That Support Pretrial Program Budgets and Provide Support and Surveillance Services Will Decline**

Of the 28 local pretrial release programs in Florida, twelve<sup>23</sup> charge fees to program participants to support program budgets and to pay vendors for services to defendants, primarily electronic monitoring. If this bill becomes law, it is estimated that the number of participants in the pretrial release program will decline and the collection of fees associated with their participation will be substantially reduced since the remaining indigent defendants will be less likely to be able to pay such fees.

**D. Other Constitutional Issues:**

There is a delicate balance between the power of the courts and the power of the Legislature in matters such as pretrial detention and release, as evidenced by the 2000 Legislature's amendments to s. 907.041, F.S., and the events that followed.

In 2000, the Legislature amended s. 907.041, F.S., to insert the following pertinent paragraphs, and also repealed certain inconsistent Rules of Procedure:

(3)(b) No person shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified:

1. The circumstances of the accused's family, employment, financial resources, character, mental condition, and length of residence in the community;
2. The accused's record of convictions, of appearances at court proceedings, of flight to avoid prosecution, or of failure to appear at court proceedings; and
3. Other facts necessary to assist the court in its determination of the indigency of the accused and whether she or he should be released under the supervision of the service. ...

(4)(b) No person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing; however, the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.

In *State v. Raymond*, the defendant qualified for nonmonetary release to pretrial services because she had no prior offenses, but because she was charged with domestic violence

<sup>22</sup> OPPAGA Report, Pretrial Release Programs, Pasco County's Jail Population

<sup>23</sup> OPPAGA Program Survey Responses from 2010 Annual Report. Twelve counties include: Alachua, Broward, Charlotte, Citrus, Escambia, Leon, Okaloosa, Orange, Osceola, Palm Beach, Santa Rosa, and St. Lucie.

the court could not release her under s. 907.041(4)(b), F.S., (2000) *at first appearance*. The Supreme Court found that by enacting s. 907.041(4)(b), F.S., “which is a *rule of procedure* affecting the *timing* of a defendant’s eligibility for pretrial release,” the Legislature had encroached upon the court’s power, by “imposing a new procedural rule.”<sup>24</sup> The Court then temporarily readopted the Rules and then stated: “We are particularly concerned that we be fully informed as to the policy concerns of the Florida Legislature before we take any final action on these rules. For that reason, we expressly invite the Legislature to file comments particularly addressing the policy concerns that the Legislature was attempting to address by enacting section 907.041(4)(b).”<sup>25</sup>

Subsequently, during the Court’s rulemaking process to fill the void left by the rules that had been repealed, the House of Representatives issued an official comment indicating the reasoning behind the Legislature’s passage of 2000-178, Laws of Florida. The stated purpose was to *delay the release* of persons (on nonmonetary conditions) to pretrial release programs until the certification process required in s. 907.041(3)(b), F.S., could be completed.<sup>26</sup>

The court took the House’s comment and the plain language of the statute, and amended the Rule regarding pretrial release to read:

No person charged with a dangerous crime as defined in section 907.041(4)(a), Florida Statutes, shall be released on nonmonetary conditions under the supervision of a pretrial release service, unless the service certifies to the court that it has investigated or otherwise verified the conditions set forth in section 907.041(3)(b), Florida Statutes.<sup>27</sup>

Although it does not appear that Senate Bill 372 encroaches upon the rulemaking authority of the court, as was the case in the 2000 amendments to this section of law, it is not that clear that requiring a person to be indigent in order to qualify for a local pretrial release program will necessarily escape constitutional scrutiny. A person who is unable to be released from jail to a pretrial release program because he is not indigent (although otherwise qualifying under the statute) may raise an Equal Protection challenge.

## VI. Technical Deficiencies:

The bill is unclear as to the role of the clerk of the court in the declaration of indigency procedures going forward. It appears that the intent of the bill is that the onus be on the court to find a person indigent pursuant to the applicable court rule, for purposes of pretrial release determinations. If it is the intent that the court’s (First Appearance) determination be the final order on the matter, that needs to be clarified. If it is the bill’s intent that a preliminary or temporary finding of indigency by the court at First Appearance will suffice for the “court order” as required for pretrial release program participation, that, too, needs clarification.

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<sup>24</sup> *State v. Raymond*, 906 So.2d 1045 (Fla. 2005).

<sup>25</sup> *Id.* at 1051.

<sup>26</sup> *In re Florida Rules of Criminal Procedure 3.131 and 3.132*, 948 So.2d 731, 733 (Fla. 2007).

<sup>27</sup> *Id.* and Florida Rule of Criminal Procedure 3.131(b)(4).

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

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637288

LEGISLATIVE ACTION

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

**Senate Amendment (with title amendment)**

Delete lines 10 - 17

and insert:

Section 1. Subsection (1) of section 810.08, Florida Statutes, is amended to read:

810.08 Trespass in structure or conveyance.—

(1) (a) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person



637288

13 authorized by the owner or lessee, to depart and refuses to do  
14 so, commits the offense of trespass in a structure or  
15 conveyance.

16 (b) A law enforcement officer in receipt of an affidavit  
17 from an owner or a mortgagee of the property may remove a person  
18 who is in violation of this section.

19 Section 2. Paragraph (c) is added to subsection (1) of  
20 section 810.09, Florida Statutes, to read:

21 810.09 Trespass on property other than structure or  
22 conveyance.—

23 (1)

24 (c) A law enforcement officer in receipt of an affidavit  
25 from an owner or a mortgagee of the property may remove a person  
26 who is in violation of this section.

27  
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete lines 2 - 5

31 and insert:

32 An act relating to landlord and tenant; amending ss.  
33 810.08 and 810.09, F.S.; allowing a law enforcement  
34 officer to remove persons who trespass in a structure  
35 or conveyance or on property if the law enforcement  
36 officer receives an affidavit from an owner or  
37 mortgagee of the property; providing an



abandoned residential properties as a result of the mortgage foreclosure crisis. In a recent report prepared by the U.S. Conference of Mayors, 71 percent of survey cities reported that the mortgage foreclosure crisis has affected their approach to managing and disposing of vacant and abandoned properties, prompting the cities to modify protocols and procedures, ordinances, and policies.<sup>2</sup> Fifty-five local governments in Florida have adopted ordinances to address the management of vacant and abandoned properties.<sup>3</sup> In October 2008, the City of Miami, Florida, enacted an ordinance that requires the owner or deed holder of vacant or abandoned property to register the property and provide a phone number and address where the owner or agent can be reached within 24 hours.<sup>4</sup> If the property is blighted, unsecured, or abandoned, the owner must pay an annual registration fee of between \$250 and \$500 and provide the names, addresses, and contact numbers of anyone with a lien on or interest in the property. The Miami ordinance includes an authorization for police to enforce trespassing laws for properties considered vacant or abandoned and a requirement for owners of abandoned properties to submit a plan for correcting all code violations within no more than 90 days.

Squatters have started moving into foreclosed property without any legal right to occupy the premises.<sup>5</sup> In order to evict squatters, law enforcement officers need authorization from the property's owner, usually a bank or other financial institution, and certainty that the squatter's right of possession has been settled under the Florida Residential Landlord and Tenant Act.<sup>6</sup> Law enforcement officials may be liable for wrongful ejection or eviction if the owner has not settled his or her right of possession to the property in an action for possession in the county court of the county where the property is located pursuant to the Florida Residential Landlord and Tenant Act, which is discussed below.

### **Florida Residential Landlord and Tenant Act**

The Florida Residential Landlord and Tenant Act (Act) governs residential landlord tenant law. The Act provides remedies to a tenant and landlord and applies to the rental of a dwelling unit.<sup>7</sup> If a tenant holds over and continues in possession of the dwelling unit after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit by seeking a right of action for possession in the county court of the county where the premises are situated stating the facts that authorize its recovery.<sup>8</sup> The landlord may not recover possession of the dwelling unit except: in an action for possession or other civil action in which the issue of the right of possession is determined; when the tenant has surrendered possession of the dwelling unit to the landlord; or when the tenant has abandoned the dwelling unit.<sup>9</sup> It is presumed that the tenant has abandoned the dwelling unit if he or she is

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<sup>2</sup> The United States Conference of Mayors, *Impact of the Mortgage Foreclosure Crisis on Vacant and Abandoned Properties in Cities, A 77-City Survey* (June 2010), <http://www.usmayors.org/publications/2010%20VAP%20Report.pdf> (last visited Mar. 17, 2011).

<sup>3</sup> American Financial Services Association, *Vacant and Abandoned Property Municipal Ordinances*, [http://www.afsaonline.org/library/files/sga\\_resources/AFSA%20Vacant%20and%20Abandoned%20Property%20Ordinances%20Dec%202010%20FINAL.pdf](http://www.afsaonline.org/library/files/sga_resources/AFSA%20Vacant%20and%20Abandoned%20Property%20Ordinances%20Dec%202010%20FINAL.pdf) (last visited Mar. 17, 2011).

<sup>4</sup> MIAMI, FL, CHAPTER 10, ARTICLE IV (10-16-2008).

<sup>5</sup> See Natalie O'Neill, *Squatters Don't Cry. Just Move Into One of Those Empty Homes Around the Corner*, Miami New Times (Nov. 20, 2008); John Leland, *With Advocates' Help, Squatters Call Foreclosures Home*, N.Y. Times (Apr. 10, 2009).

<sup>6</sup> Telephone interview with City of Miami, Florida attorneys.

<sup>7</sup> Section 83.41, F.S.

<sup>8</sup> Section 83.59, F.S.

<sup>9</sup> *Id.*

absent from the premises for a period of time equal to one-half the time for periodic rental payment.

The Act also provides for the restoration of possession of the premises to the landlord.<sup>10</sup> In an action for possession, after entry of judgment in favor of the landlord, the clerk must issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice is conspicuously posted on the premises. The landlord or the landlord's agent may remove any personal property found on the premises to or near the property line.

The Act does not apply to:

- Residency or detention in a public or private facility (when detention is incidental to medical, geriatric, educational, counseling, religious, or similar services);
- Occupancy under a contract of sale;
- Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park;
- Occupancy by a holder of a proprietary lease in a cooperative apartment; or
- Occupancy by an owner of a condominium unit.<sup>11</sup>

### **Criminal Trespass**

Section 810.08, F.S., specifies the elements for trespass in a structure or conveyance. Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance. Trespass in a structure or conveyance is a second-degree misdemeanor punishable by jail time up to 60 days and the imposition of a fine up to \$500.<sup>12</sup> The section provides for enhanced penalties if there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance or if the offender is armed with a firearm or other dangerous weapon, or arms himself or herself with such while in the structure or conveyance.<sup>13</sup> As used in s. 810.08, F.S., the term "person authorized" means any owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in the case of a threat to public safety or welfare.

Section 810.09, F.S., outlines the elements for trespass on property other than a structure or conveyance which is punishable as a first-degree misdemeanor. A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance as defined in the law and:

- has been given notice against entering or remaining as required by law; or

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<sup>10</sup> Section 83.62, F.S.

<sup>11</sup> Section 83.42, F.S.

<sup>12</sup> Section 810.08, F.S.

<sup>13</sup> *Id.*

- enters or remains with the intent to commit an offense on the unenclosed land surrounding a house or dwelling

commits trespass on property other than a structure or conveyance. A first-degree misdemeanor is punishable by jail time up to 1 year and the imposition of a fine of up to \$1,000.

If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits the offense of trespass on property other than a structure or conveyance. If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of third-degree felony. A third-degree felony is punishable by imprisonment of up to 5 years and imposition of a fine of up to \$5,000.

If the offender trespasses on a construction site that is greater than 1 acre or as otherwise described in the section or trespasses on commercial horticulture property with the required notice, the offender is liable for a third-degree felony. The section describes additional elements of the offense of trespass on property other than a structure or conveyance that are punishable as a third-degree felony.

### **III. Effect of Proposed Changes:**

The bill amends the Florida Residential Landlord and Tenant Act to provide that the act does not apply to an:

- Occupancy for less than 30 days by a person not legally entitled to occupy the premises. A person who refuses to depart the premises is in violation of the offense of trespass in a structure or conveyance,<sup>14</sup> or trespass on property other than a structure or conveyance,<sup>15</sup> as applicable, and may be removed from the premises by any law enforcement officer.

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

#### **Other Potential Implications:**

Law enforcement officials would like to use the exemption in the bill to the Florida Residential Landlord and Tenant Act to enforce the trespassing laws against squatters who have possessed abandoned or vacant property. Under the exemption, law enforcement will need to get proof of the squatter's illegal possession of the property and proof that the squatter occupied the premises for a period of less than 30 days as a prerequisite to enforcing the trespass laws. It is unclear how the factual dispute pertaining to the possessory rights of the squatter and owner can be adjudicated outside of a court to provide law enforcement officials the proof needed to prosecute the squatter.

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<sup>14</sup> Section 810.08, F.S.

<sup>15</sup> Section 810.09, 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:

To the extent that law enforcement officials may eject persons unlawfully occupying a dwelling without requiring the owner to quiet his, her, or its (individual or bank) right of possession of the property, the owner may save associated costs associated with recovering possession of a dwelling.

## 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.)**CS by Judiciary on March 22, 2011:**

The committee substitute revises the exemption to the Florida Residential Landlord and Tenant Act so that it applies to an occupancy for less than 30 days by a person not legally entitled to occupy the premises, rather than an occupancy for less than 60 days under the original bill.

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The committee substitute adds s. 810.08, F.S., criminal trespass in a structure or conveyance, to the criminal trespass provisions that law enforcement may enforce in the case of a person unlawfully occupying the premises who refuses to depart the premises.

B. Amendments:

None.

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

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**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 834

INTRODUCER: Senator Wise

SUBJECT: Mentally Deficient and Mentally Ill Defendants

DATE: March 30, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 834 changes the definition of mental illness for purposes of ch. 916, F.S., which pertains to mentally deficient and mentally ill defendants in the criminal justice system. These are defendants who are found incompetent to proceed or, perhaps, not guilty by reason of insanity. The bill includes traumatic brain injury, as defined by the bill, in the existing definition of mental illness.

The defendants in the criminal justice system who suffer with a traumatic brain injury, and therefore under the amended definition, a mental illness, and who are found incompetent to proceed are likely to be ordered to undergo treatment with the Department of Children and Family Services.

This bill substantially amends section 916.106 of the Florida Statutes.

**II. Present Situation:**

Section 916.105, F.S., sets forth the intent of the Legislature regarding the responsibility of the Department of Children and Family Services (Department) and the Agency for Persons with Disabilities (Agency) as it relates to felony defendants who are found incompetent to proceed.

- (1) It is the intent of the Legislature that the Department of Children and Family Services and the Agency for Persons with Disabilities, as appropriate, establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been charged with a felony and who have been found to be incompetent to proceed due to

their mental illness, mental retardation, or autism, or who have been acquitted of a felony by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department or agency under the provisions of this chapter. Such facilities shall be sufficient to accommodate the number of defendants committed under the conditions noted above.

Except for those defendants found by the department or agency to be appropriate for treatment or training in a civil facility or program pursuant to subsection (3), forensic facilities shall be designed and administered so that ingress and egress, together with other requirements of this chapter, may be strictly controlled by staff responsible for security in order to protect the defendant, facility personnel, other clients, and citizens in adjacent communities. ...

- (3) It is the intent of the Legislature that evaluation and services to defendants who have mental illness, mental retardation, or autism be provided in community settings, in community residential facilities, or in civil facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.<sup>1</sup>

The definitions contained in s. 916.106, F.S., delineate the Agency as being responsible for training forensic clients who are developmentally disabled “due to mental retardation or autism and have been determined incompetent to proceed.”<sup>2</sup> The Department “is responsible for the treatment of forensic clients who have been determined incompetent to proceed due to *mental illness* or who have been acquitted of a felony by reason of insanity.”<sup>3</sup> Therefore, it is clear that any change in the definition of “mental illness” will result in a client increase or decrease, depending upon the content of the change.

Forensic clients with mental illness who are charged with committing felonies must receive appropriate treatment or training. Section 916.107(4)(a) requires that:

Each forensic client shall receive treatment or training suited to the client’s needs, which shall be administered skillfully, safely, and humanely with full respect for the client’s dignity and personal integrity. Each client shall receive such medical, vocational, social, educational, and rehabilitative services as the client’s condition requires to bring about a return to court for disposition of charges or a return to the community. In order to achieve this goal, the department and the agency shall coordinate their services with each other, the Department of Corrections, and other appropriate state agencies.

Mental illness is currently defined as “an impairment of the emotional processes that exercise conscious control of one’s actions, or of the ability to perceive or understand reality, which impairment substantially interferes with a defendant’s ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants with only mental

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<sup>1</sup> s. 916.105, F.S.

<sup>2</sup> s. 916.106(1), F.S.

<sup>3</sup> s. 916.106(7), F.S.

retardation or autism and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.”<sup>4</sup>

The definition of incompetent to proceed is set forth in subsection (11) of s. 916.106, F.S.<sup>5</sup> Section 916.12, F.S., states that a defendant is incompetent to proceed if he or she “does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.”<sup>6</sup>

If mental health experts appointed by the court first determine that a defendant has a mental illness, then the experts are required to consider the following factors in determining whether the defendant is competent to proceed by considering the defendant’s capacity to:

- Appreciate the charges or allegations against the defendant.
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.
- Understand the adversarial nature of the legal process.
- Disclose to counsel facts pertinent to the proceedings at issue.
- Manifest appropriate courtroom behavior.
- Testify relevantly.

The experts shall consider any other factor deemed relevant by the expert.<sup>7</sup>

If an expert finds the defendant incompetent to proceed, the expert’s report is required to include any *recommended treatment for the defendant to attain competency*. Specifically, the report shall include:

- The mental illness causing the incompetence;
- The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices;
- The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report; and
- The *likelihood* of the defendant’s attaining competence under the treatment recommended, an assessment of the *probable duration of the treatment* required to restore competence, and the *probability* that the defendant will attain competence to proceed in the *foreseeable future*.<sup>8</sup>

A felony defendant may be involuntarily committed by the court for treatment if the court finds by clear and convincing evidence that there is a substantial probability that the mental illness

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<sup>4</sup> s. 916.106(13), F.S.

<sup>5</sup> “Incompetent to proceed” means unable to proceed at any material stage of a criminal proceeding, which shall include trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, proceedings for violation of probation or violation of community control, sentencing, and hearings on issues regarding a defendant’s failure to comply with court orders or conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered.

<sup>6</sup> s. 916.12(1), F.S.

<sup>7</sup> s. 916.12(3), F.S.; see also Rule 3.211, Florida Rules of Criminal Procedure.

<sup>8</sup> s. 916.12(4), F.S.

causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future, among other findings.<sup>9</sup> Should five years lapse and the defendant remains incompetent to proceed, the charges may be dismissed without prejudice for the state to refile the case should the defendant later be declared competent.<sup>10</sup>

Traumatic brain injury (TBI) occurs when a sudden trauma such as a blow or a jolt causes damage to the brain. The damage can be just to one area of the brain, called a focal injury, or located in more than one area of the brain, called a diffuse injury.<sup>11</sup>

TBI can result from a penetrating head injury or a closed head injury. A penetrating injury occurs when an object goes through the skull and enters the brain. A closed injury can occur from any trauma that causes the brain to be violently shaken inside of the skull. A common type of closed head injury suffered in combat is known as a blast injury.<sup>12</sup>

Brain injuries can occur when the head strikes an object such as a windshield or the ground at a fast rate of speed, or when a flying or falling object strikes the head. Injury to the brain also can occur without a direct blow to the head, for example in cases of severe "whiplash." The trauma can cause nerve cells in the brain to stretch, tear, or pull apart, making it difficult or impossible for the cells to send messages from one part of the brain to another, and to the rest of the body.<sup>13</sup>

TBI can interfere with how the brain works, including thinking, remembering, seeing, and controlling movements. Traumatic brain injury can range from mild to very severe depending on many things including the force of the trauma, previous brain injuries and how quickly emergency medical treatment is given.<sup>14</sup>

It is estimated that each year, 1.7 million people sustain a TBI. About 75 percent of those are concussions or other mild TBI's. Children up to 4 years, adolescents between 15-19 years and adults 65 and over are most likely to sustain TBI.<sup>15</sup> According to the Brain Injury Association of Florida, there are over 210,000 people in Florida who have TBI.

Repeated mild TBI's that occur over an extended period of time (months, years) can result in cumulative neurological and cognitive deficits. Those that occur over a shorter period of time (hours, days or weeks) can be catastrophic or fatal.<sup>16</sup> It is estimated that over 5 million Americans are living with longstanding disability from TBI including cognitive, physical, psychosocial, occupational and emotional difficulties.<sup>17</sup>

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<sup>9</sup> s. 916.13(1), F.S.

<sup>10</sup> s. 916.145, F.S.

