CS/SB 112 by **JU, Dean**; (Compare to H 0915) Filing False Documents Against Real or Personal Property

215638	A	S	RCS	CJ, Dean	Delete L.100:	03/18 07:09 PM
711720	A	S	RCS	CJ, Dean	Delete L.122 - 125:	03/18 07:09 PM
691104	A	S	RCS	CJ, Dean	Delete L.126:	03/18 07:09 PM
160476	A	S	RCS	CJ, Dean	Delete L.162 - 186:	03/18 07:09 PM
627916	A	S	RCS	CJ, Dean	btw L.219 - 220:	03/18 07:09 PM
104420	A	S	RCS	CJ, Dean	Delete L.398 - 400:	03/18 07:09 PM
863968	A	S	RCS	CJ, Dean	Delete L.465:	03/18 07:09 PM
436258	A	S	RCS	CJ, Dean	Delete L.527:	03/18 07:09 PM

SB 148 by **Altman (CO-INTRODUCERS) Soto**; (Identical to H 0961) Sentencing In Capital Felonies

SB 504 by **Brandes (CO-INTRODUCERS) Gardiner, Lee**; (Similar to CS/H 0851) Animal Cruelty

272052	A	S	RCS	CJ, Bradley	Delete L.82 - 158.	03/18 07:09 PM

CS/SB 654 by **AG, Montford**; (Similar to H 1393) Agricultural Storage and Shipping Containers

743390	A	S	RCS	CJ, Dean	Delete L.60 - 88:	03/18 07:09 PM
172104	A	S	RCS	CJ, Dean	Delete L.93 - 95:	03/18 07:09 PM

SB 664 by **Simmons**; State Taxes on Motor Fuel

211192	A	S	RCS	CJ, Simmons	Delete L.61 - 62:	03/18 07:09 PM

SB 812 by **Gibson (CO-INTRODUCERS) Bullard**; (Identical to H 0959) Youth in Solitary Confinement

SB 824 by **Garcia**; (Identical to H 1183) Public Records/Forensic Behavioral Health Evaluation

SB 946 by **Simmons**; (Identical to H 0787) Computer or Electronic Device Harassment

275298	A	S	RCS	CJ, Simmons	Delete L.23 - 55:	03/18 07:09 PM

SB 1216 by **Bradley**; (Compare to CS/H 1125) Wage Theft

411024	D	S	WD	CJ, Bradley	Delete everything after	03/13 05:49 PM
901110	AA	S	WD	CJ, Bradley	Delete L.45 - 49:	03/13 05:49 PM
459014	AA	S	WD	CJ, Bradley	Delete L.63 - 70:	03/13 05:49 PM
841392	AA	S	WD	CJ, Smith	Delete L.99 - 102:	03/14 05:00 PM
420660	D	S	PEND	CJ, Bradley	Delete everything after	03/18 07:09 PM
929198	AA	S	WD	CJ, Smith	Delete L.87 - 90:	03/18 07:09 PM
663082	AA	S	PEND	CJ, Smith	Delete L.87 - 93:	03/18 07:09 PM

SB 1222 by **Richter**; (Similar to CS/H 0253) Protection of Vulnerable Persons

SB 1330 by **Latvala**; (Identical to H 0875) Licensed Security Officers

SB 1406 by **Bean**; (Compare to CS/H 0441) Juvenile Justice Education Programs

742608	D	S	RCS	CJ, Bradley	Delete everything after	03/18 07:09 PM

SB 1434 by **Evers**; (Similar to H 0293) Department of Law Enforcement

544712	D	S	RCS	CJ, Evers	Delete everything after	03/18 07:09 PM

SB 1476 by **Dean**; (Identical to H 1221) Murder of a Child 17 Years of Age or Younger

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, March 18, 2013
TIME: 1:00 —3:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Smith, Vice Chair; Senators Altman, Bradley, Dean, Gibson, and Simmons