<sup>11</sup> [www.traumaticbraininjuryatoz.org](http://www.traumaticbraininjuryatoz.org), last visited March 31, 2011.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Centers for Disease Control and Prevention, [www.cdc.gov/TraumaticBrainInjury/statistics.html](http://www.cdc.gov/TraumaticBrainInjury/statistics.html), last visited March 31, 2011.

<sup>16</sup> *Id.*

<sup>17</sup> [www.archives-pmr.org/article/S0003-9993\(08\)01485-8/fulltext](http://www.archives-pmr.org/article/S0003-9993(08)01485-8/fulltext), last visited March 31, 2011.

Active duty and reserve service members are at increased risk for sustaining a TBI compared to their civilian peers. This is a result of several factors, including the specific demographics of the military; in general, young men between the ages of 18 to 24 are at greatest risk for TBI. Many operational and training activities which are routine in the military are physically demanding and even potentially dangerous. Military service members are increasingly deployed to areas where they are at risk for experiencing blast exposures from improvised explosive devices (IEDs), suicide bombers, land mines, mortar rounds, rocket-propelled grenades, etc. These and other combat related activities put our military service members at increased risk for sustaining a TBI.<sup>18</sup>

The long-term symptoms of TBI can be divided into several categories, including physical changes, cognitive effects, sensory effects, perceptual effects, social/emotional changes and others. The symptoms and effects will vary greatly from one patient to another, depending on the severity of the TBI.

### **PHYSICAL**

#### **Physical Changes:**

- Sleep disorders
- Loss of stamina
- Appetite changes
- Physical paralysis/spasticity
- Chronic pain
- Control of bowel and bladder
- Seizures
- Difficulty regulating body temperature
- Hormonal challenges

### **COGNITIVE**

#### **Cognitive Difficulties relating to:**

- Attention
- Concentration
- Distractibility
- Memory
- Speed of Processing
- Confusion
- Perseveration, the abnormal persistent repetition of a word gesture or act.
- Impulsiveness
- Language Processing
- Executive functions – which are involved in brain processes such as planning, cognitive flexibility, abstract thinking, rule acquisition, initiating appropriate actions and inhibiting inappropriate actions, and selecting relevant sensory information.

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<sup>18</sup> [www.cemm.org](http://www.cemm.org) , last visited March 31, 2011.

**SPEECH and LANGUAGE****Speech and Language Effects:**

- Receptive Aphasia – which involves difficulty understanding the spoken word
- Expressive Aphasia - in which the patient knows what he wishes to say but is unable to get the words out. In some cases, the patient is able to perceive and comprehend both spoken and written language but is unable to repeat what he sees or hears.
- Slurred speech
- Speaking very fast or very slow
- Problems reading
- Problems writing

**SENSORY****Sensory Difficulties relating to the interpretation of:**

- Touch
- Temperature
- Movement
- Limb position
- Fine discrimination

**Perceptual Effects:**

- Difficulty integrating and understanding information gained through the five senses

**Vision:**

- Partial or total loss of vision
- Weakness of eye muscles and double vision (diplopia)
- Blurred vision
- Problems judging distance
- Involuntary eye movements (nystagmus)
- Intolerance of light (photophobia)

**Hearing:**

- Decrease or loss of hearing
- Ringing in the ears (tinnitus)
- Increased sensitivity to sounds

**Smell:**

- Loss or diminished sense of smell (anosmia)

**Taste:**

- Loss or diminished sense of taste

**SOCIAL EMOTIONAL****Social-Emotional Effects:**

- Dependent behaviors
- Fluctuating emotions
- Lack of motivation
- Irritability
- Aggression
- Depression
- Lack of inhibition

- Denial/lack of awareness<sup>19</sup>

### III. Effect of Proposed Changes:

Senate Bill 834 amends the definition of mental illness in ch. 916, F.S, relating to mentally deficient and mentally ill defendants. The bill includes traumatic brain injury as a mental illness and defines traumatic brain injury as a form of acquired brain injury that occurs when a sudden trauma causes damage to the brain and a severe change in emotional, behavioral, and cognitive functions.

The change of the definition is likely to lead to an increase in forensic clients for the Department of Children and Family Services, the department responsible for restoring defendants to competency to proceed with their criminal cases. The particular difficulties faced by this population is unfamiliar to the Department. While it is impossible to quantify, the special needs that clients with TBI would have will likely result in the need for a different treatment and training protocol than the department is currently utilizing with its forensic clients.

#### Other Potential Implications:

The Department states that it does not have the present capacity nor expertise to provide the necessary and appropriate services to individuals with TBI. The department could be subject to potential litigation due to the inability to serve this population. Past examples of similar litigation include a Broward county case in 1998, which the Department of Risk Management settled for \$17.5 million.<sup>20</sup>

### 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.

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<sup>19</sup> [www.traumaticbraininjuryatoz.org](http://www.traumaticbraininjuryatoz.org) , last visited March 31, 2011.

<sup>20</sup> Department of Children and Family Services Staff Analysis and Impact Statement, February 8, 2011.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the Department, to provide such specialized inpatient treatment, the cost for these individuals would significantly exceed the current average of \$333 per day in a forensic facility, facilities would need to provide: 1) Additional services, such as occupational and speech therapy, neurobehavioral specialists, neurologists, 2) Increased staffing levels, and 3) Specialized units. There are a limited number of residential programs in Florida that treat individuals with traumatic brain injuries. While the majority of programs that serve individuals with TBI are acute, rehab focused programs, there are four facilities, operated by two different companies, that provide longer-term care, or transitional living. These programs cost significantly more than forensic facilities and would include the aforementioned specialized services and staffing levels. As a cost comparison, the department obtained cost information for three of the four transitional living facilities:

Neurorestorative Florida (Orlando and Lutz locations); \$1,115/day  
Florida Institute of Neurological Rehabilitation: \$900/day

However, computing the actual cost associated with the bill is not possible because the additional number of forensic clients that would result from the bill cannot be accurately predicted.<sup>21</sup>

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

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<sup>21</sup> *Id.*



645656

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete lines 66 - 71  
and insert:  
exhibition, show, image, data, computer depiction,  
representation, or other presentation which, in whole or in  
part, he or she knows to include any sexual conduct by a child.  
The possession, control, or intentional viewing of each such  
photograph, motion picture, exhibition, show, image, data,  
computer depiction, representation, or presentation is a  
separate offense. A



645656

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

14 And the title is amended as follows:

15       Delete lines 6 - 7

16 and insert:

17       exhibition, show, image, data, computer depiction,

18       representation, or other presentation that

**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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 846

INTRODUCER: Senators Benacquisto and Gaetz

SUBJECT: Prevention of Child Exploitation

DATE: March 30, 2011

REVISED: \_\_\_\_\_

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

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**I. Summary:**

This bill amends s. 827.071(5), F.S., the statute prohibiting possession of child pornography, to extend its prohibitions to controlling or intentionally viewing child pornography. The bill also modifies the phrase “representation, or other presentation...” to “representation of an image, data, computer, or other presentation...”.

This bill substantially amends section 827.071 of the Florida Statutes:

**II. Present Situation:**

Section 827.071(5), F.S., prohibits a person from possessing a photograph, motion picture, exhibition, show, representation, or other presentation that he or she knows to include any sexual conduct by a child in whole or in part. Violation of the statute is a third degree felony ranked at Level 5 of the Criminal Punishment Code, punishable by up to five years in prison. A computer image falls within the definition of the proscribed materials.<sup>1</sup>

While it is clear that it is illegal to knowingly possess child pornography, in the computer age it is much more difficult to determine whether a person knowingly possesses an image of child pornography. It is clear that intentionally saving an image to a computer hard drive constitutes knowing possession. However, courts in a number of states have held that an image is not knowingly possessed if it is on a computer hard drive because it has been automatically saved as a temporary Internet file. In Florida and many other states, viewing child pornography without possessing or distributing it is not a crime. In *Strouse v. State*, 932 So.2d 326 (Fla. 4th DCA

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<sup>1</sup> *State v. Cohen*, 696 So.2d 435, 436 (Fla. 4th DCA 1997).

2006), the Fourth District Court of Appeals noted that “passive viewing on the Internet of child pornography does not violate the law because viewing does not constitute possession.” However, the court upheld the defendant’s conviction because it concluded that testimony given by his girlfriend was sufficient to establish that the child pornography on his computer was not merely an automatically stored temporary Internet file. Without that testimony, he would have been acquitted.

In reaching its conclusion in *Strouse*, the appellate court considered federal court decisions that addressed the possession issue:

Federal courts have analyzed the issue of temporary Internet files in the context of the federal child pornography statute. In *United States v. Perez*, the court held the mere viewing of a child pornographic image does not constitute knowing possession of the image under 18 U.S.C. § 2252A(a)(5)(B). 247 F.Supp.2d 459, 484 n. 12 (S.D.N.Y.2003) (citing *United States v. Zimmerman*, 277 F.3d 426, 435 (3d Cir.2002)). However, the court acknowledged that “knowing possession” should be based upon the manner in which the defendant manages the files. *Id.*, (citing *United States v. Tucker*, 305 F.3d 1193, 1205 (10th Cir.2002) (upholding a conviction based on automatically stored files because the defendant habitually deleted the temporary files manually, demonstrating that he exercised control over them), *cert. denied*, 537 U.S. 1223, 123 S.Ct. 1335, 154 L.Ed.2d 1082 (2003)).

In 2008, Congress resolved this issue for federal courts by amending 18 U.S.C. § 2252A(a)(5)(B) to criminalize the conduct of a person who “knowingly accesses with intent to view” child pornography.

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 827.071, F.S., in several ways. First, it adds a prohibition against “controlling” or “intentionally viewing” child pornography. As previously noted, the existence of a temporary Internet image file of child pornography on a computer hard drive is not “possession” in violation of the statute unless there is proof that the image was intentionally saved. With the criminalization of intentional viewing, temporary Internet files of child pornography images found on a computer can be used as evidence that a person was intentionally viewing prohibited material. For example, a prosecutor could argue that the existence of numerous temporary Internet files on a hard drive indicates that someone intentionally viewed the images. If the prosecutor is able to offer sufficient proof that the defendant was the person who intentionally viewed the images, a judge or jury may conclude that the defendant is guilty of intentionally viewing child pornography.<sup>2</sup>

Another scenario that could occur if the statute is amended is that a person could potentially be convicted based upon testimony that he or she was observed viewing child pornography (either on a computer or in another form) even if there is no physical evidence to corroborate the

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<sup>2</sup> Of course, the judge or jury would also consider any evidence that is presented and any defenses that are raised by the defendant, and must find the defendant’s guilt beyond a reasonable doubt.

testimony. As in all cases, the judge or jury would be required to determine whether such testimony proved the defendant's guilt beyond a reasonable doubt.

The bill defines "intentionally view" as meaning to "deliberately, purposefully, and voluntarily view." This clearly does not include inadvertent or unintentional viewing such as might happen if a person is using the Internet and an image of child pornography pops up on a computer screen, or the person accidentally accesses a site with child pornography. However, the decision of whether to charge a person with "intentional viewing" is up to the discretion of the prosecutor, and ultimate conviction depends upon the judge or jury concluding that the charge has been proven beyond a reasonable doubt.

The addition of a prohibition against "controlling" an image of child pornography addresses emerging technologies. A person can maintain images of child pornography on a remote server ("in the cloud") and control what happens to the image, even though arguably the person does not possess the image. It is possible that the prohibition against "controlling" images could be used to prosecute such cases in the unusual situation when there is insufficient evidence of distributing, transmitting, or intentionally viewing an image.

The bill also amends the list of materials that include sexual conduct by a child to which the prohibition against possession are applied. Among other things, the statute currently prohibits possession of a "representation" that includes any sexual conduct by a child in whole or part. The bill expands "representation" to "representation of an image, data, computer depiction." It appears that this is intended to include computer images, but Florida case law has already established that images of child pornography on a computer are included in the current list of prohibited materials.<sup>3</sup> Narrowing the broad term "representation" to "representation of an image, data, computer depiction" may have the unintended effect of limiting prosecution of certain cases.

**Section 2** of the bill reenacts s. 921.0022(3)(e), F.S., which is Level 5 of the Offense Severity Ranking Chart in the Criminal Punishment Code, to incorporate the amendments to s. 827.071, F.S.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>3</sup> See Footnote 1.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Criminal Justice Impact Conference found that the bill would have an indeterminate fiscal impact.

**VI. Technical Deficiencies:**

The following amendments to the bill are recommended for purposes of clarification:

- Lines 66-67 should be amended to read “exhibition, show, image, data, computer depiction, representation, or other presentation which, in whole or in part, he” to avoid inadvertently narrowing the application of the statute.
- On line 69, the new language “control, or viewing” should be amended to read “control, or intentional viewing” for purposes of consistency.

**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.



895754

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete line 66

and insert:

repealed on October 2, 2016 ~~2013~~, unless reviewed and saved from

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

And the title is amended as follows:

Delete lines 3 - 10

and insert:



895754

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119.071, F.S.; providing an exemption from public-  
records requirements for the dissemination of a  
photograph, videotape, or other image of any part of  
the body of a victim of a sexual offense which is made  
or broadcast by a video voyeur and which constitutes  
criminal investigation information or criminal  
intelligence information in an agency investigation;  
providing for future repeal and legislative review of  
the exemption under the Open Government Sunset Review  
Act; providing a statement of public necessity;  
reenacting s.

**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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 1168

INTRODUCER: Senators Oelrich and Lynn

SUBJECT: Public Records/Victim of a Sexual Offense

DATE: March 25, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			GO	
4.				
5.				
6.				

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**I. Summary:**

Current law provides a public record exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. The bill expands the exemption to include victims of the sexual offense of video voyeurism.

The bill provides for a statement of public necessity as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill; thus, ensuring the public record exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

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

This bill substantially amends s. 119.071, F.S., and reenacts s. 92.56(1)(a), F.S., s. 119.0714(1)(h), F.S., and s. 794.024(1), F.S., to incorporate the amendment made to s. 119.071, F.S., in reference thereto.

## II. Present Situation:

### Public Records Law

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

### Public Record Exemptions for Certain Victim Information

Current law provides a public record exemption for any criminal intelligence information<sup>3</sup> or criminal investigative information<sup>4</sup> that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses,<sup>5</sup> regardless of whether it identifies the victim.<sup>6</sup>

Current law also provides that the confidential and exempt status of the criminal investigative information and the criminal intelligence information must be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt

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<sup>1</sup> Article I, s. 24(c) of the Florida Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

<sup>4</sup> Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

<sup>5</sup> This exemption specifies sexual offenses prohibited under ch. 794, F.S., ch. 796, F.S., ch. 800, F.S., ch. 827, F.S., or ch. 847, F.S.

<sup>6</sup> Section 119.071(2)(h)c., F.S.

status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.<sup>7</sup>

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public records requirements as provided in s. 119.071(2)(h), F.S.<sup>8</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 119.071, F.S., to expand the current exemption in that section for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim, to include victims of the sexual offense of video voyeurism under s. 810.145, F.S.

Under current law, the exemption is scheduled to repeal on October 2, 2013, unless reenacted. The bill does not currently extend the repeal date.

The bill also provides the following statement of public necessity as required by the Florida Constitution:

The Legislature finds that it is a public necessity that images of any part of the body of a victim of a sexual offense recorded or broadcast by a video voyeur not be disseminated to the public. Such displays, even if they do not identify the victim, are inappropriate for public access. Under current law, it is possible for persons to obtain access to photographs or videos of victims of video voyeurism crimes through a public-records request. These illegally and surreptitiously taken photographs or videos are usually of women, and commonly show the victims undressed or engaged in private acts of personal hygiene or sexual conduct. These activities are not intended for public view or inspection. This restriction of public access recognizes the basic privacy rights of these victims by preventing access to or possible public dissemination of such photographs or videotapes.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill; thus, ensuring the public record exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

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

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>7</sup> See s. 92.56, F.S.

<sup>8</sup> Section 119.0714(1)(h), F.S.

**B. Public Records/Open Meetings Issues:**

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption; thus, it includes a public necessity statement.

**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 First Amendment Foundation indicated to Senate professional staff that its position on the bill is “neutral.”

**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.



947852

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Criminal Justice (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) is added to section 119.0712, Florida Statutes, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(3) OFFICE OF FINANCIAL REGULATION.—

(a) The following information held by the Office of Financial Regulation before, on, or after July 1, 2011, is



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13 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
14 of the State Constitution:

15 1. Information received from another state or federal  
16 regulatory, administrative, or criminal justice agency which is  
17 otherwise confidential or exempt pursuant to the laws of that  
18 state or federal law.

19 2. Information that is received or developed by the office  
20 as part of a joint or multiagency examination or investigation  
21 with another state or federal regulatory, administrative, or  
22 criminal justice agency. The office may obtain and use the  
23 information in accordance with the conditions imposed by the  
24 joint or multiagency agreement. This exemption does not apply to  
25 information obtained or developed by the office which would  
26 otherwise be available for public inspection if the office had  
27 conducted an independent examination or investigation under  
28 Florida law.

29 (b) This subsection is subject to the Open Government  
30 Sunset Review Act in accordance with s. 119.15 and shall stand  
31 repealed on October 2, 2016, unless reviewed and saved from  
32 repeal through reenactment by the Legislature.

33 Section 2. (1) The Legislature finds that it is a public  
34 necessity that information held by the Office of Financial  
35 Regulation before, on, or after July 1, 2011, which is received  
36 from another state or federal regulatory, administrative, or  
37 criminal justice agency and which is confidential or exempt  
38 pursuant to the laws of that state or pursuant to federal law be  
39 made confidential and exempt from public-records requirements.  
40 Without the exemption, the office will be unable to obtain  
41 information that could assist it in pursuing violations of law



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42 under its jurisdiction. Without this exemption, the effective  
43 and efficient administration of the regulatory programs  
44 administered by the Office of Financial Regulation would be  
45 significantly impaired.

46 (2) The Legislature finds that it is a public necessity  
47 that information held by the Office of Financial Regulation  
48 which is received or developed by the office as part of a joint  
49 or multiagency examination or investigation with another state  
50 or federal regulatory, administrative, or criminal justice  
51 agency be made confidential and exempt from public-records  
52 requirements. The exemption is necessary to enable the office to  
53 participate in joint or multiagency investigations and  
54 examinations. Without the exemption, the office will be unable  
55 to participate in these activities, which impairs its ability to  
56 leverage its limited resources. Without the sharing and  
57 coordination of information, governmental agencies may be  
58 required to conduct duplicative independent investigations or  
59 examinations in order to meet their regulatory responsibilities.  
60 With this exemption, that burden can be reduced or eliminated  
61 through joint or alternating investigations or examinations, or  
62 by off-site reviews of other governmental agency investigations  
63 or examinations.

64 Section 3. This act shall take effect July 1, 2011.

65  
66 ===== T I T L E A M E N D M E N T =====

67 And the title is amended as follows:

68 Delete everything before the enacting clause  
69 and insert:

70 A bill to be entitled



947852

71 An act relating to public records; amending s.  
72 119.0712, F.S.; providing an exemption from public-  
73 records requirements for information held by the  
74 Office of Financial Regulation which is received from  
75 another state or federal agency and which is otherwise  
76 confidential or exempt pursuant to the laws of that  
77 state or federal law; providing an exemption from  
78 public-records requirements for information held by  
79 the office which is received or developed by the  
80 office as part of a joint or multiagency examination  
81 or investigation with another state or federal agency;  
82 specifying conditions under which the Office of  
83 Financial Regulation may obtain and use such  
84 information; providing for retroactive application;  
85 providing for future review and repeal; providing a  
86 statement of public necessity; providing an effective  
87 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 1328  
 INTRODUCER: Senator Hays  
 SUBJECT: Public Records/Office of Financial Regulation  
 DATE: March 30, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	<b>Favorable</b>
2.	Erickson	Cannon	CJ	<b>Pre-Meeting</b>
3.			GO	
4.				
5.				
6.				

**I. Summary:**

The Office of Financial Regulation (Office) is the regulatory body in charge of oversight of state financial institutions. The Office charters and routinely examines financial institutions in order to ensure they are complying with regulatory requirements. Many financial institutions federally chartered or chartered in other states operate within Florida or in multiple states, making interstate cooperation essential for performing the Office’s duties. At times, however, the acquisition of information from federal or out-of-state regulatory agencies is impractical because the information is not exempt from the public records requirements. Therefore, this bill institutes certain exemptions from public records requirements including information developed by out-of-state or federal regulatory agencies and information made available to the Office on a restricted basis or in connection with a multiagency investigation.

This bill substantially amends the following section of the Florida Statutes: 119.0712.

**II. Present Situation:**

**Florida’s Public-Records Laws**

Florida has a long history of providing public access to the records of governmental and other public entities. 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.<sup>1</sup> Article I, s. 24(a), of the Florida Constitution, provides that:

<sup>1</sup> FLA CONST. Art. I, Section 24.

Every person<sup>2</sup> 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.

The Public Records Act<sup>3</sup> specifies conditions under which access must be provided to agency<sup>4</sup> records. Unless specifically exempted, all agency 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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials prepared in connection with official agency business which are intended to perpetuate, communicate, or formalize knowledge.<sup>6</sup> Such materials, regardless of whether they are in final form, are open for public inspection unless specifically exempted.<sup>7</sup> Exemptions can only be created by the Legislature,<sup>8</sup> and must be created in general law, state the public necessity justifying it, and may not be broader than necessary to meet that public necessity.<sup>9</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>10</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>11</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>12</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an

<sup>2</sup> Section 1.01(3) F.S., defines “person” to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), 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.”

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c) of the State Constitution.

<sup>9</sup> *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, 568-69 (Fla. 1999).

<sup>10</sup> Attorney General Opinion 85-62.

<sup>11</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

<sup>12</sup> Section 119.15, F.S.

automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.<sup>13</sup>

### **Office of Financial Regulation Public Records Exemptions**

Florida law exempts certain information obtained or created by the Office when it is involved in the charter, examination, or investigation of financial institutions.<sup>14</sup> However, the exemptions vary among the Office's regulatory programs. Nevertheless, there are three areas where confidentiality and exemptions are currently disallowed, but would assist the Office in performing its investigatory and examination duties more diligently and efficiently.

The first instance in which the Office is impeded from gathering information is when a federal or out-of-state regulatory agency maintains confidentiality requirements of certain information obtained through investigations or examinations. In this instance, the Office is required to keep the information confidential, but cannot do so because there is no confidentiality provision for the information under current Florida law. Therefore, valuable information that could be obtained from other agencies is not accessible by the Office.

Furthermore, the Office is limited in its capacity to become involved in out-of-state or federal investigations due to limited confidentiality and exemptions. Currently, if the Office is involved in a multi-agency examination or investigation, the Office cannot accept information from other agencies if the information is confidential under the federal or out-of-state laws. The Office is also inadvertently limited in the supply of information in multi-jurisdictional investigations. Several of the Office's exemptions are only effective for the time of the investigation or examination. Specifically, information used in multi-jurisdictional investigations or examinations may become public record under current Florida law after the examination or investigation is complete. If the federal or out-of-state laws provide for a continuing confidentiality, then the Office is limited in its ability to provide information in these instances.

Additionally, the Office is limited in the gathering of information from out-of-state and federal agencies that treat certain information as confidential. In these cases, the Office is required to

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<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> See s. 560.129, F.S. (Money Services Businesses exemptions), s. 494.00125, F.S. (mortgage brokering and lending), s. 517.2015, F.S. (securities), s. 520.9965, F.S. (retail installment sales), s. 655.057, F.S. (financial institutions).

sign confidentiality agreements with the appropriate regulatory agency. However, the Office cannot sign these agreements if Florida law does not exempt the information from public records requirements. Therefore, the Office is inhibited in its investigative capacity to gather information from other regulatory agencies.

### **III. Effect of Proposed Changes:**

**Section 1** creates public records exemptions for certain documents and information held by the Office. Therefore all records obtained by the office from a state or federal agency through an agreement of confidentiality or restricted basis is subject to the public records exemption. Additionally, the bill exempts information that is developed as part of a joint investigation or examination from public records requirements. Information held by the office on or after the effective date of the bill is subject to this exemption. The bill provides for an automatic repeal, in accordance with s. 119.15, F.S., on October 2, 2016, unless reenacted by the Legislature prior to that date.

**Section 2** states the public necessity of the bill. The bill explains that the exemption is necessary to facilitate the Office's access to information that could assist in pursuing violations of the laws and regulations under the Office's jurisdiction. The exemption is also necessary to allow for the participation by the Office in joint or multiagency investigations and examinations because this would assist the Office in more efficiently using its resources by sharing information and coordinating examinations and investigations with other governmental agencies. Therefore, the public records exemption provided for in this bill is necessary to ensure the effective and efficient administration of the regulatory programs administered by the Office.

**Section 3** provides that the bill take effect July 1, 2011.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Indeterminate. The bill could create a fiscal impact on the Office because its staff would have to be trained with regard to the categories of information made confidential and exempt from public disclosure versus records that are available for public inspection and copying. The Office could also incur costs associated with redacting confidential and exempt information prior to releasing a record.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The First Amendment Foundation has expressed concerns that the exemption created by the bill is broader than necessary to meet public necessity. Specifically, the First Amendment Foundation (FAF) is concerned with out-of-state regulators possibly transferring information to Florida in order to keep information confidential. FAF staff indicated to Senate professional staff that the FAF's position regarding the bill would be "neutral" if the bill's language conformed to the language in CS/HB 677.

**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 1588

INTRODUCER: Senator Latvala

SUBJECT: Licensed security officers

DATE: March 30, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	<b>Fav/1 amendment</b>
2.	Erickson	Cannon	CJ	<b>Pre-Meeting</b>
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

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

**I. Summary:**

This bill increases and specifically establishes penalties for impersonating a Security Officer, Private Investigator, or Recovery Agent, as licensed by the Department of Agriculture and Consumer Services (DACS or department) under ch. 493, F.S. A person who engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, commits a first degree misdemeanor. For second or subsequent offenses, the person commits a third degree felony, and DACS is authorized to impose a civil penalty not to exceed \$10,000. However, penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license. The bill also provides penalties for activities relating to the impersonation of a Licensed Security Officer, Private Investigator, or Recovery Agent.

The bill expands the authority of an armed licensed security officer and armed licensed security agency manager to allow them to detain a person on the premises of a critical infrastructure facility if the security officer has probable cause to believe that the person has committed or is committing a crime and for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The bill provides procedures for notifying law enforcement and transferring of the detained person.

The bill also authorizes the security officer and security agency manager to search the person temporarily detained if they observe that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon.

This bill substantially amends section 493.6120 of the Florida Statutes and creates an undesignated section of the Florida Statutes.

## II. Present Situation:

### **Private Security, Private Investigative, and Recovery Services**

The Division of Licensing of the Department of Agriculture and Consumer Services is responsible for the regulation of licensing of private security, private investigative and recovery services.<sup>1</sup>

A **security officer** is defined as:

any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, chooses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.<sup>2</sup>

A “**private investigator**” is defined as “any individual who, for consideration, advertises as providing or performs private investigation.”<sup>3</sup> Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.

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<sup>1</sup> The responsibility for regulating private investigative, private security, and recovery industries was assigned to the Department of State in 1965. In 2002, the Division of Licensing of the Department of State was transferred to the Department of Agriculture and Consumer Services, including the Concealed Weapons Permit Program. *See* ss. 1, 3-10, ch. 2002-295, L.O.F.

<sup>2</sup> Section 493.6101(19), F.S.

<sup>3</sup> Section 493.6101(16), F.S.

- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefore.<sup>4</sup>

A “**recovery agent**” is defined as “any individual who, for consideration, advertises as providing or performs repossessions.”<sup>5</sup> “Recovery agency” is defined as “any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.”<sup>6</sup> “Repossession” means recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, industrial equipment, and motor homes “by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.”<sup>7</sup>

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These include local, state, and federal law enforcement officers, licensed insurance investigators, and individuals solely, exclusively, and regularly employed as unarmed investigators and security officers “in connection with the business of his or her employer, when there exists an employer-employee relationship.”<sup>8</sup>

Florida law establishes criteria for granting licenses for security, private investigative, and repossession services. Individuals seeking a license must clear a criminal background check as well as meet specific training and experience requirements, which vary by the type of license. In addition, the applicant must meet the following criteria:

- Be at least 18 years of age.
- Be of good moral character.
- Not have been adjudicated incapacitated, unless capacity has been judicially restored.
- Not have been involuntarily placed in a treatment facility for the mentally ill, unless competency has been judicially restored.
- Not have been diagnosed as having an incapacitating mental illness, unless a psychologist or psychiatrist licensed in this state certifies that she or he does not currently suffer from the mental illness.
- Not be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired.
- Not have been committed under ch. 397, F.S., former ch. 396, F.S., or a similar law in any other state.
- Not have been found to be a habitual offender under s. 856.011(3), F.S., or a similar law in any other state.
- Not have had two or more convictions under s. 316.193, F.S., or a similar law in any other state within the 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently impaired and has successfully completed a rehabilitation course.

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<sup>4</sup> Section 493.6101(17), F.S.

<sup>5</sup> Section 493.6101(21), F.S.

<sup>6</sup> Section 493.6101(20), F.S.

<sup>7</sup> Section 493.6101(22), F.S.

<sup>8</sup> Section 493.6102(1)-(4), F.S.

- Not have been committed for controlled substance abuse or have been found guilty of a crime under ch. 893, F.S., or a similar law relating to controlled substances in any other state within a 3-year period immediately preceding the date the application was filed, unless the individual establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.
- Be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.<sup>9</sup>

**License Classifications**

Ch. 493, F.S., provides for many numerous classifications of licenses within the three general categories of licenses, as follows:<sup>10</sup>

<b>PRIVATE INVESTIGATION</b>	
Agency	Class “A”
Private Investigator	Class “C”
Armed Private Investigator	Class “C” & Class “G”
Branch Office	Class “AA”
Manager	Class “C” or Class “MA” or Class “M”
Intern	Class “CC”
<b>PRIVATE SECURITY</b>	
Agency	Class “B”
Security Officer	Class “D”
Armed Security Officer	Class “D” & Class “G”
Branch Office	Class “BB”
Manager	Class “MB” or Class “M”
<b>REPOSSESSION ACTIVITY</b>	
Agency	Class “R”
Recovery Agent	Class “E”
Branch Office	Class “RR”
Manager	Class “MR” or Class “E”
Intern	Class “EE”
<b>COMBINED PRIVATE INVESTIGATION AND SECURITY</b>	
Agency	Class “A” & Class “B”
Branch Office	Class “AB”
Manager	Class “M”
<b>SCHOOLS</b>	
Security Officer School or Training Facility	Class “DS”
Security Officer Instructor	Class “DI”
Recovery Agent School or Training Facility	Class “RS”
Recovery Agent Instructor	Class “RI”
<b>FIREARMS</b>	
Instructor	Class “K”
Statewide Firearm License	Class “G”
<b>MANAGERS</b>	
Private Investigative Agency or Branch	Class “C”, “MA”, or “M”
Private Security Agency or Branch	Class “MB” or “M”
Recovery Agency or Branch	Class “E” or “MR”
Armed Manager	Appropriate Manager’s License and Class “G”

<sup>9</sup> Section 493.6106(1), F.S.

<sup>10</sup> See 5N-1.116(1), F.A.C.

**D, MB, and G Licenses**

Generally, an applicant for a Class “D” security officer license must complete a minimum of 40 hours of professional training at a school or training facility licensed by the department, which establishes by rule the general content and number of hours of each subject area to be taught. Class MB security officers may manage a security agency. Class G officers have special firearms training requirements and are authorized to carry their firearms on duty.

Class D and Class G security officers who are employed at seaports and who are given the power to detain persons are further required to be certified under the Maritime Transportation Security Act or s. 311.121, F. S.

The statutorily-specified certification curriculum for the seaport security officer training program includes no less than 218 hours of initial certification training that conforms to or exceeds model courses approved by the Federal Maritime Act under Section 109 of the Federal Maritime Transportation Security Act of 2002 for facility personnel with specific security duties.

Pursuant to s. 311.124, F.S., these particular Class D or G security officers are given the power to detain persons for a reasonable period of time if they have “probable cause to believe that a person is trespassing ... in a designated restricted area” pending the arrival of a law enforcement officer. In addition, this action does not “render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.” Furthermore, the seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.

To date, the department has not issued any revised licenses to a class “D” security officer stating that the person is certified as a seaport security officer.

**Impersonating a Licensee**

Section 493.6118(1), F.S., authorizes DACS to “take disciplinary action” against “any unlicensed person engaged in activities regulated” in ch. 493, F.S., related to Private Security, Private Investigative, and Recovery Services. Grounds for such disciplinary action include:

- Conducting activities regulated under this chapter without a license or with a revoked or suspended license.
- Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer.
- Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under ch. 493, F.S.
- Violating any provision of ch. 493, F.S.

Section 493.6120, F.S., provides that any person who violates any provision of ch. 493, F.S., with one exception,<sup>11</sup> commits a first degree misdemeanor.<sup>12</sup> DACS is authorized to institute

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<sup>11</sup> The exception is s. 493.6405(3), F.S., which deals with the sale of motor vehicles, mobile homes, motorboats, aircraft, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment by a recovery agent or intern.

judicial proceedings in the appropriate circuit court seeking enforcement of ch. 493, F.S., or any rule or order of DACS.<sup>13</sup>

### **The Power to Detain**

Section 812.015(3)(a), F.S., authorizes a law enforcement officer, a merchant, a farmer, or their employee or agent, who has probable cause to believe that a retail theft, farm theft, or trespass, has been committed by a person and, in the case of retail or farm theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to effect such recovery or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the event the merchant, merchant's employee, farmer, or a transit agency's employee or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody. Detention provisions are also applicable to transit fare evasion.

Section 509.143, F.S., authorizes innkeepers and food service establishment operators to "take a person into custody and detain that person" if there is probable cause to believe the person is engaging in disorderly conduct that threatens the safety of the person or others. In these situations, a law enforcement agency must be immediately contacted.

### **"Citizen's Arrest"**

A citizen has a common law right to make a "citizen's arrest" for a felony, or a breach of the peace committed in his presence. The citizen may make such an arrest and justify his failure to obtain a warrant by proving the person's guilt.<sup>14</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 493.6120, F.S., to increase and specifically establish penalties for impersonating a Security Officer, Private Investigator, or Recovery Agent, as licensed by the Department of Agriculture and Consumer Services (DACs or department) under ch. 493, F.S. Specifically, a person who engages in any activity for which ch. 493, F.S., requires a license, but acts without having a license, commits a first degree misdemeanor. For a second or subsequent offense, the person commits a third degree felony,<sup>15</sup> and DACs is authorized to impose a civil penalty not to exceed \$10,000. However, penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of the person's license.

The bill also provides that a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S., commits a third degree felony. A person who impersonates a security officer or other designated officer during the commission of

<sup>12</sup> A first degree misdemeanor is punishable by up to one year in a county jail and a fine of up to \$1,000 may also be imposed. ss. 775.082 and 775.083, F.S.

<sup>13</sup> Section 493.6121(7), F.S.

<sup>14</sup> *Phoenix v. State*, 455 So.2d 1024 (Fla.1984).

<sup>15</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000 may also be imposed. ss. 775.082 and 775.083, F.S.

a felony commits a second degree felony<sup>16</sup> and a person who impersonates a security officer or other designated officer during the commission of a felony that results in death or serious bodily injury to another human being commits a first degree felony.<sup>17</sup>

**Section 2** creates an undesignated section of the Florida Statutes to provide that an armed licensed security officer or an armed licensed security agency manager licensed under ch. 493, F.S., may temporarily detain a person on the premises of a critical infrastructure facility if the security officer or security agency manager has probable cause to believe that the person has committed or is committing a crime. The person may be temporarily detained for the purpose of ascertaining the person's identity and the circumstances of the activity that is the basis for the temporary detention. The security officer or security agency manager must notify the law enforcement agency as soon as possible, and the person may be detained until a responding law enforcement officer arrives at the critical infrastructure facility. The custody of any person temporarily detained must be immediately transferred to the responding law enforcement officer unless the law enforcement officer requests the security officer to assist in detaining the person.

The security officer or security agency manager may search the person detained if the security officer or security agency manager observes that the person is armed with a firearm, concealed weapon, or any destructive device that poses a threat to the safety of the security officer or security agency manager, or the detainee admits to the security officer or security agency manager that he or she is armed with a weapon. The security officer or security agency manager is required to seize any weapon discovered and transfer the weapon to the responding law enforcement officer.

This section defines the term "critical infrastructure facility" to mean any one of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel *and* is determined by a state or federal authority to be so vital to the state that the incapacity or destruction of the facility would have a debilitating impact on security, state economic stability, state public health or safety, or any combination of those matters:

- A chemical manufacturing facility.
- A refinery.
- An electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility.
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station.
- A natural gas transmission compressor station.
- A liquid natural gas terminal or storage facility.
- A telecommunications central switching office.
- A deep water seaport or railroad switching yard.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

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<sup>16</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000 may also be imposed. ss. 775.082 and 775.083, F.S.

<sup>17</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000 may also be imposed. ss. 775.082 and 775.083, F.S.

In addition, a security officer or manager must perform duties required “under this chapter” in a uniform that bears at least one patch or emblem visible at all time clearly identifying the employing agency.

**Section 3** provides the bill takes effect on July 1, 2011.

**Other Potential Implications:**

While a person may know that physical barriers and signage indicate that trespassing may be unlawful, they may be unaware that they are in a “critical infrastructure facility” where security personnel would have the lawful authority to detain and search them, if otherwise warranted. The designation of “critical infrastructure facility” is not necessarily public information.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is possible that a person who is detained under this bill could raise Fourth Amendment search and seizure issues. The bill statutorily authorizes one citizen, arguably “under color of law,” to detain and search another citizen virtually *on behalf of* law enforcement. For that reason, security officers who undertake a detention and subsequent search under the parameters authorized in the bill should be aware that any evidence they seize may be later used as evidence in a criminal case and it should be handled accordingly.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. **Government Sector Impact:**

The bill creates misdemeanor and felony offenses. The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet met to provide an impact estimate on the bill.<sup>18</sup>

VI. **Technical Deficiencies:**

Section 2 of the bill requires a security officer or manager to perform duties required “under this chapter” in a uniform that bears at least one patch or emblem visible at all time clearly indentifying the employing agency. The clause “under this chapter” should be replaced with “under this section” as the bill creates provisions in an undesignated section of the Florida Statutes. An amendment traveling with the bill would correct this technical deficiency.

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:**

**Barcode 587518 by Commerce and Tourism Committee on March 29, 2011:**

This amendment corrects a technical deficiency related to a reference to provisions in the bill.

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

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<sup>18</sup> Senate Criminal Justice Committee staff has requested that the bill be placed on a future CJIC agenda.



587518

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/29/2011	.	
	.	
	.	
	.	

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The Committee on Commerce and Tourism (Detert) recommended the following:

**Senate Amendment**

Delete line 182  
and insert:  
regulated under this section in a uniform that bears at least

**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 1790

INTRODUCER: Senator Storms

SUBJECT: Driving Under the Influence

DATE: March 29, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Spalla	TR	<b>Favorable</b>
2.	Dugger	Cannon	CJ	<b>Pre-Meeting</b>
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill prohibits any state or local law enforcement agency from operating a “no refusal” driving under the influence (DUI) checkpoint at which a judge is present on-site to issue a warrant for a blood test without the person’s consent.

This bill creates a new unnumbered section of the Florida Statutes.

**II. Present Situation:**

Currently, s. 316.1932, F.S., allows a law enforcement officer to request a blood test of a person who is suspected of operating a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances if that person appears for treatment in a hospital, clinic, or other medical facility and a breath or urine test is impractical. These tests must conform to the rules promulgated by the Alcohol Testing Program within the Department of Law Enforcement. Refusal to take the blood test causes the driver to have their driver’s license suspended for a period of 1 year for a first refusal, or 18 months if the driver had previously had their license suspended for refusing a blood test or other such test. Also, s. 316.1933, F.S., mandates that a blood test be performed, with an authorized use of reasonable force, on a driver whom a law enforcement officer has probable cause to believe is driving under the influence of alcoholic beverages, chemical substances, or controlled substances and has caused serious bodily injury or death to a human being.

According to the Department of Highway Safety and Motor Vehicles, “no refusal” DUI checkpoints, as they have been run thus far in the state of Florida, consist of a traditional DUI checkpoint with the addition of an Assistant State Attorney (ASA), blood-draw technicians

possibly being on-site with the officers, and with an on-call judge who may or may not be on-site. Once a driver is stopped at the checkpoint, the officer first must determine if probable cause exists that the driver is under the influence of drugs or alcohol to the extent his/her normal faculties are impaired. Such determinations are made by the officer on the basis of factors including but not limited to the odor of alcohol, slurred speech, blood-shot eyes, stumbling, and fumbling for his or her driver's license. At a DUI checkpoint an officer must base the probable cause determination more heavily on these factors than he would at a routine traffic stop because usually the checkpoint officer would lack any observation of erratic driving.

Once probable cause is determined, the driver is asked to submit to a breath alcohol test. Under no circumstances would every driver stopped at a "no refusal" DUI checkpoint be asked to submit to a breath test without the requisite determination of probable cause. If a driver for whom probable cause has been established refuses the breath test, the officer will complete an application for a search warrant, which includes an affidavit of probable cause, which when approved by the on-site ASA is delivered to the on-call judge either by the officer or with an electronic file transfer. After review the on-call judge may issue a warrant. Only then could the driver's blood be drawn for testing.<sup>1</sup>

### III. Effect of Proposed Changes:

**Section 1** would prohibit any state or local law enforcement agency from conducting a "no refusal" DUI checkpoint where a judge is present on site to issue a warrant for a blood alcohol test without the driver's consent.