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.		
	Criminal Conflict and Civil Regional Counsel - Fourth District Court of Appeal		
1	Ryan, Antony Parker Esquire (Riviera Beach)	07/01/2015	Recommend Confirm Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	**CS/SB 112** Judiciary / Dean (Compare H 915)	Filing False Documents Against Real or Personal Property; Prohibiting a person from filing or causing to be filed, with intent to defraud another, a document relating to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property, which the person knows contains a material misstatement or misrepresentations; establishing reclassified penalties that increase criminal penalties for persons who commit the specified offenses a second or more times, who are convicted offenders who commit unlawful acts while incarcerated in a jail or participating in community correctional programs, and when the victim of the offense is a public officer or employee under certain circumstances, etc. JU 03/06/2013 Fav/CS CJ 03/18/2013 Fav/CS RC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 148** Altman (Identical H 961)	Sentencing In Capital Felonies; Requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug-trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist; requiring that the court provide a special verdict form for each aggravating circumstance found, etc. CJ 03/11/2013 Temporarily Postponed CJ 03/18/2013 Temporarily Postponed JU ACJ AP	Temporarily Postponed
4	**SB 504** Brandes (Similar CS/H 851)	Animal Cruelty; Specifying that a person who commits multiple acts of animal cruelty against one animal or acts of animal cruelty against multiple animals may be charged with a separate offense for each such act of animal cruelty; providing criminal penalties; providing factors that may be used in determining whether an object is animal-fighting or animal-baiting paraphernalia; including illegal animal fighting or baiting as an offense within the definition of the term "racketeering activity" for purposes of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, etc. CJ 03/18/2013 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
5	**CS/SB 654** Agriculture / Montford (Similar H 1393)	Agricultural Storage and Shipping Containers; Providing that an owner of containers used for the storage or transport of agricultural or other commercial products may adopt for his or her exclusive use a particular mark or brand to designate and distinguish ownership of the containers; requiring that a person who purchases five or more plastic bulk merchandise containers from one seller obtain proof of ownership, verify the seller's identity, pay noncash, and record and maintain other information for a specified period of time; providing an exception for licensed waste haulers, etc. AG 03/04/2013 Fav/CS CJ 03/18/2013 Fav/CS AP	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 664** Simmons	State Taxes on Motor Fuel; Requiring that certain motor fuel taxes paid by a county sheriff's office be returned and used to offset ongoing fuel costs, etc. TR 03/07/2013 Favorable CJ 03/18/2013 Fav/CS AFT AP	Fav/CS Yeas 7 Nays 0
7	**SB 812** Gibson (Identical H 959)	Youth in Solitary Confinement; Citing this act as the "Youth in Solitary Confinement Reduction Act"; prohibiting the Department of Corrections or a local government body from subjecting a youth to solitary confinement except under certain circumstances; prohibiting a youth prisoner from being subjected to emergency cell confinement for more than 24 hours; providing for an individualized suicide crisis intervention plan, if applicable; prohibiting a youth prisoner from being subjected to disciplinary cell confinement for more than 72 hours, etc. CJ 03/18/2013 Temporarily Postponed CA JU	Temporarily Postponed
8	**SB 824** Garcia (Identical H 1183)	Public Records/Forensic Behavioral Health Evaluation; Creating an exemption from public records requirements for a forensic behavioral health evaluation filed with a court; providing a definition for the term "forensic behavioral health evaluation"; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, applicability, and construction, etc. CJ 03/18/2013 Favorable GO RC	Favorable Yeas 7 Nays 0
9	**SB 946** Simmons (Identical H 787)	Computer or Electronic Device Harassment; Prohibiting knowing use of a computer or other device to transmit or post any photograph or video of an individual which depicts nudity and contains specified information relating to the depicted individual without first obtaining the depicted person's written consent; providing an exception; providing enhanced penalties for violations by persons 18 years of age or older involving victims younger than 16 years of age, etc. CJ 03/18/2013 Fav/CS JU ACJ AP	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 1216** Bradley (Compare CS/H 1125)	Wage Theft; Providing circumstances under which an employer commits wage theft; providing that a claim is governed by the Florida Small Claims Rules; requiring the claimant to prove wage theft by a preponderance of the evidence; authorizing the Attorney General to seek injunctive relief against an employer accused of wage theft; authorizing a county, municipality, or political subdivision to establish an administrative process to facilitate the collection of money owed to an employee, etc. CJ 03/11/2013 Not Considered CJ 03/18/2013 Temporarily Postponed JU CM AP	Temporarily Postponed
11	**SB 1222** Richter (Similar CS/H 253)	Protection of Vulnerable Persons; Reducing the minimum amount of a theft from a person 65 years of age or older that constitutes a felony of the third degree; providing criminal penalties; revising terminology to prohibit specified lewd and lascivious offenses committed upon or in the presence of a vulnerable adult and to prohibit specified offenses involving exploitation of a vulnerable adult, etc. CJ 03/18/2013 Favorable JU AP	Favorable Yeas 6 Nays 1
12	**SB 1330** Latvala (Identical H 875)	Licensed Security Officers; Providing penalties for an unlicensed person who engages in an activity for which ch. 493, F.S., requires a license; providing penalties if a person commits a felony while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S.; authorizing a licensed security officer or licensed security agency manager to detain a person on the premises of a critical infrastructure facility in certain circumstances, etc. CJ 03/18/2013 Favorable ACJ AP	Favorable Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 1406** Bean (Compare CS/H 441, S 1324)	Juvenile Justice Education Programs; Revising the content of rules relating to expectations for education programs for youth in certain Department of Juvenile Justice programs; increasing percentage of Florida Education Finance Program (FEFP) funds required to be spent on students in juvenile justice programs; authorizing immediate sanctions for district school boards whose juvenile justice education programs are considered unsatisfactory; requiring that the Department of Education and the Department of Juvenile Justice ensure the development of education transition plans for youth in juvenile justice programs, etc. CJ 03/18/2013 Fav/CS ED AED AP	Fav/CS Yeas 7 Nays 0
14	**SB 1434** Evers (Similar H 293, Compare H 131, CS/H 585, H 7031, S 1114)	Department of Law Enforcement; Authorizing counties and municipalities to require state and federal criminal history screening for certain specified persons, including employees, private contractors, and employees of private contractors; requiring fingerprints of a child taken and retained by specified agencies other than the Department of Law Enforcement to be destroyed when the child becomes 18 years of age; requiring a sexual offender to provide his or her fingerprints and a photograph when registering with the department, etc. CJ 03/18/2013 Fav/CS CA AP	Fav/CS Yeas 7 Nays 0
15	**SB 1476** Dean (Identical H 1221)	Murder of a Child 17 Years of Age or Younger; Providing for reclassification of specified murder offenses if committed upon a child 17 years of age or younger; prohibiting a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence, etc. CJ 03/18/2013 Favorable JU AP	Favorable Yeas 5 Nays 2
	Other Related Meeting Documents		