**Section 2** creates 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:

None.

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<sup>1</sup> Telephone communications with the General Counsel and staff of the Department of Highway Safety and Motor Vehicles on March 18, 2011, and March 21, 2011.

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 1808

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Assault or Battery

DATE: March 29, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill provides that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties must be sentenced to a 20-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a firearm or destructive device.

The bill also provides that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties, must be sentenced to a 25-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

This bill substantially amends the following section of the Florida Statutes: 784.07.

**II. Present Situation:**

Simple battery is generally a first degree misdemeanor.<sup>1</sup> Section 784.07(2)(b), F.S., reclassifies<sup>2</sup> a battery from a first degree misdemeanor to a third degree felony<sup>3</sup> if a person knowingly<sup>4</sup>

<sup>1</sup> See s. 784.03(1), F.S. This offense is committed 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. *Id.* A first degree misdemeanor is punishable by up to one year in a county jail and a fine of up to \$1,000 may also be imposed. ss. 775.082 and 775.083, F.S.

<sup>2</sup> Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for the offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony.

commits a battery upon any of the following persons in the lawful performance of that person's duties:

- A law enforcement officer.<sup>5</sup>
- A firefighter.<sup>6</sup>
- An emergency medical care provider.
- A traffic accident investigation officer.
- A nonsworn law enforcement agency employee who is certified as an agency inspector.
- A blood alcohol analyst or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI.
- A law enforcement explorer.
- A traffic infraction enforcement officer.
- A parking enforcement specialist.
- A public transit employee or agent.
- A person licensed as a security officer and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer.
- A security officer employed by the board of trustees of a community college.

Section 784.07(3)(a), F.S., provides that a person who is convicted under s. 784.07(2)(b), F.S., must be sentenced to a 3-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a firearm<sup>7</sup> or destructive device.<sup>8</sup> Section 784.07(3)(b),

<sup>3</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000 may also be imposed. ss. 775.082 and 775.083, F.S. The reclassified third degree felony under s. 784.07(2)(b), F.S., is ranked in Level 4 of the offense severity ranking chart of the Criminal Punishment Code. s. 921.0022(3)(d), F.S.

<sup>4</sup> As regards a law enforcement officer as a victim under s. 784.07, the Florida Supreme Court has held that the term "knowingly" in s. 784.07, F.S., includes knowledge of the officer's status. *Polite v. State*, 973 So.2d 1107, 1115 (Fla.2007).

<sup>5</sup> Section 784.07(1)(d), F.S., defines the term "law enforcement officer" to include 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; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505, F.S.; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement.

<sup>6</sup> Section 784.07(1)(b), F.S., defines the term "firefighter" to mean 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.

<sup>7</sup> Section 790.001(6), F.S., defines the term "firearm" to mean any weapon (including a starter gun) which will, 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; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

<sup>8</sup> Section 790.001(4), F.S., defines the term "destructive device" to mean any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other

F.S., provides that a person who is convicted under s. 784.07(2)(b), F.S., must be sentenced to a 8-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a semiautomatic firearm<sup>9</sup> and its high-capacity detachable box magazine<sup>10</sup> or a machine gun.<sup>11</sup>

Section 784.07(3), F.S., also provides that, notwithstanding s. 948.01, F.S., adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275, F.S., or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, F.S., prior to serving the minimum sentence.

### III. Effect of Proposed Changes:

The bill retains current 3 and 8-year mandatory minimum terms under s. 784.07(3), F.S., if the battery is upon a person specified in s. 784.07(2), F.S., who is not a law enforcement officer or firefighter.

The bill amends s. 784.07(3), F.S., to provide that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties must be sentenced to a 20-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a firearm or destructive device.

The bill also amends s. 784.07(3), F.S., to provide that a person who is convicted under s. 784.07(2)(b), F.S., of knowingly committing a battery on a law enforcement officer or firefighter in the lawful performance of his or her duties, must be sentenced to a 25-year mandatory minimum term of imprisonment if the person, during the commission of this offense, possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.

Staff notes that the battery offense to which the minimum sentence provisions apply is a third degree felony (as reclassified). Since the maximum penalty provided under s. 775.082, F.S., for a third degree felony is 5-years state imprisonment, the mandatory minimum terms are greater than the maximum penalty under s. 775.082, F.S. This is not unlike the current 8-year mandatory

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ammunition designed for use in a firearm other than a destructive device. "Destructive device" does not include a device which is not designed, redesigned, used, or intended for use as a weapon; any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; any shotgun other than a short-barreled shotgun; or any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

<sup>9</sup> Section 775.087(3)(e)2., F.S., defines the term "semiautomatic firearm" to mean a firearm which is capable of firing a series of rounds by separate successive depressions of the trigger and which uses the energy of discharge to perform a portion of the operating cycle.

<sup>10</sup> Section 775.087(3)(e)1., F.S., defines the term "high-capacity detachable box magazine" to mean any detachable box magazine, for use in a semiautomatic firearm, which is capable of being loaded with more than 20 centerfire cartridges.

<sup>11</sup> Section 790.001(9), F.S., defines the term "machine gun" to mean any firearm, as defined in s. 790.001, F.S., which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

minimum term under s. 784.07(3)(b), F.S., though the new mandatory minimum terms are significantly longer.<sup>12</sup>

**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 creates 20 and 25-year mandatory minimum terms of imprisonment, but it is not known how many battery offenses would be subject to those mandatory minimum terms.

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet met to provide an impact estimate for the bill.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>12</sup> In *Medenhall v. State*, 48 So.3d 740 (Fla.2010), the Florida Supreme Court held that specific provisions of s. 775.087, F.S., the “10-20-Life” statute with regard to mandatory minimums controlled over the general provisions of s. 775.082, F.S., regarding statutory maximums.

<sup>13</sup> Senate Criminal Justice Committee staff has requested that the bill be placed on a future CJIC agenda.

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

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LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment**

Delete lines 94 - 99

and insert:

40. 3,4-Methylenedioxymethcathinone.

41. 3,4-Methylenedioxypropylvalerone (MDPV).

42. Methylenedioxymethcathinone.

43. Methoxymethcathinone.

44. Fluoromethcathinone.

45. Methylethcathinone.

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**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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 1886

INTRODUCER: Senator Wise

SUBJECT: Controlled Substances

DATE: March 24, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

The bill schedules several psychoactive substances in Schedule I of Florida's controlled substance schedules. Currently, these substances are temporarily scheduled in Schedule I by emergency rule of the Florida Attorney General.

This bill substantially amends s. 893.03, F.S., and reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendments to s. 893.03 in reference thereto.

**II. Present Situation:**

On January 26, 2011, the Florida Attorney General, by emergency rule, temporarily scheduled the following psychoactive substances:

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypyrovalerone (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.
- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).<sup>1</sup>

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<sup>1</sup> Notice of Emergency Rule, 2ER11-1 (effective January 26, 2011), Florida Administrative Weekly, vol. 37/06 (published February 11, 2011), <https://www.flrules.org/gateway/ruleNo.asp?id=2ER11-1> (last accessed on March 24, 2011).

The effect of this emergency rule is that retailers and those in possession of these substances who do not comply with the rule may be subject to arrest and prosecution for offenses under ch. 893, F.S., relevant to Schedule I controlled substances. A Schedule I controlled substance is a substance that has a high potential for abuse and no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards.<sup>2</sup>

Some of these psychoactive substances have been identified as cathinones or cathinone derivatives of synthetic origin.<sup>3</sup> Most, if not all, of these substances have been sold over the Internet and at some head shops, convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, truck stops, and other locations.<sup>4</sup> They are typically sold as “bath salts,” “plant food/plant growth regulators,” and “research chemicals.”<sup>5</sup> None of these substances has a currently accepted medical use in treatment in the United States.

In recent years, the abuse of these psychoactive substances has increased. Law enforcement and medical professionals indicated that the popularity of these substances increased due to the perception that they posed a seemingly safer alternative to illegal methods of getting “high” and could be easily obtained.<sup>6</sup>

The Office of Statewide Intelligence in the Florida Department of Law Enforcement (FDLE) has noted:

[T]he Florida Department of Health has reported numerous health-related calls to both the Florida Poison Control Center (FPCC) and emergency rooms concerning the use of “bath salts.” The FPCC has received several calls regarding exposure to this product with the majority of these calls being placed by individuals 16 to 30 years of age. As an example, during the weekend of January 21-22, 2011, a north Florida emergency room physician reported to FDLE an excess of six emergency related patients admitted due to both the ingestion and injection of “bath salts.”<sup>7</sup>

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<sup>2</sup> s. 893.03(1), F.S.

<sup>3</sup> Cathinone is a Schedule I controlled substance under s. 893.03(1)(c)8., F.S. Cathinone is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances. “Consideration of the cathinones” (March 2010), Advisory Council on the Misuse of Drugs, United Kingdom, <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary> (last accessed on March 24, 2010). The “molecular architecture” of cathinone “can be altered to produce a series of different compounds which are closely structurally related to cathinone. Together these are known as ‘cathinones’ or ‘cathinone derivatives.’” *Id.* For example, the Advisory Council describes methylone as “the cathinone analogue of MDMA (ecstasy)” and mephedrone as a “cathinone derivative.” *Id.* “Advisory Council report” is cited in further reference to this source.

<sup>4</sup> Advisory Council report and “Drug Alert Watch: Increasing abuse of bath salts” (December 17, 2010), National Drug Intelligence Center, United States Department of Justice, <http://www.justice.gov/ndic/pubs43/43474/sw0007p.pdf> (last accessed on March 24, 2011).

<sup>5</sup> Advisory Council report. According to the Advisory Council, “none of the cathinones has any recognized efficacy as a plant fertilizer nor would they suitably function as bath salts.” *Id.*

<sup>6</sup> “‘Bath Salts’ Receive Emergency Drug Scheduling” (January 26, 2011), Florida Fusion Center, Florida Department of Law Enforcement, <http://www.myfloridalicense.com/dbpr/abt/documents/FDLEBriefBathSaltsPublic.pdf> (last accessed on March 24, 2011).

<sup>7</sup> *Id.* “Throughout the US, Poison Centers have been tracking calls about users hospitalized. In 2010, there were 291 calls. In January 2011 alone, there were 373 cases.” “Synthetic chemicals known as Bath Salts or Plant Food” (footnote omitted),

The Office of Statewide Intelligence has also identified reported toxicity and side effects of these psychoactive substances:

“Bath salt” products are known to produce certain side effects, some of which are quite severe. The following is the list of milder, short-term side effects associated with consumption of this drug as reported by medical personnel:

- Increased heart rate
- Increased alertness and awareness
- Agitation
- Anxiety
- Diminished requirement for sleep
- Fits and delusions
- Lack of appetite
- Nosebleeds

More serious side effects associated with these drugs reportedly include:

- Muscle spasms
- Hallucinations
- Blood circulation problems, including increased blood pressure
- Aggression
- Kidney failure
- Severe paranoia
- Seizures
- Panic attacks
- Risk of renal failure
- Sharp increase in body temperature

In most extreme cases, powdered “bath salt” products have been linked to self-mutilation and drug induced deaths to include an increased risk of suicide.<sup>8</sup>

These psychoactive substances do not appear to be specifically scheduled at this time under federal law, but mephedrone and MDPV are listed by the United States Drug Enforcement Administration (DEA) as “Drugs and Chemicals of Concern.”<sup>9</sup> The DEA has indicated that mephedrone, one of these substances, “can be considered an analogue of methcathinone (schedule I substance) under the analogue provision of the CSA (Title 21 United States Code 813). Therefore, law enforcement cases involving mephedrone can be prosecuted under the

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Florida Poison Control Center, Tampa, Florida, <http://poisoncentertampa.org/resources/1/substances/Bath-salts-FPICT-flyer.pdf> (last accessed on March 25, 2011).

<sup>8</sup> “‘Bath Salts’ Receive Emergency Drug Scheduling” (January 26, 2011), Florida Fusion Center, Florida Department of Law Enforcement, <http://www.myfloridalicense.com/dbpr/abt/documents/FDLEBriefBathSaltsPublic.pdf> (last accessed on March 24, 2011).

<sup>9</sup> Drugs and Chemicals of Concern, Office of Diversion Control, U.S. Drug Enforcement Administration, [http://www.deadiversion.usdoj.gov/drugs\\_concern/index.html](http://www.deadiversion.usdoj.gov/drugs_concern/index.html) (last accessed on March 24, 2010).

Federal Analog Act of the CSA.”<sup>10</sup> Scheduling information and other information provided by the DEA at its website do not indicate whether the other psychoactive substances may be covered by the Federal Analog Act.

### III. Effect of Proposed Changes:

The bill amends s. 893.13(1)(c), F.S., to schedule several psychoactive substances in Schedule I of Florida’s controlled substance schedule. Currently, these substances are temporarily scheduled in Schedule I by emergency rule of the Florida Attorney General. The substances scheduled are:

- 3,4-Methylenedioxymethcathinone (Methylone).
- 3,4-Methylenedioxypropylamphetamine (MDPV).
- 4-Methylmethcathinone (Mephedrone).
- 3-Methoxymethcathinone.
- 3-Fluoromethcathinone.
- 4-Fluoromethcathinone (Flephedrone).

The description of the substances duplicates the description of the substances in the emergency rule.

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate the amendments to s. 893.03, F.S., in reference thereto.

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

#### **Other Potential Implications:**

The psychoactive substances listed in the bill are currently scheduled by emergency rule of the Florida Attorney General pursuant to her emergency authority under s. 893.035(7), F.S. The effective date of the rule is January 26, 2011. Attorney General staff informed Senate professional staff that the rule will elapse on June 30, 2011. If the rule elapses and these substances are not scheduled by statute, possession, sale, distribution, etc., of these substances will not be a criminal offense under Florida law.

The FDLE provided the following suggestions to modify proposed scheduling language and the rationale for those changes:

Based on recommendations received from FDLE’s drug chemists, FDLE suggests amending the current proposed substance list to match the following:

- 3,4-methylenedioxymethcathinone
- Methylmethcathinone
- Methylethcathinone

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<sup>10</sup> “4-methylmethcathinone [Mephedrone, 4-MMC, meow meow, m-CAT, bounce, bubbles, mad cow]” (July 2010), Office of Diversion Control, U.S. Drug Enforcement Administration, [http://www.deadiversion.usdoj.gov/drugs\\_concern/mephedrone.htm](http://www.deadiversion.usdoj.gov/drugs_concern/mephedrone.htm) (last accessed on March 25, 2011).

- Methoxymethcathinone
- Fluoromethcathinone
- 3,4-methylenedioxypropylamphetamine (MDPV)

The key differences between the substances identified in the emergency scheduling and the new recommendation for final legislation is centered around dropping the listing of the specific isomers and recommending only controlling the parent drug compounds. This approach should allow for all isomers and salts of isomers of the parent drug compounds, as well as any new analogs that we come across, to be controlled based on the current language in 893.03, F.S., Schedule I. We also recommend dropping the abbreviated names in parentheses except for MDPV. The decision to leave MDPV listed as an acronym is due to MDMA being handled identically in the statutes, as this is a very common acronym used in the criminal justice community.

Additionally, the FDLE Crime Laboratories did share these suggestions to other law enforcement laboratories throughout Florida and did not receive any differing suggestions on how to best capture the broadest range of synthetic substances used in psychoactive “bath salts” products.<sup>11</sup>

#### **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 FDLE states that the bill “should have little or no impact of the private sector. All of the proposed substances have been emergency scheduled as a Schedule I drug by Florida Attorney General Bondi as of January 26, 2011, with little-to-no reported impact to the private sector.”<sup>12</sup>

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<sup>11</sup> Analysis of SB 1886, Florida Department of Law Enforcement (March 18, 2011) (on file with the Senate Criminal Justice Committee). “FDLE analysis” is cited in further reference to this source.

<sup>12</sup> FDLE analysis.

**C. Government Sector Impact:**

The FDLE states that passage of the bill “would add additional chemical substances to Florida’s controlled substances list. However, since the emergency scheduling of these proposed chemicals were enacted on January 26, 2011, FDLE’s Crime Laboratory System is currently able to identify and has obtained standards of the proposed substances (with the exception of one) in one or more of the crime laboratories. Thus, the fiscal impact would be minimal.”<sup>13</sup>

The FDLE also states that “[l]ocal agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a similar rise in submissions associated with the additions of the proposed chemical substances.”<sup>14</sup>

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet met to provide an impact estimate for the bill.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Several states, including Hawaii, Michigan, Louisiana, Kentucky, and North Dakota, have introduced legislation to ban the so-called “bath salts” products.<sup>16</sup>

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

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Senate Criminal Justice Committee staff has requested that the bill be placed on a future CJIC agenda.

<sup>16</sup> “Message from the Director on ‘Bath Salts’ - Emerging and Dangerous Products,” National Institute on Drug Abuse, <http://www.nida.nih.gov/about/welcome/MessageBathSalts211.html> (last accessed on March 24, 2011).



133958

LEGISLATIVE ACTION

Senate	.	House
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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. Paragraph (i) of subsection (2), paragraphs (a), (e), (g), (i), and (j) of subsection (6), paragraph (a) of subsection (8), and paragraph (a) of subsection (10) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

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

(i) "Internet identifier ~~Instant message name~~" means all electronic mail, chat, instant messenger, social networking, or



133958

13 similar name used for Internet communication, but does not  
14 include a date of birth, social security number, or personal  
15 identification number (PIN) an identifier that allows a person  
16 to communicate in real time with another person using the  
17 Internet. Voluntary disclosure by the sexual predator of his or  
18 her date of birth, social security number, or personal  
19 identification number (PIN) as an Internet identifier waives the  
20 disclosure exemption in this paragraph for such personal  
21 information.

22 (6) REGISTRATION.—

23 (a) A sexual predator must register with the department  
24 through the sheriff's office by providing the following  
25 information to the department:

26 1. Name; social security number; age; race; sex; date of  
27 birth; height; weight; hair and eye color; photograph; address  
28 of legal residence and address of any current temporary  
29 residence, within the state or out of state, including a rural  
30 route address and a post office box; if no permanent or  
31 temporary address, any transient residence within the state;  
32 address, location or description, and dates of any current or  
33 known future temporary residence within the state or out of  
34 state; all any electronic mail addresses address and all  
35 Internet identifiers any instant message name required to be  
36 provided pursuant to subparagraph (g)4.; all home telephone  
37 numbers number and any cellular telephone numbers number; date  
38 and place of any employment; date and place of each conviction;  
39 fingerprints; and a brief description of the crime or crimes  
40 committed by the offender. A post office box shall not be  
41 provided in lieu of a physical residential address. The sexual



133958

42 predator must also produce or provide information about his or  
43 her passport, if he or she has a passport, and, if he or she is  
44 an alien, must produce or provide information about documents  
45 establishing his or her immigration status.

46 a. If the sexual predator's place of residence is a motor  
47 vehicle, trailer, mobile home, or manufactured home, as defined  
48 in chapter 320, the sexual predator shall also provide to the  
49 department written notice of the vehicle identification number;  
50 the license tag number; the registration number; and a  
51 description, including color scheme, of the motor vehicle,  
52 trailer, mobile home, or manufactured home. If a sexual  
53 predator's place of residence is a vessel, live-aboard vessel,  
54 or houseboat, as defined in chapter 327, the sexual predator  
55 shall also provide to the department written notice of the hull  
56 identification number; the manufacturer's serial number; the  
57 name of the vessel, live-aboard vessel, or houseboat; the  
58 registration number; and a description, including color scheme,  
59 of the vessel, live-aboard vessel, or houseboat.

60 b. If the sexual predator is enrolled, employed, or  
61 carrying on a vocation at an institution of higher education in  
62 this state, the sexual predator shall also provide to the  
63 department the name, address, and county of each institution,  
64 including each campus attended, and the sexual predator's  
65 enrollment or employment status. Each change in enrollment or  
66 employment status shall be reported in person at the sheriff's  
67 office, or the Department of Corrections if the sexual predator  
68 is in the custody or control of or under the supervision of the  
69 Department of Corrections, within 48 hours after any change in  
70 status. The sheriff or the Department of Corrections shall



133958

71 promptly notify each institution of the sexual predator's  
72 presence and any change in the sexual predator's enrollment or  
73 employment status.

74 2. Any other information determined necessary by the  
75 department, including criminal and corrections records;  
76 nonprivileged personnel and treatment records; and evidentiary  
77 genetic markers when available.

78 (e)1. If the sexual predator is not in the custody or  
79 control of, or under the supervision of, the Department of  
80 Corrections or is not in the custody of a private correctional  
81 facility, the sexual predator shall register in person:

82 a. At the sheriff's office in the county where he or she  
83 establishes or maintains a residence within 48 hours after  
84 establishing or maintaining a residence in this state; and

85 b. At the sheriff's office in the county where he or she  
86 was designated a sexual predator by the court within 48 hours  
87 after such finding is made.

88 2. Any change in the sexual predator's permanent or  
89 temporary residence, name, or all any electronic mail addresses  
90 ~~address~~ and all Internet identifiers ~~any instant message name~~  
91 required to be provided pursuant to subparagraph (g)4., after  
92 the sexual predator registers in person at the sheriff's office  
93 as provided in subparagraph 1., shall be accomplished in the  
94 manner provided in paragraphs (g), (i), and (j). When a sexual  
95 predator registers with the sheriff's office, the sheriff shall  
96 take a photograph and a set of fingerprints of the predator and  
97 forward the photographs and fingerprints to the department,  
98 along with the information that the predator is required to  
99 provide pursuant to this section.



133958

100 (g)1. Each time a sexual predator's driver's license or  
101 identification card is subject to renewal, and, without regard  
102 to the status of the predator's driver's license or  
103 identification card, within 48 hours after any change of the  
104 predator's residence or change in the predator's name by reason  
105 of marriage or other legal process, the predator shall report in  
106 person to a driver's license office and shall be subject to the  
107 requirements specified in paragraph (f). The Department of  
108 Highway Safety and Motor Vehicles shall forward to the  
109 department and to the Department of Corrections all photographs  
110 and information provided by sexual predators. Notwithstanding  
111 the restrictions set forth in s. 322.142, the Department of  
112 Highway Safety and Motor Vehicles is authorized to release a  
113 reproduction of a color-photograph or digital-image license to  
114 the Department of Law Enforcement for purposes of public  
115 notification of sexual predators as provided in this section. A  
116 sexual predator who is unable to secure or update a driver's  
117 license or identification card with the Department of Highway  
118 Safety and Motor Vehicles as provided in s. 943.0435(3) and (4)  
119 must also report any change of the predator's residence or  
120 change in the predator's name by reason of marriage or other  
121 legal process within 48 hours after the change to the sheriff's  
122 office in the county where the predator resides or is located  
123 and provide confirmation that he or she reported such  
124 information to the Department of Highway Safety and Motor  
125 Vehicles.

126 2. A sexual predator who vacates a permanent, temporary, or  
127 transient residence and fails to establish or maintain another  
128 permanent, temporary, or transient residence shall, within 48



133958

129 hours after vacating the permanent, temporary, or transient  
130 residence, report in person to the sheriff's office of the  
131 county in which he or she is located. The sexual predator shall  
132 specify the date upon which he or she intends to or did vacate  
133 such residence. The sexual predator must provide or update all  
134 of the registration information required under paragraph (a).  
135 The sexual predator must provide an address for the residence or  
136 other place that he or she is or will be located during the time  
137 in which he or she fails to establish or maintain a permanent or  
138 temporary residence.

139 3. A sexual predator who remains at a permanent, temporary,  
140 or transient residence after reporting his or her intent to  
141 vacate such residence shall, within 48 hours after the date upon  
142 which the predator indicated he or she would or did vacate such  
143 residence, report in person to the sheriff's office to which he  
144 or she reported pursuant to subparagraph 2. for the purpose of  
145 reporting his or her address at such residence. When the sheriff  
146 receives the report, the sheriff shall promptly convey the  
147 information to the department. An offender who makes a report as  
148 required under subparagraph 2. but fails to make a report as  
149 required under this subparagraph commits a felony of the second  
150 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
151 775.084.

152 4. A sexual predator must register all ~~any~~ electronic mail  
153 addresses and Internet identifiers ~~address or instant message~~  
154 ~~name~~ with the department prior to using such electronic mail  
155 addresses and Internet identifiers ~~address or instant message~~  
156 ~~name on or after October 1, 2007~~. The department shall establish  
157 an online system through which sexual predators may securely



133958

158 access and update all electronic mail address and Internet  
159 identifier ~~instant message name~~ information.

160 (i) A sexual predator who intends to establish a permanent,  
161 temporary, or transient residence in another state or  
162 jurisdiction other than the State of Florida shall report in  
163 person to the sheriff of the county of current residence within  
164 48 hours before the date he or she intends to leave this state  
165 to establish residence in another state or jurisdiction or  
166 within 21 days before his or her planned departure date if the  
167 intended residence of 7 days or more is outside of the United  
168 States. The sexual predator must provide to the sheriff the  
169 address, municipality, county, ~~and~~ state, and country of  
170 intended residence. The sheriff shall promptly provide to the  
171 department the information received from the sexual predator.  
172 The department shall notify the statewide law enforcement  
173 agency, or a comparable agency, in the intended state, ~~or~~  
174 jurisdiction, or country of residence of the sexual predator's  
175 intended residence. The failure of a sexual predator to provide  
176 his or her intended place of residence is punishable as provided  
177 in subsection (10).

178 (j) A sexual predator who indicates his or her intent to  
179 establish a permanent, temporary, or transient residence in  
180 another state, a ~~or~~ jurisdiction other than the State of  
181 Florida, or another country and later decides to remain in this  
182 state shall, within 48 hours after the date upon which the  
183 sexual predator indicated he or she would leave this state,  
184 report in person to the sheriff to which the sexual predator  
185 reported the intended change of residence, and report his or her  
186 intent to remain in this state. If the sheriff is notified by



133958

187 the sexual predator that he or she intends to remain in this  
188 state, the sheriff shall promptly report this information to the  
189 department. A sexual predator who reports his or her intent to  
190 establish a permanent, temporary, or transient residence in  
191 another state, a ~~ex~~ jurisdiction other than the State of  
192 Florida, or another country, but who remains in this state  
193 without reporting to the sheriff in the manner required by this  
194 paragraph, commits a felony of the second degree, punishable as  
195 provided in s. 775.082, s. 775.083, or s. 775.084.

196 (8) VERIFICATION.—The department and the Department of  
197 Corrections shall implement a system for verifying the addresses  
198 of sexual predators. The system must be consistent with the  
199 provisions of the federal Adam Walsh Child Protection and Safety  
200 Act of 2006 and any other federal standards applicable to such  
201 verification or required to be met as a condition for the  
202 receipt of federal funds by the state. The Department of  
203 Corrections shall verify the addresses of sexual predators who  
204 are not incarcerated but who reside in the community under the  
205 supervision of the Department of Corrections and shall report to  
206 the department any failure by a sexual predator to comply with  
207 registration requirements. County and local law enforcement  
208 agencies, in conjunction with the department, shall verify the  
209 addresses of sexual predators who are not under the care,  
210 custody, control, or supervision of the Department of  
211 Corrections. Local law enforcement agencies shall report to the  
212 department any failure by a sexual predator to comply with  
213 registration requirements.

214 (a) A sexual predator must report in person each year  
215 during the month of the sexual predator's birthday and during



133958

216 every third month thereafter to the sheriff's office in the  
217 county in which he or she resides or is otherwise located to  
218 reregister. The sheriff's office may determine the appropriate  
219 times and days for reporting by the sexual predator, which shall  
220 be consistent with the reporting requirements of this paragraph.  
221 Reregistration shall include any changes to the following  
222 information:

223 1. Name; social security number; age; race; sex; date of  
224 birth; height; weight; hair and eye color; address of any  
225 permanent residence and address of any current temporary  
226 residence, within the state or out of state, including a rural  
227 route address and a post office box; if no permanent or  
228 temporary address, any transient residence within the state;  
229 address, location or description, and dates of any current or  
230 known future temporary residence within the state or out of  
231 state; all ~~any~~ electronic mail addresses ~~address~~ and all  
232 Internet identifiers ~~any instant message name~~ required to be  
233 provided pursuant to subparagraph (6)(g)4.; all home telephone  
234 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date  
235 and place of any employment; vehicle make, model, color, and  
236 license tag number; fingerprints; and photograph. A post office  
237 box shall not be provided in lieu of a physical residential  
238 address.

239 2. If the sexual predator is enrolled, employed, or  
240 carrying on a vocation at an institution of higher education in  
241 this state, the sexual predator shall also provide to the  
242 department the name, address, and county of each institution,  
243 including each campus attended, and the sexual predator's  
244 enrollment or employment status.



133958

245           3. If the sexual predator's place of residence is a motor  
246 vehicle, trailer, mobile home, or manufactured home, as defined  
247 in chapter 320, the sexual predator shall also provide the  
248 vehicle identification number; the license tag number; the  
249 registration number; and a description, including color scheme,  
250 of the motor vehicle, trailer, mobile home, or manufactured  
251 home. If the sexual predator's place of residence is a vessel,  
252 live-aboard vessel, or houseboat, as defined in chapter 327, the  
253 sexual predator shall also provide the hull identification  
254 number; the manufacturer's serial number; the name of the  
255 vessel, live-aboard vessel, or houseboat; the registration  
256 number; and a description, including color scheme, of the  
257 vessel, live-aboard vessel, or houseboat.

258           (10) PENALTIES.—

259           (a) Except as otherwise specifically provided, a sexual  
260 predator who fails to register; who fails, after registration,  
261 to maintain, acquire, or renew a driver's license or  
262 identification card; who fails to provide required location  
263 information, electronic mail address information, Internet  
264 identifier ~~instant message name~~ information, all home telephone  
265 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~, or  
266 change-of-name information; who fails to make a required report  
267 in connection with vacating a permanent residence; who fails to  
268 reregister as required; who fails to respond to any address  
269 verification correspondence from the department within 3 weeks  
270 of the date of the correspondence; or who otherwise fails, by  
271 act or omission, to comply with the requirements of this  
272 section, commits a felony of the third degree, punishable as  
273 provided in s. 775.082, s. 775.083, or s. 775.084.



133958

274 Section 2. Paragraphs (a) and (g) of subsection (1),  
275 subsection (2), paragraphs (a) and (d) of subsection (4),  
276 subsections (7) and (8), and paragraph (c) of subsection (14) of  
277 section 943.0435, Florida Statutes, are amended to read:

278 943.0435 Sexual offenders required to register with the  
279 department; penalty.—

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

281 (a)1. "Sexual offender" means a person who meets the  
282 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
283 subparagraph c., or sub-subparagraph d., as follows:

284 a.(I) Has been convicted of committing, or attempting,  
285 soliciting, or conspiring to commit, any of the criminal  
286 offenses proscribed in the following statutes in this state or  
287 similar offenses in another jurisdiction: s. 787.01, s. 787.02,  
288 or s. 787.025(2)(c), where the victim is a minor and the  
289 defendant is not the victim's parent or guardian; s. 794.011,  
290 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.  
291 800.04; s. 825.1025; s. 826.04 where the victim is a minor and  
292 the defendant is 18 years of age or older; s. 827.071; s.  
293 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.  
294 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense  
295 committed in this state which has been redesignated from a  
296 former statute number to one of those listed in this sub-sub-  
297 subparagraph; and

298 (II) Has been released on or after October 1, 1997, from  
299 the sanction imposed for any conviction of an offense described  
300 in sub-sub-subparagraph (I). For purposes of sub-sub-  
301 subparagraph (I), a sanction imposed in this state or in any  
302 other jurisdiction includes, but is not limited to, a fine,



133958

303 probation, community control, parole, conditional release,  
304 control release, or incarceration in a state prison, federal  
305 prison, private correctional facility, or local detention  
306 facility;

307       b. Establishes or maintains a residence in this state and  
308 who has not been designated as a sexual predator by a court of  
309 this state but who has been designated as a sexual predator, as  
310 a sexually violent predator, or by another sexual offender  
311 designation in another state or jurisdiction and was, as a  
312 result of such designation, subjected to registration or  
313 community or public notification, or both, or would be if the  
314 person were a resident of that state or jurisdiction, without  
315 regard to whether the person otherwise meets the criteria for  
316 registration as a sexual offender;

317       c. Establishes or maintains a residence in this state who  
318 is in the custody or control of, or under the supervision of,  
319 any other state or jurisdiction as a result of a conviction for  
320 committing, or attempting, soliciting, or conspiring to commit,  
321 any of the criminal offenses proscribed in the following  
322 statutes or similar offense in another jurisdiction: s. 787.01,  
323 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and  
324 the defendant is not the victim's parent or guardian; s.  
325 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.  
326 796.035; s. 800.04; s. 825.1025; s. 826.04 where the victim is a  
327 minor and the defendant is 18 years of age or older; s. 827.071;  
328 s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137;  
329 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar  
330 offense committed in this state which has been redesignated from  
331 a former statute number to one of those listed in this sub-



133958

332 subparagraph; or

333 d. On or after July 1, 2007, has been adjudicated  
334 delinquent for committing, or attempting, soliciting, or  
335 conspiring to commit, any of the criminal offenses proscribed in  
336 the following statutes in this state or similar offenses in  
337 another jurisdiction when the juvenile was 14 years of age or  
338 older at the time of the offense:

339 (I) Section 794.011, excluding s. 794.011(10);

340 (II) Section 800.04(4)(b) where the victim is under 12  
341 years of age or where the court finds sexual activity by the use  
342 of force or coercion;

343 (III) Section 800.04(5)(c)1. where the court finds  
344 molestation involving unclothed genitals; or

345 (IV) Section 800.04(5)(d) where the court finds the use of  
346 force or coercion and unclothed genitals.

347 2. For all qualifying offenses listed in sub-subparagraph  
348 (1)(a)1.d., the court shall make a written finding of the age of  
349 the offender at the time of the offense.

350  
351 For each violation of a qualifying offense listed in this  
352 subsection, the court shall make a written finding of the age of  
353 the victim at the time of the offense. For a violation of s.  
354 800.04(4), the court shall additionally make a written finding  
355 indicating that the offense did or did not involve sexual  
356 activity and indicating that the offense did or did not involve  
357 force or coercion. For a violation of s. 800.04(5), the court  
358 shall additionally make a written finding that the offense did  
359 or did not involve unclothed genitals or genital area and that  
360 the offense did or did not involve the use of force or coercion.



133958

361 (g) "Internet identifier ~~Instant message name~~" has the same  
362 meaning as provided in s. 775.21 ~~means an identifier that allows~~  
363 ~~a person to communicate in real time with another person using~~  
364 ~~the Internet.~~

365 (2) A sexual offender shall:

366 (a) Report in person at the sheriff's office:

367 1. In the county in which the offender establishes or  
368 maintains a permanent, temporary, or transient residence within  
369 48 hours after:

370 a. Establishing permanent, temporary, or transient  
371 residence in this state; or

372 b. Being released from the custody, control, or supervision  
373 of the Department of Corrections or from the custody of a  
374 private correctional facility; or

375 2. In the county where he or she was convicted within 48  
376 hours after being convicted for a qualifying offense for  
377 registration under this section if the offender is not in the  
378 custody or control of, or under the supervision of, the  
379 Department of Corrections, or is not in the custody of a private  
380 correctional facility.

381  
382 Any change in the information required to be provided pursuant  
383 to paragraph (b), including, but not limited to, any change in  
384 the sexual offender's permanent, temporary, or transient  
385 residence, name, all any electronic mail addresses ~~address~~ and  
386 all Internet identifiers ~~any instant message name~~ required to be  
387 provided pursuant to paragraph (4)(d), after the sexual offender  
388 reports in person at the sheriff's office, shall be accomplished  
389 in the manner provided in subsections (4), (7), and (8).



133958

390 (b) Provide his or her name; date of birth; social security  
391 number; race; sex; height; weight; hair and eye color; tattoos  
392 or other identifying marks; occupation and place of employment;  
393 address of permanent or legal residence or address of any  
394 current temporary residence, within the state or out of state,  
395 including a rural route address and a post office box; if no  
396 permanent or temporary address, any transient residence within  
397 the state, address, location or description, and dates of any  
398 current or known future temporary residence within the state or  
399 out of state; all home telephone numbers ~~number~~ and ~~any~~ cellular  
400 telephone numbers ~~number~~; all ~~any~~ electronic mail addresses  
401 ~~address~~ and all Internet identifiers ~~any instant message name~~  
402 required to be provided pursuant to paragraph (4) (d); date and  
403 place of each conviction; and a brief description of the crime  
404 or crimes committed by the offender. A post office box shall not  
405 be provided in lieu of a physical residential address. The  
406 sexual offender must also produce or provide information about  
407 his or her passport, if he or she has a passport, and, if he or  
408 she is an alien, must produce or provide information about  
409 documents establishing his or her immigration status.

410 1. If the sexual offender's place of residence is a motor  
411 vehicle, trailer, mobile home, or manufactured home, as defined  
412 in chapter 320, the sexual offender shall also provide to the  
413 department through the sheriff's office written notice of the  
414 vehicle identification number; the license tag number; the  
415 registration number; and a description, including color scheme,  
416 of the motor vehicle, trailer, mobile home, or manufactured  
417 home. If the sexual offender's place of residence is a vessel,  
418 live-aboard vessel, or houseboat, as defined in chapter 327, the



133958

419 sexual offender shall also provide to the department written  
420 notice of the hull identification number; the manufacturer's  
421 serial number; the name of the vessel, live-aboard vessel, or  
422 houseboat; the registration number; and a description, including  
423 color scheme, of the vessel, live-aboard vessel, or houseboat.

424 2. If the sexual offender is enrolled, employed, or  
425 carrying on a vocation at an institution of higher education in  
426 this state, the sexual offender shall also provide to the  
427 department through the sheriff's office the name, address, and  
428 county of each institution, including each campus attended, and  
429 the sexual offender's enrollment or employment status. Each  
430 change in enrollment or employment status shall be reported in  
431 person at the sheriff's office, within 48 hours after any change  
432 in status. The sheriff shall promptly notify each institution of  
433 the sexual offender's presence and any change in the sexual  
434 offender's enrollment or employment status.

435  
436 When a sexual offender reports at the sheriff's office, the  
437 sheriff shall take a photograph and a set of fingerprints of the  
438 offender and forward the photographs and fingerprints to the  
439 department, along with the information provided by the sexual  
440 offender. The sheriff shall promptly provide to the department  
441 the information received from the sexual offender.

442 (4) (a) Each time a sexual offender's driver's license or  
443 identification card is subject to renewal, and, without regard  
444 to the status of the offender's driver's license or  
445 identification card, within 48 hours after any change in the  
446 offender's permanent, temporary, or transient residence or  
447 change in the offender's name by reason of marriage or other



133958

448 legal process, the offender shall report in person to a driver's  
449 license office, and shall be subject to the requirements  
450 specified in subsection (3). The Department of Highway Safety  
451 and Motor Vehicles shall forward to the department all  
452 photographs and information provided by sexual offenders.  
453 Notwithstanding the restrictions set forth in s. 322.142, the  
454 Department of Highway Safety and Motor Vehicles is authorized to  
455 release a reproduction of a color-photograph or digital-image  
456 license to the Department of Law Enforcement for purposes of  
457 public notification of sexual offenders as provided in this  
458 section and ss. 943.043 and 944.606. A sexual offender who is  
459 unable to secure or update a driver's license or identification  
460 card with the Department of Highway Safety and Motor Vehicles as  
461 provided in subsection (3) and this subsection must also report  
462 any change in the sexual offender's permanent, temporary, or  
463 transient residence or change in the offender's name by reason  
464 of marriage or other legal process within 48 hours after the  
465 change to the sheriff's office in the county where the offender  
466 resides or is located and provide confirmation that he or she  
467 reported such information to Department of Highway Safety and  
468 Motor Vehicles.

469 (d) A sexual offender must register all ~~any~~ electronic mail  
470 addresses and Internet identifiers ~~address or instant message~~  
471 ~~name~~ with the department prior to using such electronic mail  
472 addresses and Internet identifiers ~~address or instant message~~  
473 ~~name on or after October 1, 2007~~. The department shall establish  
474 an online system through which sexual offenders may securely  
475 access and update all electronic mail address and Internet  
476 identifier ~~instant message name~~ information.



133958

477 (7) A sexual offender who intends to establish a permanent,  
478 temporary, or transient residence in another state or  
479 jurisdiction other than the State of Florida shall report in  
480 person to the sheriff of the county of current residence within  
481 48 hours before the date he or she intends to leave this state  
482 to establish residence in another state or jurisdiction or  
483 within 21 days before his or her planned departure date if the  
484 intended residence of 7 days or more is outside of the United  
485 States. The notification must include the address, municipality,  
486 county, ~~and~~ state, and country of intended residence. The  
487 sheriff shall promptly provide to the department the information  
488 received from the sexual offender. The department shall notify  
489 the statewide law enforcement agency, or a comparable agency, in  
490 the intended state, ~~or~~ jurisdiction, or country of residence of  
491 the sexual offender's intended residence. The failure of a  
492 sexual offender to provide his or her intended place of  
493 residence is punishable as provided in subsection (9).