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Antony Parker Ryan, Esquire

Criminal Conflict and Civil Regional Counsel - Fourth District Court of Appeal

NOTICE OF HEARING

TO: Mr. Antony Parker Ryan, Esquire

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 18, 2013, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 1:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 13th day of March, 2013

Committee on Criminal Justice

Greg Evers

Senator Greg Evers
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

A black and white copy of this document is not official

529

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Antony P. Ryan

is duly appointed a member of the

Office of Criminal Conflict and Civil Regional Counsel, Fourth District Court of Appeal

for a term beginning on the
Twenty-Third day of April, A.D., 2012,
until the First day of July, A.D., 2015
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 Tenth day of December, A.D., 2012.

Ken Detzner

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 8½ x 11" document.

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

RECEIVED
12 APR 23 PM 2:39
DIVISION OF ELECTIONS
SECRETARY OF STATE

April 23, 2012

The Honorable Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 27.511, Florida Statutes:

Mr. Antony P. Ryan

as a member of the Office of Criminal Conflict and Civil Regional Counsel, subject to confirmation by the Senate. This appointment is effective April 23, 2012 for a term ending July 1, 2015.

Sincerely,

Rick Scott
Governor

RS/jrd

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272 • FAX (850) 922-4292

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.
Please type or print in blue or black ink.