494 (8) A sexual offender who indicates his or her intent to  
495 establish a permanent, temporary, or transient residence in  
496 another state, a ~~or~~ jurisdiction other than the State of  
497 Florida, or another country and later decides to remain in this  
498 state shall, within 48 hours after the date upon which the  
499 sexual offender indicated he or she would leave this state,  
500 report in person to the sheriff to which the sexual offender  
501 reported the intended change of permanent, temporary, or  
502 transient residence, and report his or her intent to remain in  
503 this state. The sheriff shall promptly report this information  
504 to the department. A sexual offender who reports his or her  
505 intent to establish a permanent, temporary, or transient



133958

506 residence in another state, a ~~of~~ jurisdiction other than the  
507 State of Florida, or another country but who remains in this  
508 state without reporting to the sheriff in the manner required by  
509 this subsection commits a felony of the second degree,  
510 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

511 (14)

512 (c) The sheriff's office may determine the appropriate  
513 times and days for reporting by the sexual offender, which shall  
514 be consistent with the reporting requirements of this  
515 subsection. Reregistration shall include any changes to the  
516 following information:

517 1. Name; social security number; age; race; sex; date of  
518 birth; height; weight; hair and eye color; address of any  
519 permanent residence and address of any current temporary  
520 residence, within the state or out of state, including a rural  
521 route address and a post office box; if no permanent or  
522 temporary address, any transient residence within the state;  
523 address, location or description, and dates of any current or  
524 known future temporary residence within the state or out of  
525 state; all any electronic mail addresses address and all  
526 Internet identifiers any instant message name required to be  
527 provided pursuant to paragraph (4) (d); all home telephone  
528 numbers number and all any cellular telephone numbers number;  
529 date and place of any employment; vehicle make, model, color,  
530 and license tag number; fingerprints; and photograph. A post  
531 office box shall not be provided in lieu of a physical  
532 residential address.

533 2. If the sexual offender is enrolled, employed, or  
534 carrying on a vocation at an institution of higher education in



133958

535 this state, the sexual offender shall also provide to the  
536 department the name, address, and county of each institution,  
537 including each campus attended, and the sexual offender's  
538 enrollment or employment status.

539 3. If the sexual offender's place of residence is a motor  
540 vehicle, trailer, mobile home, or manufactured home, as defined  
541 in chapter 320, the sexual offender shall also provide the  
542 vehicle identification number; the license tag number; the  
543 registration number; and a description, including color scheme,  
544 of the motor vehicle, trailer, mobile home, or manufactured  
545 home. If the sexual offender's place of residence is a vessel,  
546 live-aboard vessel, or houseboat, as defined in chapter 327, the  
547 sexual offender shall also provide the hull identification  
548 number; the manufacturer's serial number; the name of the  
549 vessel, live-aboard vessel, or houseboat; the registration  
550 number; and a description, including color scheme, of the  
551 vessel, live-aboard vessel or houseboat.

552 4. Any sexual offender who fails to report in person as  
553 required at the sheriff's office, or who fails to respond to any  
554 address verification correspondence from the department within 3  
555 weeks of the date of the correspondence or who fails to report  
556 all electronic mail addresses and all Internet identifiers ~~or~~  
557 ~~instant message names~~, commits a felony of the third degree,  
558 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

559 Section 3. Section 943.04351, Florida Statutes, is amended  
560 to read:

561 943.04351 Search of registration information regarding  
562 sexual predators and sexual offenders required prior to  
563 appointment or employment.—A state agency or governmental



133958

564 subdivision, prior to making any decision to appoint or employ a  
565 person to work, whether for compensation or as a volunteer, at  
566 any park, playground, day care center, or other place where  
567 children regularly congregate, must conduct a search of that  
568 person's name or other identifying information against the  
569 registration information regarding sexual predators and sexual  
570 offenders maintained by the Department of Law Enforcement under  
571 s. 943.043. The agency or governmental subdivision may conduct  
572 the search using the Internet site maintained by the Department  
573 of Law Enforcement. Also, a national search must be conducted  
574 through the Dru Sjodin National Sex Offender Public Website  
575 maintained by the United States Department of Justice. This  
576 section does not apply to those positions or appointments within  
577 a state agency or governmental subdivision for which a state and  
578 national criminal history background check is conducted.

579 Section 4. Subsection (1) of section 943.04354, Florida  
580 Statutes, is amended to read:

581 943.04354 Removal of the requirement to register as a  
582 sexual offender or sexual predator in special circumstances.—

583 (1) For purposes of this section, a person shall be  
584 considered for removal of the requirement to register as a  
585 sexual offender or sexual predator only if the person:

586 (a) Was or will be convicted or adjudicated delinquent of a  
587 violation of s. 794.011, s. 800.04, s. 827.071, or s.  
588 847.0135(5) or the person committed a violation of s. 794.011,  
589 s. 800.04, s. 827.071, or s. 847.0135(5) for which adjudication  
590 of guilt was or will be withheld, and the person does not have  
591 any other conviction, adjudication of delinquency, or withhold  
592 of adjudication of guilt for a violation of s. 794.011, s.



133958

593 800.04, s. 827.071, or s. 847.0135(5);

594 (b) Is required to register as a sexual offender or sexual  
595 predator solely on the basis of this violation; and

596 (c) Is not more than 4 years older than the victim of this  
597 violation who was 13 ~~14~~ years of age or older but not more than  
598 18 ~~17~~ years of age at the time the person committed this  
599 violation.

600 Section 5. Subsection (2) and paragraph (a) of subsection  
601 (3) of section 943.0437, Florida Statutes, are amended to read:  
602 943.0437 Commercial social networking websites.-

603 (2) The department may provide information relating to  
604 electronic mail addresses and Internet identifiers ~~instant~~  
605 ~~message names~~ maintained as part of the sexual offender registry  
606 to commercial social networking websites or third parties  
607 designated by commercial social networking websites. The  
608 commercial social networking website may use this information  
609 for the purpose of comparing registered users and screening  
610 potential users of the commercial social networking website  
611 against the list of electronic mail addresses and Internet  
612 identifiers ~~instant message names~~ provided by the department.

613 (3) This section shall not be construed to impose any civil  
614 liability on a commercial social networking website for:

615 (a) Any action voluntarily taken in good faith to remove or  
616 disable any profile of a registered user associated with an  
617 electronic mail address or Internet identifier ~~instant message~~  
618 ~~name~~ contained in the sexual offender registry.

619 Section 6. Paragraphs (b) and (d) of subsection (1) and  
620 paragraph (a) of subsection (3) of section 944.606, Florida  
621 Statutes, are amended to read:



133958

622 944.606 Sexual offenders; notification upon release.-

623 (1) As used in this section:

624 (b) "Sexual offender" means a person who has been convicted  
625 of committing, or attempting, soliciting, or conspiring to  
626 commit, any of the criminal offenses proscribed in the following  
627 statutes in this state or similar offenses in another  
628 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
629 the victim is a minor and the defendant is not the victim's  
630 parent or guardian; s. 794.011, excluding s. 794.011(10); s.  
631 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 826.04  
632 where the victim is a minor and the defendant is 18 years of age  
633 or older; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
634 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s.  
635 985.701(1); or any similar offense committed in this state which  
636 has been redesignated from a former statute number to one of  
637 those listed in this subsection, when the department has  
638 received verified information regarding such conviction; an  
639 offender's computerized criminal history record is not, in and  
640 of itself, verified information.

641 (d) "Internet identifier ~~Instant message name~~" has the same  
642 meaning as provided in s. 775.21 ~~means an identifier that allows~~  
643 ~~a person to communicate in real time with another person using~~  
644 ~~the Internet.~~

645 (3) (a) The department must provide information regarding  
646 any sexual offender who is being released after serving a period  
647 of incarceration for any offense, as follows:

648 1. The department must provide: the sexual offender's name,  
649 any change in the offender's name by reason of marriage or other  
650 legal process, and any alias, if known; the correctional



133958

651 facility from which the sexual offender is released; the sexual  
652 offender's social security number, race, sex, date of birth,  
653 height, weight, and hair and eye color; address of any planned  
654 permanent residence or temporary residence, within the state or  
655 out of state, including a rural route address and a post office  
656 box; if no permanent or temporary address, any transient  
657 residence within the state; address, location or description,  
658 and dates of any known future temporary residence within the  
659 state or out of state; date and county of sentence and each  
660 crime for which the offender was sentenced; a copy of the  
661 offender's fingerprints and a digitized photograph taken within  
662 60 days before release; the date of release of the sexual  
663 offender; all ~~any~~ electronic mail addresses ~~address~~ and all  
664 Internet identifiers ~~any instant message name~~ required to be  
665 provided pursuant to s. 943.0435(4)(d); all ~~and~~ home telephone  
666 numbers ~~number~~ and ~~any~~ cellular telephone numbers; and passport  
667 information, if he or she has a passport, and, if he or she is  
668 an alien, information about documents establishing his or her  
669 immigration status ~~number~~. The department shall notify the  
670 Department of Law Enforcement if the sexual offender escapes,  
671 absconds, or dies. If the sexual offender is in the custody of a  
672 private correctional facility, the facility shall take the  
673 digitized photograph of the sexual offender within 60 days  
674 before the sexual offender's release and provide this photograph  
675 to the Department of Corrections and also place it in the sexual  
676 offender's file. If the sexual offender is in the custody of a  
677 local jail, the custodian of the local jail shall register the  
678 offender within 3 business days after intake of the offender for  
679 any reason and upon release, and shall notify the Department of



133958

680 Law Enforcement of the sexual offender's release and provide to  
681 the Department of Law Enforcement the information specified in  
682 this paragraph and any information specified in subparagraph 2.  
683 that the Department of Law Enforcement requests.

684 2. The department may provide any other information deemed  
685 necessary, including criminal and corrections records,  
686 nonprivileged personnel and treatment records, when available.

687 Section 7. Paragraphs (a) and (f) of subsection (1),  
688 paragraph (a) of subsection (4), and paragraph (c) of subsection  
689 (13) of section 944.607, Florida Statutes, are amended to read:

690 944.607 Notification to Department of Law Enforcement of  
691 information on sexual offenders.-

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

693 (a) "Sexual offender" means a person who is in the custody  
694 or control of, or under the supervision of, the department or is  
695 in the custody of a private correctional facility:

696 1. On or after October 1, 1997, as a result of a conviction  
697 for committing, or attempting, soliciting, or conspiring to  
698 commit, any of the criminal offenses proscribed in the following  
699 statutes in this state or similar offenses in another  
700 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
701 the victim is a minor and the defendant is not the victim's  
702 parent or guardian; s. 794.011, excluding s. 794.011(10); s.  
703 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 826.04  
704 where the victim is a minor and the defendant is 18 years of age  
705 or older; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
706 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s.  
707 985.701(1); or any similar offense committed in this state which  
708 has been redesignated from a former statute number to one of



133958

709 those listed in this paragraph; or

710 2. Who establishes or maintains a residence in this state  
711 and who has not been designated as a sexual predator by a court  
712 of this state but who has been designated as a sexual predator,  
713 as a sexually violent predator, or by another sexual offender  
714 designation in another state or jurisdiction and was, as a  
715 result of such designation, subjected to registration or  
716 community or public notification, or both, or would be if the  
717 person were a resident of that state or jurisdiction, without  
718 regard as to whether the person otherwise meets the criteria for  
719 registration as a sexual offender.

720 (f) “Internet identifier Instant message name” has the same  
721 meaning as provided in s. 775.21 ~~means an identifier that allows~~  
722 ~~a person to communicate in real time with another person using~~  
723 ~~the Internet.~~

724 (4) A sexual offender, as described in this section, who is  
725 under the supervision of the Department of Corrections but is  
726 not incarcerated must register with the Department of  
727 Corrections within 3 business days after sentencing for a  
728 registrable offense and otherwise provide information as  
729 required by this subsection.

730 (a) The sexual offender shall provide his or her name; date  
731 of birth; social security number; race; sex; height; weight;  
732 hair and eye color; tattoos or other identifying marks; all any  
733 electronic mail addresses ~~address~~ and all Internet identifiers  
734 ~~any instant message name~~ required to be provided pursuant to s.  
735 943.0435(4)(d); permanent or legal residence and address of  
736 temporary residence within the state or out of state while the  
737 sexual offender is under supervision in this state, including



133958

738 any rural route address or post office box; if no permanent or  
739 temporary address, any transient residence within the state; and  
740 address, location or description, and dates of any current or  
741 known future temporary residence within the state or out of  
742 state. The sexual offender must also produce or provide  
743 information about his or her passport, if he or she has a  
744 passport, and, if he or she is an alien, must produce or provide  
745 information about documents establishing his or her immigration  
746 status. The Department of Corrections shall verify the address  
747 of each sexual offender in the manner described in ss. 775.21  
748 and 943.0435. The department shall report to the Department of  
749 Law Enforcement any failure by a sexual predator or sexual  
750 offender to comply with registration requirements.

751 (13)

752 (c) The sheriff's office may determine the appropriate  
753 times and days for reporting by the sexual offender, which shall  
754 be consistent with the reporting requirements of this  
755 subsection. Reregistration shall include any changes to the  
756 following information:

757 1. Name; social security number; age; race; sex; date of  
758 birth; height; weight; hair and eye color; address of any  
759 permanent residence and address of any current temporary  
760 residence, within the state or out of state, including a rural  
761 route address and a post office box; if no permanent or  
762 temporary address, any transient residence; address, location or  
763 description, and dates of any current or known future temporary  
764 residence within the state or out of state; all any electronic  
765 mail addresses ~~address~~ and all Internet identifiers ~~any instant~~  
766 ~~message name~~ required to be provided pursuant to s.



133958

767 943.0435(4)(d); date and place of any employment; vehicle make,  
768 model, color, and license tag number; fingerprints; and  
769 photograph. A post office box shall not be provided in lieu of a  
770 physical residential address.

771 2. If the sexual offender is enrolled, employed, or  
772 carrying on a vocation at an institution of higher education in  
773 this state, the sexual offender shall also provide to the  
774 department the name, address, and county of each institution,  
775 including each campus attended, and the sexual offender's  
776 enrollment or employment status.

777 3. If the sexual offender's place of residence is a motor  
778 vehicle, trailer, mobile home, or manufactured home, as defined  
779 in chapter 320, the sexual offender shall also provide the  
780 vehicle identification number; the license tag number; the  
781 registration number; and a description, including color scheme,  
782 of the motor vehicle, trailer, mobile home, or manufactured  
783 home. If the sexual offender's place of residence is a vessel,  
784 live-aboard vessel, or houseboat, as defined in chapter 327, the  
785 sexual offender shall also provide the hull identification  
786 number; the manufacturer's serial number; the name of the  
787 vessel, live-aboard vessel, or houseboat; the registration  
788 number; and a description, including color scheme, of the  
789 vessel, live-aboard vessel or houseboat.

790 4. Any sexual offender who fails to report in person as  
791 required at the sheriff's office, or who fails to respond to any  
792 address verification correspondence from the department within 3  
793 weeks of the date of the correspondence, or who fails to report  
794 all electronic mail addresses and all Internet identifiers ~~or~~  
795 ~~instant message names~~, commits a felony of the third degree,



133958

796 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

797 Section 8. Subsection (11) of section 947.005, Florida  
798 Statutes, is amended to read:

799 947.005 Definitions.—As used in this chapter, unless the  
800 context clearly indicates otherwise:

801 (11) "Risk assessment" means an assessment completed by a  
802 ~~an independent~~ qualified practitioner to evaluate the level of  
803 risk associated when a sex offender has contact with a child.

804 Section 9. Section 948.31, Florida Statutes, is amended to  
805 read:

806 948.31 Evaluation and treatment of sexual predators and  
807 offenders on probation or community control.—Conditions imposed  
808 pursuant to this section do not require oral pronouncement at  
809 the time of sentencing and shall be considered standard  
810 conditions of probation or community control for offenders  
811 specified in this section. The court shall require an evaluation  
812 by a qualified practitioner to determine the need of a  
813 probationer or community controllee for treatment. If the court  
814 determines that a need therefor is established by the evaluation  
815 process, the court shall require sexual offender treatment as a  
816 term or condition of probation or community control for any  
817 person who is required to register as a sexual predator under s.  
818 775.21 or sexual offender under s. 943.0435, s. 944.606, or s.  
819 944.607. Such treatment shall be required to be obtained from a  
820 qualified practitioner as defined in s. 948.001. Treatment may  
821 not be administered by a qualified practitioner who has been  
822 convicted or adjudicated delinquent of committing, or  
823 attempting, soliciting, or conspiring to commit, any offense  
824 that is listed in s. 943.0435(1)(a)1.a.(I). ~~The court shall~~



133958

825 ~~impose a restriction against contact with minors if sexual~~  
826 ~~offender treatment is recommended.~~ The evaluation and  
827 recommendations for treatment of the probationer or community  
828 controllee shall be provided to the court for review.

829 Section 10. Paragraph (a) of subsection (3) of section  
830 985.481, Florida Statutes, is amended to read:

831 985.481 Sexual offenders adjudicated delinquent;  
832 notification upon release.—

833 (3) (a) The department must provide information regarding  
834 any sexual offender who is being released after serving a period  
835 of residential commitment under the department for any offense,  
836 as follows:

837 1. The department must provide the sexual offender's name,  
838 any change in the offender's name by reason of marriage or other  
839 legal process, and any alias, if known; the correctional  
840 facility from which the sexual offender is released; the sexual  
841 offender's social security number, race, sex, date of birth,  
842 height, weight, and hair and eye color; address of any planned  
843 permanent residence or temporary residence, within the state or  
844 out of state, including a rural route address and a post office  
845 box; if no permanent or temporary address, any transient  
846 residence within the state; address, location or description,  
847 and dates of any known future temporary residence within the  
848 state or out of state; date and county of disposition and each  
849 crime for which there was a disposition; a copy of the  
850 offender's fingerprints and a digitized photograph taken within  
851 60 days before release; the date of release of the sexual  
852 offender; all and home telephone numbers number and any cellular  
853 telephone numbers; and passport information, if he or she has a



133958

854 passport, and, if he or she is an alien, information about  
855 documents establishing his or her immigration status number. The  
856 department shall notify the Department of Law Enforcement if the  
857 sexual offender escapes, absconds, or dies. If the sexual  
858 offender is in the custody of a private correctional facility,  
859 the facility shall take the digitized photograph of the sexual  
860 offender within 60 days before the sexual offender's release and  
861 also place it in the sexual offender's file. If the sexual  
862 offender is in the custody of a local jail, the custodian of the  
863 local jail shall register the offender within 3 business days  
864 after intake of the offender for any reason and upon release,  
865 and shall notify the Department of Law Enforcement of the sexual  
866 offender's release and provide to the Department of Law  
867 Enforcement the information specified in this subparagraph and  
868 any information specified in subparagraph 2. which the  
869 Department of Law Enforcement requests.

870 2. The department may provide any other information  
871 considered necessary, including criminal and delinquency  
872 records, when available.

873 Section 11. Paragraph (a) of subsection (4) and paragraph  
874 (b) of subsection (13) of section 985.4815, Florida Statutes,  
875 are amended to read:

876 985.4815 Notification to Department of Law Enforcement of  
877 information on juvenile sexual offenders.-

878 (4) A sexual offender, as described in this section, who is  
879 under the supervision of the department but who is not committed  
880 must register with the department within 3 business days after  
881 adjudication and disposition for a registrable offense and  
882 otherwise provide information as required by this subsection.



133958

883           (a) The sexual offender shall provide his or her name; date  
884 of birth; social security number; race; sex; height; weight;  
885 hair and eye color; tattoos or other identifying marks;  
886 permanent or legal residence and address of temporary residence  
887 within the state or out of state while the sexual offender is in  
888 the care or custody or under the jurisdiction or supervision of  
889 the department in this state, including any rural route address  
890 or post office box; if no permanent or temporary address, any  
891 transient residence; address, location or description, and dates  
892 of any current or known future temporary residence within the  
893 state or out of state; passport information, if he or she has a  
894 passport, and, if he or she is an alien, information about  
895 documents establishing his or her immigration status; and the  
896 name and address of each school attended. The department shall  
897 verify the address of each sexual offender and shall report to  
898 the Department of Law Enforcement any failure by a sexual  
899 offender to comply with registration requirements.

900           (13)

901           (b) The sheriff's office may determine the appropriate  
902 times and days for reporting by the sexual offender, which shall  
903 be consistent with the reporting requirements of this  
904 subsection. Reregistration shall include any changes to the  
905 following information:

906           1. Name; social security number; age; race; sex; date of  
907 birth; height; weight; hair and eye color; address of any  
908 permanent residence and address of any current temporary  
909 residence, within the state or out of state, including a rural  
910 route address and a post office box; if no permanent or  
911 temporary address, any transient residence; address, location or



133958

912 description, and dates of any current or known future temporary  
913 residence within the state or out of state; passport  
914 information, if he or she has a passport, and, if he or she is  
915 an alien, information about documents establishing his or her  
916 immigration status; name and address of each school attended;  
917 date and place of any employment; vehicle make, model, color,  
918 and license tag number; fingerprints; and photograph. A post  
919 office box shall not be provided in lieu of a physical  
920 residential address.