12/04/2012
Date Completed

1. Name: Mr. Ryan, Antony Parker
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address:
Street Office # City
N/A
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address:
Street City County
N/A
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business ☒ Residence ☐ Fax (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
N/A			

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DIVISION OF ELECTIONS
TALLAHASSEE, FL

5. Date of Birth: Place of Birth:

6. Social Security Number:

7. Driver License Number: Issuing State: FL

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

N/A

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

N/A

If you are a naturalized citizen, date of naturalization: N/A

10. Since what year have you been a continuous resident of Florida? 1974

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

A. County of Registration: Palm Beach B. Current Party Affiliation: Democratic

12. Education

A. High School: Jupiter High School (Name and Location) Year Graduated: 1983

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
Boston College	Sept., 1983 - May, 1987	Bachelor of Arts
Creighton University School of Law	Sept., 1988 - May, 1991	Juris Doctor

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: N/A

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.) Yes ☐ No ☒ If Yes" give details:

Date	Place	Nature	Disposition
N/A			

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
Office of Criminal Conflict & Civil Regional Counsel for the Fourth District of Appeal Region, Initially Appointed by Governor Rick Scott December 19, 2011, re-appointed on April 23, 2012.			
Office of the Public Defender, 15th Judicial Circuit 421 Third Street, West Palm Beach, FL 33401		Assistant Public Defender	Aug., 2004 - Dec., 2011

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
Assistant Public Defender,	Office of the Public Defender, 15th Judicial Circuit, 421 Third Street, West Palm Beach, FL 33401	Aug., 2004 - Dec., 2011
Assistant Public Defender,	Office of the Public Defender, 15th Judicial Circuit, 421 Third Street, West Palm Beach, FL 33401	Oct., 1991 - May, 1996

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

I believe my 20 years of extensive crininal defense trial experience, acquired both in public and private practice, and my experience in positions of leadership at the Public Defender in the past four years, make me well qualified for the position of Regional Counsel. As a trial lawyer I have always striven to achieve the best possible results for my clients, be they indigent or of some financial means; as a senior assistant public defender, I have sought, in both leading by example and by providing informed direction and instruction, to ensure that our clientele receives representation which meets the highest professional standards. If appointed to serve as Regional Counsel, I would instil this work ethic throughout the office of the 4th DCA region in order to elevate the quality of the representation which the office is mandated -- constitutionally and statutorily -- to provide.

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:

Juris Doctor, 1991, Creighton University School of Law

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

N/A

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

Florida Association of Criminal Defense Lawyers; Palm Beach Association of Criminal Defense Lawyer, Current President

Palm Beach County Bar Association; The Florida Bar

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:

N/A

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
N/A			

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

(1) How frequently were meetings scheduled: N/A

(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
N/A		

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
N/A		

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: N/A 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: N/A

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:

N/A

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
Member of the Florida Bar, admitted October 25, 1991, Florida Bar No.: 0907359			None

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

N/A

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

My wife, Pamala H. Ryan, is an attorney who is employed, by means of an employment contract, as the City Attorney for the City of Riviera Beach (600 West Blue Heron, Boulevard, Riviera Beach 33404).

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
N/A	

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
Benjamin L. Bedard, Esq.,			
C. Reid Bierer, Esq., Lesser, Lesser, Landy & Smith			
Michael P. Maher, Esq.,			

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

In addition to the Bar Associations which I listed in answer to question 17-D, I am a member of the Knights of Columbus, A Catholic fraternal organization; the local chapter I belong to is Council # 6988, Post Office Box 30482, Palm Beach Gardens, FL 33420

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:

N/A

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

CERTIFICATION

STATE OF FLORIDA, COUNTY OF Palm Beach

Before me, the undersigned Notary Public of Florida, personally appeared Antony P. Ryan, who, after being duty 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.

Signature of Applicant-Affiant

RECEIVED
DEPARTMENT OF STATE
2012 DEC 10 AM 11:02
DIVISION OF ELECTIONS
TALLAHASSEE, FL

Sworn to and subscribed before me this 5th day of December, 2012

Signature of Notary Public-State of Florida

RUTH M MARTINEZ-ESTES
MY COMMISSION # EE085491
EXPIRES June 15, 2015
(407) 398-0153 FloridaNotaryService.com

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 6/15/2015

Personally Known ☑ **OR** Produced Identification ☐

Type of Identification Produced _____

(seal)

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 the Public Records Law.