921 2. If the sexual offender is enrolled, employed, or  
922 carrying on a vocation at an institution of higher education in  
923 this state, the sexual offender shall also provide to the  
924 department the name, address, and county of each institution,  
925 including each campus attended, and the sexual offender's  
926 enrollment or employment status.

927 3. If the sexual offender's place of residence is a motor  
928 vehicle, trailer, mobile home, or manufactured home, as defined  
929 in chapter 320, the sexual offender shall also provide the  
930 vehicle identification number; the license tag number; the  
931 registration number; and a description, including color scheme,  
932 of the motor vehicle, trailer, mobile home, or manufactured  
933 home. If the sexual offender's place of residence is a vessel,  
934 live-aboard vessel, or houseboat, as defined in chapter 327, the  
935 sexual offender shall also provide the hull identification  
936 number; the manufacturer's serial number; the name of the  
937 vessel, live-aboard vessel, or houseboat; the registration  
938 number; and a description, including color scheme, of the  
939 vessel, live-aboard vessel, or houseboat.

940 4. Any sexual offender who fails to report in person as



133958

941 required at the sheriff's office, or who fails to respond to any  
942 address verification correspondence from the department within 3  
943 weeks after the date of the correspondence, commits a felony of  
944 the third degree, punishable as provided in ss. 775.082,  
945 775.083, and 775.084.

946 Section 12. If any provision of this act or its application  
947 to any person or circumstance is held invalid, the invalidity  
948 does not affect other provisions or applications of this act  
949 which can be given effect without the invalid provision or  
950 application, and to this end the provisions of this act are  
951 severable.

952 Section 13. This act shall take effect upon becoming a law.

953  
954 ===== T I T L E A M E N D M E N T =====

955 And the title is amended as follows:

956 Delete everything before the enacting clause  
957 and insert:

958 A bill to be entitled  
959 An act relating to sexual offenders and predators;  
960 amending s. 775.21, F.S.; replacing the definition of  
961 the term "instant message name" with the definition of  
962 the term "Internet identifier"; providing that  
963 voluntary disclosure of specified information waives a  
964 disclosure exemption for such information; conforming  
965 provisions; requiring disclosure of passport and  
966 immigration status information; requiring that a  
967 sexual predator who is unable to secure or update a  
968 driver's license or identification card within a  
969 specified period must report specified information to



133958

970 the local sheriff's office within a specified period  
971 after such change with confirmation that he or she  
972 also reported such information to the Department of  
973 Highway Safety and Motor Vehicles; revising reporting  
974 requirements if a sexual predator plans to leave the  
975 United States for more than a specified period;  
976 amending s. 943.0435, F.S.; replacing the definition  
977 of the term "instant message name" with the definition  
978 of the term "Internet identifier"; conforming  
979 provisions; requiring disclosure of passport and  
980 immigration status information; requiring that a  
981 sexual predator who is unable to secure or update a  
982 driver's license or identification card within a  
983 specified period must report specified information to  
984 the local sheriff's office within a specified period  
985 of such change with confirmation that he or she also  
986 reported such information to the Department of Highway  
987 Safety and Motor Vehicles; providing additional  
988 requirements for sexual offenders intending to reside  
989 outside of the United States; amending s. 943.04351,  
990 F.S.; requiring a specified national search of  
991 registration information regarding sexual predators  
992 and sexual offenders prior to appointment or  
993 employment of persons by state agencies and  
994 governmental subdivisions; amending s. 943.04354,  
995 F.S.; revising the age range applicable to provisions  
996 allowing removal of the requirement to register as a  
997 sexual offender or sexual predator in certain  
998 circumstances; amending s. 943.0437, F.S.; replacing



133958

999 the definition of the term "instant message name" with  
1000 the definition of the term "Internet identifier";  
1001 conforming provisions; amending ss. 944.606 and  
1002 944.607, F.S.; replacing the definition of the term  
1003 "instant message name" with the definition of the term  
1004 "Internet identifier"; conforming provisions;  
1005 requiring disclosure of passport and immigration  
1006 status information; amending s. 947.005, F.S.;  
1007 revising the definition of the term "risk assessment";  
1008 amending s. 948.31, F.S.; providing that conditions  
1009 imposed under that section do not require oral  
1010 pronouncement at the time of sentencing and shall be  
1011 considered standard conditions of probation or  
1012 community control for certain offenders; removing a  
1013 provision prohibiting contact with minors if sexual  
1014 offender treatment is recommended; amending ss.  
1015 985.481 and 985.4815, F.S.; requiring disclosure of  
1016 passport and immigration status information by certain  
1017 sexual offenders adjudicated delinquent and certain  
1018 juvenile sexual offenders; providing severability;  
1019 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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 1890

INTRODUCER: Senator Storms

SUBJECT: Sexual Predator Identifiers

DATE: March 30, 2011

REVISED: \_\_\_\_\_

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

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**I. Summary:**

This bill amends statutes concerning reporting requirements of sexual predators and sexual offenders. The most significant change requires these persons to report more types of identifiers used for activities on the Internet than are currently required. The current requirement to report any “instant message name” applies only to communications in real time, such as instant messaging and Internet chats. The new requirement to report any “Internet identifier” includes communications that are not in real time, such as posting on a social networking site or on a newspaper comment board. Therefore, the bill will result in law enforcement having more information to identify sexual predators and sexual offenders if they engage in unlawful activities on the Internet.

The bill also creates the offense of “unlawful electronic communication between minors” (sexting) in new s. 847.0141, F.S. “Sexting” is a term that describes the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. The bill prohibits a minor from transmitting a video depiction of himself or herself that depicts nudity and that is harmful to minors, or from possessing a visual depiction of another minor that depicts nudity and that is harmful to minors. A minor who commits sexting is subject to penalties that are less than the punishment that could be assessed for the same conduct under existing law.

This bill substantially amends sections 775.21, 943.0435, 943.0437, 944.606, and 944.607, of the Florida Statutes. The bill creates section 847.0141, of the Florida Statutes.

## II. Present Situation:

### **Sexual Predator and Sexual Offender Reporting Requirements**

The distinction between a sexual predator and a sexual offender is based on the offense, the date the offense occurred or when sanctions were completed, and whether the person was previously convicted of a sexual offense. Conviction of committing or attempting to commit any of the following offenses would require registration as either a sexual offender or a sexual predator<sup>1</sup>:

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery [s. 794.011, F.S., except false accusation of another under subsection (10)].
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under the age of 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography [s. 847.0135, F.S., except owners or operators of computer services liable under subsection (6)].
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a Department of Juvenile Justice (DJJ) employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

Designation as a sexual predator requires either: (1) conviction of one of the enumerated offenses after having previously been convicted of one of the offenses, or (2) conviction of a capital, life, or first-degree felony violation of s. 787.01, F.S. or s. 787.02, F.S.; where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S.; s. 800.04, F.S.; s. 847.0145, F.S.; or conviction for violating a similar law of another jurisdiction. Sexual predator status can only be conferred as the result of offenses committed on or after October 1, 1993.

The requirement to register as a sexual offender is triggered by conviction of committing or attempting, soliciting, or conspiring to commit one of the offenses, transmission of child pornography by electronic device (s. 847.0137, F.S.), or transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.). It applies only when the offender was released from the sanction for the offense on or after October 1, 1997.

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<sup>1</sup> The criteria for designation as a sexual predator is found in s. 775.21, F.S. The criteria for registration as a sexual offender is found in s. 943.0435, F.S.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.<sup>2</sup> Those in custody will be registered by the agency by which they are held. Persons under the supervision of the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ) must register with the respective department. All others must register at the county sheriff's office within 48 hours of either: (1) being designated as a sexual predator; (2) convicted of an offense that requires registration as a sexual offender; or (3) establishing a residence in the county.

A variety of personally identifying information must be provided to the sheriff's office as part of the registration process. This information includes the address of a legal residence or temporary residence or the address, location or description of a transient residence, any electronic mail address, and any instant message name.

The sheriff's office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database. The offender or predator must also register at a driver's license office within 48 hours of the initial registration at the sheriff's department.

Both sexual predators and sexual offenders must report any change of permanent, temporary, or transient residence within the state to the driver's license office within 48 hours. If a new permanent, temporary, or transient residence is not established, the sheriff's office must be given the address for the residence or other location that will be occupied until a new residence is established. Transient residence is defined as:

A place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

The predator or offender must also report his or her intent to establish a residence in another state or jurisdiction within 48 hours of the intended change. However, this notice must be given in person to the county sheriff, not to the driver's license office.

Predators and offenders are also required to keep information concerning electronic mail addresses and instant message names in the same manner as is required for a change of residence. This includes providing the information within 48 hours of establishing or changing an electronic mail address or instant message name.

The county sheriff or municipal police chief must notify child care centers and schools within a one-mile radius of the sexual predator's permanent, temporary, or transient residence within 48 hours of the notification by the predator. In addition, the sheriff or police chief is required to notify the community of the presence of the predator in an appropriate manner, which is often by posting on the sheriff's website. Both notices must include the predator's address, including the name of the municipality or county.

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<sup>2</sup> The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

The DOC and DJJ are required to provide FDLE with information including the offender's intended residence address, if known six months prior to release from custody or commitment. The agencies must also provide FDLE with the current or intended permanent, temporary, or transient address, if known during the time of incarceration or residential commitment.

### **Sexting**

Florida law currently contains various statutes that prohibit the creation, possession, and transmission of sexual materials depicting minors. Some of these laws address photographs or videos that do not rise to the level of child pornography, which is statutorily defined as "any image depicting a minor engaged in sexual conduct."<sup>3</sup> Section 847.001(16), F.S., defines "sexual conduct" as:

[A]ctual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."<sup>4</sup>

### **Sexual Performance by a Child**

Section 827.071(5), F.S., provides that it is a third degree felony for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The statute specifies that the possession of each photograph, motion picture, exhibition, show, representation, or presentation is a separate offense.

### **Prohibition of Acts Relating to Obscene and Lewd Materials**

Section 847.011(1)(a), F.S., provides that it is a first degree misdemeanor for a person to knowingly sell, lend, give away, distribute, transmit, show, or transmute, or have in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, or transmute, specified obscene items, including pictures, photographs, and images. However, s. 847.011(1)(c), F.S., provides that it is a third degree felony if the violation of s. 847.011(1)(a) or (2), F.S., is based on materials that depict a minor<sup>5</sup> engaged in any act or conduct that is harmful to minors.<sup>6</sup>

Section 847.011(2), F.S., provides that it is a second degree misdemeanor for a person to have in his or her possession, custody, or control specified obscene items, including pictures, photographs, and images, without the intent to sell, etc., such items.

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<sup>3</sup> See ss. 775.0847(1)(b) and 847.001(3), F.S.

<sup>4</sup> "Sexual conduct" is defined identically in ss. 775.0847 and 827.071, F.S. It has a more limited definition in s. 365.161, F.S., which relates to obscene or indecent communications made by a telephone that describe certain sexual acts.

<sup>5</sup> The term "minor" is defined as "any person under the age of 18 years." Section 847.001(8), F.S.

<sup>6</sup> The term "harmful to minors" is defined in s. 847.001(6), F.S. For a more detailed definition, see the "Effect of Proposed Changes" section of this bill analysis.

**Protection of Minors**

Section 847.0133, F.S., provides that it is a third degree felony for a person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene<sup>7</sup> material to a minor. “Material” includes pictures, photographs, and images.

**Computer Pornography**

Section 847.0135(2), F.S., provides that it is a third degree felony for a person to:

- Knowingly compile, enter into, or transmit the visual depiction of sexual conduct with a minor by use of computer;
- Make, print, publish, or reproduce by other computerized means the visual depiction of sexual conduct with a minor;
- Knowingly cause or allow to be entered into or transmitted by use of computer the visual depiction of sexual conduct with a minor; or
- Buy, sell, receive, exchange, or disseminate the visual depiction of sexual conduct with a minor.

**Transmission of Pornography**

Section 847.0137(2), F.S., provides that any person in this state who knew or reasonably should have known that he or she was transmitting child pornography to another person in this state or another jurisdiction commits a third degree felony.

**Transmission of Material Harmful to Minors**

Section 847.0138(2), F.S., provides that any person who knew or believed that he or she was transmitting an image, information, or data that is harmful to minors to a specific individual known or believed by the defendant to be a minor commits a third-degree felony.

Both minors and adults can be charged with any of the offenses described above.

**Sexting**

“Sexting” is a recently coined term that combines the words “sex” and “texting.”<sup>8</sup> It is used to describe the act of sending sexually explicit messages, photographs, or videos of oneself or another person by electronic means. As the name suggests, “sext” messages are most commonly sent by a cell phone text message. Media reports and other studies indicate that sexting is a growing trend among teenagers. In a 2008 survey of 1,280 teenagers and young adults of both sexes, 20 percent of teens (ages 13-19) and 33 percent of young adults (ages

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<sup>7</sup> Section 847.001(10), F.S., defines the term “obscene” as the status of material which the average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother’s breastfeeding of her baby is not under any circumstance “obscene.”

<sup>8</sup> Stacey Garfinkle, Sex + Texting = Sexting, *The Washington Post*, Dec. 10, 2008, available at <http://voices.washingtonpost.com/parenting/2008/12/sexting.html> (last visited March 7, 2011).

20-26) had sent nude or semi-nude photographs of themselves electronically.<sup>9</sup> Additionally, 39 percent of teens and 59 percent of young adults had sent sexually explicit text messages.<sup>10</sup>

There is no Florida law that specifically addresses sexting. Under current law, a person who knowingly sends certain sexually explicit images of a minor to another person, or a person who knowingly receives such images, could be charged with any number of different offenses that relate to sexual material depicting minors. For example, in 2007, 18-year-old Phillip Alpert was arrested and charged with transmitting child pornography (among other things) after he sent a nude photo of his 16-year-old girlfriend to her friends and family after they had an argument. In total, Alpert was charged with 72 offenses, sentenced to five years of probation, and was required to register as a sexual offender.<sup>11</sup>

Similarly, in other jurisdictions, some law enforcement officers and district attorneys have begun prosecuting teens who “sext” under laws generally reserved for producers and distributors of child pornography. For example, in Pennsylvania, a district attorney gave 17 students who were either pictured in images or found with “provocative” images on their cell phones the option of either being prosecuted under child pornography laws or agreeing to participate in a five-week after school program and probation.<sup>12</sup> Similar incidents have occurred in other states, e.g., Massachusetts, Ohio, and Iowa.<sup>13</sup>

As a result, state legislatures have considered making laws that downgrade the charges for sexting from felonies to misdemeanors. For example, in 2009, Vermont and Utah passed laws that downgraded the penalties for minors and first-time perpetrators of sexting.<sup>14</sup>

### III. Effect of Proposed Changes:

#### **Reporting Requirements for Sexual Predators and Sexual Offenders**

##### *Internet identifiers*

The bill replaces the term “instant message name” with “Internet identifier” wherever it is used in relation to sexual predators or sexual offenders. “Internet identifier” encompasses more Internet-related activity than the current “instant message name,” so this will require sexual predators and sexual offenders to report more types of identifiers used for activities on the Internet than are currently required. The terms are defined as follows:

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<sup>9</sup> National Campaign to Prevent Teen and Unplanned Pregnancy, Sex and Tech: Results from a Survey of Teens and Young Adults, 1, available at [http://www.thenationalcampaign.org/sextech/PDF/SexTech\\_Summary.pdf](http://www.thenationalcampaign.org/sextech/PDF/SexTech_Summary.pdf) (last visited March 7, 2011).

<sup>10</sup> *Id.*

<sup>11</sup> Vicki Mabrey and David Perozzi, ‘Sexting’: Should Child Pornography Laws Apply?, *ABC NEWS* (Apr. 1, 2010), available at <http://abcnews.go.com/Nightline/philip-alpert-sexting-teen-child-porn/story?id=10252790> (last March 2, 2011); Deborah Feyerick and Sheila Steffen, ‘Sexting’ lands teen on sex offender list, *CNN* (Apr. 8, 2009), available at <http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html> (last visited March 7, 2011).

<sup>12</sup> Amanda Lenhart, Teens and Sexting: How and why minor teens are sending sexually suggestive nude or nearly nude images via text messaging, *Pew Research Ctr.*, 3 (Dec. 15, 2009), available at [http://www.pewinternet.org/~media/Files/Reports/2009/PIP\\_Teens\\_and\\_Sexting.pdf](http://www.pewinternet.org/~media/Files/Reports/2009/PIP_Teens_and_Sexting.pdf) (last visited March 7, 2011).

<sup>13</sup> *Id.*; see also Mabrey and Perozzi, *supra* note 10.

<sup>14</sup> Lenhart, *supra* note 11, at 3.

- In the current statute, an “instant message name” is “an identifier that allows a person to communicate in real time with another person using the Internet.”
- In the bill, an “Internet identifier” is “any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include date of birth, social security number, or Personal Identification Numbers (PIN).”<sup>15</sup>

The current requirement to report any “instant message name” applies only to communications in real time, such as instant messaging and Internet chats. The new requirement to report any “Internet identifier” includes communications that are not in real time, such as posting on a social networking site or on a newspaper comment board. It is also expected that it will include any future advancements in Internet communications. Therefore, the bill will result in law enforcement having more information to identify sexual predators and sexual offenders who engage in unlawful activities on the Internet.

The bill replaces the current requirement that a sexual predator or sexual offender report an instant message name with the new requirement to report an Internet identifier in the following places:

- Section 775.21, F.S. (the Florida Sexual Predators Act) in Section 1 of the bill.
- Section 943.0435, F.S. (sexual offenders required to register with FDLE) in Section 3 of the bill.
- Section 943.0437, F.S. (commercial social networking websites) in Section 4 of the bill.
- Section 944.607, F.S. (notification to FDLE of information on sexual offenders) in Section 5 of the bill.
- Section 944.606, F.S. (notification upon release of sexual offenders) in Section 6 of the bill.

#### ***Reporting of Change of Address***

Sections 775.21(6)(g)1. and 943.0435(4)(a), F.S., require sexual predators and sexual offenders, respectively, to report any change of permanent, temporary, or transient residence within the state to the driver’s license office within 48 hours. Sections 1 and 3 of the bill state that a predator or offender does not violate this provision if he or she reports the change of address to the local sheriff’s office within 48 hours after the change, along with proof of also promptly reporting the change to the driver’s license office. The purpose of this provision is unclear, but it may be intended to allow compliance by a reporting individual when he or she moves at a time that the driver’s license office will be closed, such as the beginning of a holiday weekend.

#### ***Notification Before Establishing Residence in Another State or Jurisdiction***

Currently, a predator or offender must give in-person notification to the county sheriff of his or her intent to establish a residence in another state or jurisdiction within 48 hours of the intended change. Section 1 of the bill amends s. 775.21(6)(i), F.S., to require that a sexual predator give this notification within 21 days before the planned departure date if he or she intends to reside outside of the United States for 7 days or more. This means that the offender can give notice at any time from 21 days before departure up until the actual departure.

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<sup>15</sup> FDLE recommends insertion of language providing that the voluntary use of a birth date, social security number, or PIN as an Internet identifier constitutes a waiver of the right of non-disclosure of such information. *See* Florida Department of Law Enforcement Analysis of Senate Bill 1890, March 25, 2011, p. 2.

**Sexting**

The bill creates the offense of “unlawful electronic communication between minors” (sexting) in new s. 847.0141, F.S. A minor who commits sexting is subject to penalties that are less than the punishment that could be assessed for the same conduct under existing law. Also, a conviction of sexting would not result in the requirement to register as a sexual offender or to comply with existing residency restriction laws or other laws that apply to persons who are convicted of certain sexual offenses.

The new offense of sexting can occur in two different ways:

- A minor commits the offense of sexting when he or she intentionally or knowingly uses an electronic communication device to transmit, distribute or display a visual depiction of himself or herself which depicts nudity and is harmful to minors; or
- A minor commits the offense of sexting when he or she intentionally or knowingly possesses a visual depiction of another minor which depicts nudity and is harmful to minors. However, a minor does not commit this possession offense if he or she: (1) did not solicit the visual depiction; (2) took reasonable steps to destroy or eliminate the visual depiction or report it to his or her parent or guardian or to a school or law enforcement official; and (3) did not transmit or distribute the visual depiction to a third party.

The term “nudity” is defined in s. 847.001(9), F.S., to mean:

[T]he showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby does not under any circumstance constitute “nudity,” irrespective of whether or not the nipple is covered during or incidental to feeding.

Section 847.001(6), F.S., defines “harmful to minors” as:

[A]ny reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (a) Predominantly appeals to a prurient, shameful, or morbid interest;
- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

A mother’s breastfeeding of her baby is not under any circumstance “harmful to minors.”

The bill provides the following graduated punishment schedule for a violation of sexting:

- A first sexting violation is a noncriminal violation, punishable by eight hours of community service or a \$60 fine if ordered by the court in lieu of community service. The court may also order the minor to participate in suitable training concerning such offenses and prohibit the use or possession of electronic devices.<sup>16</sup>
- A sexting violation that occurs after being found to have committed a noncriminal violation for sexting is a second degree misdemeanor. A second degree misdemeanor is punishable by a jail term of not more than 60 days and may include a fine of not more than \$500.<sup>17</sup> The court is also required to order suitable training for such offenses and to prohibit the use or possession of electronic devices.
- A sexting violation that occurs after being found to have committed a second degree misdemeanor violation for sexting is a first degree misdemeanor. A first degree misdemeanor is punishable by a jail term of not more than one year and may include a fine of not more than \$1,000.<sup>18</sup> The court is also required to order either suitable training for such offenses or counseling, and to prohibit the use or possession of electronic devices.
- A sexting violation that occurs after being found to have committed a first degree misdemeanor violation for sexting is an unranked third degree felony. A third-degree felony is punishable by state imprisonment for not more than five years and may include a fine of not more than \$5,000.<sup>19</sup> However, because the felony is unranked, the offender may be sentenced to a term of probation under supervision by the Department of Corrections.<sup>20</sup> In addition, the court must order a mental health evaluation by a qualified practitioner as defined in s. 948.001, F.S. The court must also order treatment if it is recommended by the qualified practitioner.

A law enforcement officer who arrests any person for sexting must seize the prohibited material and keep it until the court's sentence. In all cases, a sentence for committing sexting requires the court to authorize the law enforcement agency to destroy the prohibited material.

The bill specifies that the sexting provisions do not prohibit the prosecution of a minor for conduct relating to material that includes the depiction of sexual conduct or sexual excitement, and does not prohibit the prosecution of a minor for stalking under s. 784.048, F.S.

The bill is substantially similar to CS/SB 2560 which passed the Senate last year. According to FDLE's analysis of that bill, the minor will not have an FDLE record after a first offense because it is a noncriminal violation. Therefore, if the offenses occur in different jurisdictions, prosecutors may be unaware of a previous noncriminal violation and the minor may not be charged with the proper offense.<sup>21</sup>

<sup>16</sup> The bill includes, but is not limited to, cellular telephones, cameras, computers, or other electronic media devices.

<sup>17</sup> Sections 775.082 and 775.083, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Sections 775.082 and 775.083, F.S.

<sup>20</sup> "Unranked" is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third degree felony is a Level 1 offense. *Id.* A first-time offender convicted of only the unranked third degree felony would score a nonprison sanction as the lowest permissible sentence. Section 921.0024, F.S. Further, in this first-time offender scenario, a non prison sanction would be required unless the sentencing court made written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

<sup>21</sup> Florida Department of Law Enforcement, Senate Bill 2560 Relating to Sexting (Mar. 17, 2010).

Under the bill, the offense of sexting and its reduced penalties do not include the conduct of a minor who re-transmits a sexted photograph or video. Therefore, the state attorney would continue to have discretion in the prosecution of such conduct.

**Severability Clause**

Section 7 of the bill is a severability clause providing that a finding that any portion of the bill is found to be invalid will not affect the validity of any other portion of the bill.

**Effective Date**

Section 8 of the bill provides that it will take effect on July 1, 2011. In its analysis, FDLE requests that the date be changed to February 1, 2012, to allow time for it to meet the requirements.<sup>22</sup>

**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:

There appears to be no private sector fiscal impact.

C. Government Sector Impact:

FDLE reports that changes to the sexual offender/sexual predator reporting requirements will require a non-recurring expenditure of \$27,725.

The Criminal Justice Impact Conference assessed Senate Bill 888, a similar bill concerning the sexting provisions of this bill, as having an insignificant fiscal impact.

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<sup>22</sup> *Id.*, note 12 on p. 4.

**VI. Technical Deficiencies:**

- The bill should be amended throughout to require reporting of “all” Internet identifiers rather than “any” Internet identifiers wherever such reference is made in the bill.
- Lines 156-162 and 466-471 should be amended to clarify the intent of the provision regarding satisfaction of reporting requirements by reporting a change of address to the sheriff’s office with proof of promptly reporting the change to the driver’s license office.
- On line 466, the reference to “predator” should be changed to “offender,” because it is in the statute concerning sexual offender reporting requirements.

**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.



969172

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Criminal Justice (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 18 - 22  
and insert:

(1) (a) The Legislature finds and declares that faith- and character-based ~~faith-based~~ programs offered in state and private correctional institutions and facilities have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism.

(b) It is the intent of the Legislature that the department expand the faith- and character-based initiative through the use of faith- and character-based institutions. The department is



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13 encouraged to phase out the faith-based and self-improvement  
14 dormitory programs and move toward the goal of implementing only  
15 faith- and character-based institutions.

16

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

18 And the title is amended as follows:

19

20 Delete line 4

21 and insert:

22 944.803, F.S.; revising legislative findings;  
23 providing legislative intent with respect to expansion  
24 of the faith- and character-based initiative;



304716

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Criminal Justice (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 95 and 96  
insert:

(6) Within faith- and character-based institutions of the state correctional system, peer to peer programming shall be allowed, such as Alcoholics Anonymous groups, literacy instruction, and other activities when appropriate.

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

And the title is amended as follows:

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304716

13 Delete line 10  
14 and insert:

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16 centers; providing for the faith- and character-based  
17 institutions within the state correctional system to  
18 allow peer-to-peer programming whenever appropriate;  
19 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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 2010

INTRODUCER: Senator Braynon

SUBJECT: Faith and Character-Based Correctional Programs

DATE: March 30, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill amends s. 944.803, F.S., which governs faith-based programs in correctional institutions. Significant changes include:

- Reflecting current practice by adding references to “character-based programs” and “secular institutions.”
- Removing the requirement that 80 percent of the inmates in a dormitory-based program must be within 36 months of release.
- Clearly making the statute applicable to all faith and character-based programs, not just dormitory-based programs.
- Eliminating the statutory preference for admitting inmates who have a substance abuse issue.

This bill substantially amends section 944.803 of the Florida Statutes.

**II. Present Situation:**

References to faith-based programs in correctional institutions first appeared in the Florida Statutes in 1997. Chapter 97-78, Laws of Florida, created s. 944.803, F.S., and expressed legislative intent for public and private correctional institutions to operate religious and chaplaincy programs with the help of volunteers from faith-based institutions in the community. In addition, it required the department to conduct a study of the effectiveness of faith-based programs, including those in other jurisdictions, and to make recommendations for improvement of current programs. In 1999, the department opened its first faith-based dormitory in cooperation with Kairos Horizon at Tomoka Correctional Institution. Several other faith-based dormitories were opened around the state beginning in 2000.

In 2001, the Legislature substantially amended s. 944.803, F.S., to require the department to have six additional faith-based dormitory programs fully operational by June 1, 2002.<sup>1</sup> In 2003, Lawtey Correctional Institution became the first faith-based institution. The department currently has faith and character-based programs at 11 institutions:<sup>2</sup>

<b>Location</b>	<b>Capacity</b>	<b>Gender</b>	<b>Date Became Faith and Character Based Dormitory or Institution</b>
<b><i>Dormitories</i></b>			
Tomoka C.I. (F Dorm)	132	Male	November 1999
Polk C.I. (A Dorm)	128	Male	November 2001
Lowell C.I. (A Dorm)	32	Female	January 2002
Gulf – Annex (J Dorm)	128	Male	January 2002
Everglades C.I (B Dorm)	128	Male	February 2002
Lancaster C.I. (I Dorm)	37	Male over 21	January 2003
Union C.I. (J Dorm)	96	Male over 50	February 2003
<b><i>Total Dormitories</i></b>	<b>681</b>		
<b><i>Prisons</i></b>			
Lawtey C.I.	835	Male	December 2003
Hillsborough C.I.	292	Female	April 2004
Wakulla C.I.	1,756	Male	November 2005
Glades C.I.	1,424	Male	March 2009
<b><i>Total Prison</i></b>	<b>4,307</b>		
<b>TOTAL CAPACITY</b>	<b>4,988</b>		

The 2001 amendments to s. 944.803, F.S., established requirements for faith-based dormitory programs that are still in effect:<sup>3</sup>

- Programs must be a joint effort between the department and faith-based service groups in the community.
- An inmate’s faith orientation (or lack thereof) must not be considered in making admission decisions.
- There must not be an attempt to convert an inmate toward a particular faith or religious preference.

<sup>1</sup> Section 13, Chapter 2001-110, Laws of Florida.

<sup>2</sup> Department of Corrections Analysis of Senate Bill 2010, p. 2.

<sup>3</sup> The department has interpreted these requirements to apply only to dormitory-based programs. This is a reasonable interpretation because the statute is not clear on the point and there were no institution-wide programs at the time the requirements were established. In any event, the department reports that its requirements for institution-wide programs are basically the same as these statutory requirements except for the 80%/36 month restriction.

- Programs must emphasize the importance of personal responsibility, meaningful work, education, substance-abuse treatment, and peer support.
- Participation must be voluntary.
- Priority must be given to inmates with substance abuse issues.
- State funds must be used toward the goals of criminal rehabilitation, successful reintegration of offenders into the community, and reduction of recidivism, not toward religious indoctrination.
- At least 80 percent of inmates participating in the program must be within 36 months of release.<sup>4</sup>

Chapter 2001-110, Laws of Florida, also required the department to assign a chaplain and a full-time clerical support person for each dormitory to implement and monitor the program and to strengthen volunteer participation and support. In addition, it required assignment of chaplains to community correctional centers. Due to a lack of appropriations, these conditions have not been fulfilled in recent years.

The department refers to institution-based programs as Faith and Character-Based Institutions (FCBI) and dormitory-based programs as Faith-Based/Self Improvement Dormitories (FB/SID). Programming is similar for both FCBI programs and FB/SID programs, except that FB/SID programming is more intensive. Programs are run by volunteers and allow inmates to participate in both religious and secular programming. Inmates can take classes on topics such as writing, marriage and parenting, money management, interview and job skills, computer literacy, personal faith, and a variety of religious and secular topics.<sup>5</sup>

FB/SID programs invite secular and religious charitable organizations to mentor inmates and offer programming designed to transform inmates inwardly. There are separate faith and secular-based dormitories. Faith-based dormitory programs build upon the inmate's personal faith, while self-improvement dormitory programs take a secular approach.<sup>6</sup>

The only statutory eligibility requirement is that the inmate must enter the program voluntarily. However, the department has established procedures requiring that an inmate entering the program must:

- Not have received a disciplinary report that resulted in disciplinary confinement during the previous 90 days;
- Be in general population housing status;
- Not be in work-release, reception or transit status; and
- Fit within the institutional profile.<sup>7</sup>

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<sup>4</sup> The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) has recommended that this requirement be removed or, in the alternative, that it be clarified that the requirement applies to the total population of all FCB dormitories and not to individual dormitories. *See* OPPAGA Report No. 09-38 (October 2009), "Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest," p. 7.

<sup>5</sup> Department of Corrections Analysis of Senate Bill 2010, p. 3.

<sup>6</sup> Faith-Based/Self Improvement Dormitories. The Department of Corrections. <http://www.dc.state.fl.us/oth/faith/dorms.html>, last viewed on March 30, 2011.

<sup>7</sup> *Id.*

Of course, placement in a program is also dependent upon the availability of space. As of November 29, 2010, there were 471 inmates on the state-wide waiting list for faith-based dormitories, 452 inmates for self improvement dormitories, and 6,785 inmates for FBCIs.<sup>8</sup>

An inmate can be housed in an FCBI until completion of his or her sentence (or permanently if sentenced to life) unless he or she commits a serious infraction.

### ***Effectiveness of Faith and Character-Based Programs***

OPPAGA's 2009 review of faith and character-based programs found that institution-wide programs had a positive effect on inmate institutional adjustment and security, and a positive but modest effect on reducing recidivism. Dormitory-based programs also had a positive effect on institutional adjustment and security, but had no effect on recidivism.<sup>9</sup>

### **III. Effect of Proposed Changes:**

This bill amends s. 944.803, F.S., as follows:

- It reflects the department's current practice by changing references to "faith-based programs" and "religious programs" to "faith- and character-based programs," and adding references to "secular institutions" in the community to existing references to faith-based institutions.
- It deletes the requirement that 80 percent of the inmates in a dormitory-based program must be within 36 months of release. This implements an OPPAGA recommendation and the department indicates that it will have a positive impact on the department due to the flexibility that it allows.<sup>10</sup>
- It clearly makes the statute applicable to all faith and character-based programs, not just dormitory-based programs.
- It deletes the statutory preference for admitting inmates who have a substance abuse issue.
- It deletes the requirement that a chaplain and support staff be assigned to each dormitory program, and that a chaplain be assigned to each community corrections center. This requirement has not been met in recent years due to lack of funding.
- It deletes a fulfilled requirement in the 2001 legislation to establish six new faith-based programs.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>8</sup> Department of Corrections Faith- and Character-Based Initiative, November 2010 Update, <http://www.dc.state.fl.us/oth/faith/stats.html>, last viewed on March 30, 2011.

<sup>9</sup> OPPAGA Report No. 09-38, *supra*, pages 3-6. See also Department of Corrections Analysis of Senate Bill 2010, pages 3-4.

<sup>10</sup> Department of Corrections Analysis of Senate Bill 2010, p. 4.

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:**

Senate Bill 2018 also amends s. 944.803, F.S., but is limited to elimination of the requirement that 80 percent of inmates in a faith-based dormitory program be within 36 months of their release date.

**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 2018

INTRODUCER: Senator Braynon

SUBJECT: Faith-Based Prison Programs

DATE: March 30, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill amends the statute governing faith-based programs in correctional institutions to remove the requirement that 80 percent of inmates in dormitory-based programs must be within 36 months of release.

The bill substantially amends section 944.803 of the Florida Statutes.

**II. Present Situation:**

References to faith-based programs in correctional institutions first appeared in the Florida Statutes in 1997. Chapter 97-78, Laws of Florida, created s. 944.803, F.S., and expressed legislative intent for public and private correctional institutions to operate religious and chaplaincy programs with the help of volunteers from faith-based institutions in the community. In addition, it required the department to conduct a study of the effectiveness of faith-based programs, including those in other jurisdictions, and to make recommendations for improvement of current programs. In 1999, the department opened its first faith-based dormitory in cooperation with Kairos Horizon at Tomoka Correctional Institution. Several other faith-based dormitories were opened around the state beginning in 2000.

In 2001, the Legislature substantially amended s. 944.803, F.S., to require the department to have six additional faith-based dormitory programs fully operational by June 1, 2002.<sup>1</sup> In 2003,

<sup>1</sup> Section 13, Chapter 2001-110, Laws of Florida.

Lawtey Correctional Institution became the first faith-based institution. The department currently has faith and character-based programs at 11 institutions:<sup>2</sup>

Location	Capacity	Gender	Date Became Faith and Character Based Dormitory or Institution
<i>Dormitories</i>			
Tomoka C.I. (F Dorm)	132	Male	November 1999
<b>Polk C.I. (A Dorm)</b>	<b>128</b>	<b>Male</b>	<b>November 2001</b>
Lowell C.I. (A Dorm)	32	Female	January 2002
Gulf – Annex (J Dorm)	128	Male	January 2002
Everglades C.I (B Dorm)	128	Male	February 2002
Lancaster C.I. (I Dorm)	37	Male over 21	January 2003
Union C.I. (J Dorm)	96	Male over 50	February 2003
<b>Total Dormitories</b>	<b>681</b>		
<i>Prisons</i>			
Lawtey C.I.	835	Male	December 2003
Hillsborough C.I.	292	Female	April 2004
Wakulla C.I.	1,756	Male	November 2005
Glades C.I.	1,424	Male	March 2009
<b>Total Prison</b>	<b>4,307</b>		
<b>TOTAL CAPACITY</b>	<b>4,988</b>		

The 2001 amendments to s. 944.803, F.S., established requirements for faith-based dormitory programs that are still in effect:<sup>3</sup>

- Programs must be a joint effort between the department and faith-based service groups in the community.
- An inmate’s faith orientation (or lack thereof) must not be considered in making admission decisions.
- There must not be an attempt to convert an inmate toward a particular faith or religious preference.
- Programs must emphasize the importance of personal responsibility, meaningful work, education, substance-abuse treatment, and peer support.
- Participation must be voluntary.
- Priority must be given to inmates with substance abuse issues.
- State funds must be used toward the goals of criminal rehabilitation, successful reintegration of offenders into the community, and reduction of recidivism, not toward religious indoctrination.

<sup>2</sup> Department of Corrections Analysis of Senate Bill 2010, p. 2.

<sup>3</sup> The department has interpreted these requirements to apply only to dormitory-based programs. This is a reasonable interpretation because the statute is not clear on the point and there were no institution-wide programs at the time the requirements were established. In any event, the department reports that its requirements for institution-wide programs are basically the same as these statutory requirements except for the 80%/36 month restriction.

- At least 80 percent of inmates participating in the program must be within 36 months of release.

The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) has recommended that the 80 percent requirement be removed or, in the alternative, that it be clarified that the requirement applies to the total population of all FCB dormitories and not to individual dormitories.<sup>4</sup>

The department refers to institution-based programs as Faith and Character-Based Institutions (FCBI) and dormitory-based programs as Faith-Based/Self Improvement Dormitories (FB/SID). Programming is similar for both FCBI programs and FB/SID programs, except that FB/SID programming is more intensive. Programs are run by volunteers and allow inmates to participate in both religious and secular programming. Inmates can take classes on topics such as writing, marriage and parenting, money management, interview and job skills, computer literacy, personal faith, and a variety of religious and secular topics.<sup>5</sup>

FB/SID programs invite secular and religious charitable organizations to mentor inmates and offer programming designed to transform inmates inwardly. There are separate faith and secular-based dormitories. Faith-based dormitory programs build upon the inmate's personal faith, while self-improvement dormitory programs take a secular approach.<sup>6</sup>

The only statutory eligibility requirement is that the inmate must enter the program voluntarily. However, the department has established procedures requiring that an inmate entering the program must:

- Not have received a disciplinary report that resulted in disciplinary confinement during the previous 90 days;
- Be in general population housing status;
- Not be in work-release, reception or transit status; and
- Fit within the institutional profile.<sup>7</sup>

Of course, placement in a program is also dependent upon the availability of space. As of November 29, 2010, there were 471 inmates on the state-wide waiting list for faith-based dormitories, 452 inmates for self improvement dormitories, and 6,785 inmates for FCBIs.<sup>8</sup>

An inmate can be housed in an FCBI until completion of his or her sentence (or permanently if sentenced to life) unless he or she commits a serious infraction.

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<sup>4</sup> OPPAGA Report No. 09-38 (October 2009), "Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest," p. 7.

<sup>5</sup> Department of Corrections Analysis of Senate Bill 2010, p. 3.

<sup>6</sup> Faith-Based/Self Improvement Dormitories. The Department of Corrections. <http://www.dc.state.fl.us/oth/faith/dorms.html>, last viewed on March 30, 2011.

<sup>7</sup> *Id.*

<sup>8</sup> Department of Corrections Faith- and Character-Based Initiative, November 2010 Update, <http://www.dc.state.fl.us/oth/faith/stats.html>, last viewed on March 30, 2011.

***Effectiveness of Faith and Character-Based Programs***

OPPAGA's 2009 review of faith and character-based programs found that institution-wide programs had a positive effect on inmate institutional adjustment and security, and a positive but modest effect on reducing recidivism. Dormitory-based programs also had a positive effect on institutional adjustment and security, but had no effect on recidivism.<sup>9</sup>

**III. Effect of Proposed Changes:**

This bill amends s. 944.803(3), F.S., to remove the requirement that 80 percent of the inmates in a dormitory-based program must be within 36 months of release. Deleting this restriction implements an OPPAGA recommendation, and the department indicates that it will have a positive impact due to increased flexibility in making assignments.<sup>10</sup>

**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:**

There is no apparent impact on the private sector.

**C. Government Sector Impact:**

The department indicates that the bill will not have an impact on the government sector.

**VI. Technical Deficiencies:**

None.

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<sup>9</sup> OPPAGA Report No. 09-38, *supra*, pages 3-6. *See also* Department of Corrections Analysis of Senate Bill 2010, pages 3-4.

<sup>10</sup> Department of Corrections Analysis of Senate Bill 2010, p. 4.

**VII. Related Issues:**

Senate Bill 2010 also amends s. 944.803, F.S., to eliminate the requirement that 80 percent of inmates in a faith-based dormitory program be within 36 months of their release date.

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

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