Because: (please provide cite.) 119.071(4)(b)2.j.

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OFANY 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) 245-0150

The Florida Senate

COMMITTEE RECOMMENDATION ON EXECUTIVE APPOINTMENT

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Monday, March 18, 2013
TIME: 1:00 —3:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

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TO: The Honorable Don Gaetz, President

FROM: Committee on Criminal Justice

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Criminal Conflict and Civil Regional Counsel - Fourth District Court of Appeal
Appointee: Ryan Esquire, Antony Parker

Term: 4/23/2012-7/1/2015

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

REPORTING INSTRUCTION: With Chair's approval, file 1 copy with Secretary of the Senate (303 Capitol) and 2 copies with the Committee on Ethics and Elections

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Antony Ryan

ANSWER: I do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 03/18/13

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 Committee on Criminal Justice

BILL: CS/CS/SB 112

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Dean

SUBJECT: Property Fraud

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Fav/CS**
2.	Erickson	Cannon	CJ	**Fav/CS**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 112 creates the offense of filing or directing to file, with the intent to defraud or harass another, a document in an official record which contains materially false, fictitious, or fraudulent statements or representations that affect the owner's interest in property described in the document. A person who commits the new offense commits a third-degree felony.[1] If a person commits this offense a second or subsequent time the person commits a second-degree felony.[2] The bill reclassifies the felony degree of these offenses under circumstances outlined in the bill. The bill also provides that a person who files a fraudulent construction lien is subject to penalties under the Construction Lien Law, not the newly-created offense in the bill.

The bill amends the law relating to criminal actions under color of law or through use of simulated legal process, to revise definitions. For purposes of that law, the bill defines the term, "public officer or employee." The bill specifies additional civil remedies to grant relief to public officers or employees affected by the offense of filing of false statements or claims. The bill

[1] A third-degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to $5,000.
[2] A second-degree felony is punishable by imprisonment of up to 15 years and the imposition of a fine of up to $10,000.

ranks offenses created in the bill in the offense severity ranking chart of the Criminal Punishment Code for purposes of sentencing.

The bill creates section 817.535, Florida Statutes.

This bill amends sections 843.0855 and 921.0022, Florida Statutes.

II. Present Situation:

Fraud

Chapter 817, F.S., deals with a variety of fraudulent practices. Section 817.54, F.S., for example, states that a person commits a third-degree felony if he or she obtains a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Additionally, s. 817.155, F.S., makes it a third-degree felony to knowingly falsify any matter within the jurisdiction of the Department of State. The conduct subject to penalties appears to include filing fraudulent liens. Other provisions of law contain similar penalties specific to liens. Under s. 713.31(3), F.S., it is a third-degree felony to fraudulently file a construction lien. A construction lien is considered fraudulent if the person who filed the lien purposefully exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.[3]

In a 2011 federal case in Florida, the defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecution against him.[4] Although the liens in this case were "fantastic, delusional and incredible,"[5] with each claiming the amount owed was "$48,489,000.00 plus interest, penalties, and fees,"[6] the court found that the sham documents could still be damaging to the credit of the federal officers because they were recorded in official state and local registries.[7] The court found that the liens were fraudulent and void, and enjoined the defendant from filing future liens against federal employees absent a commercial relationship and a contract authorizing the filing.[8] The defendant was subsequently sentenced to 30 months in prison for the fraudulent filings.[9]

Fraudulent Recording of Deeds

Property owners who have wild deeds[10] recorded on their property may pursue a suit to quiet title, "an equitable action that involves clearing title of an invalid charge against the title."[11] In the alternative, property owners may sue for slander of title, a tort action for which damages may

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[3] Section 713.31(2)(a), F.S.
[4] *United States v. Leitner*, 2011 WL 2532745, No. 3:10cv454/RS/CJK. (N.D. Fla. June 6, 2011).
[5] *Id.* at *7.
[6] Id. at *5.
[7] *Id.* at *7.
[8] *Id.* at *9.
[9] *See* Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html (last visited Jan. 4, 2013).
[10] A wild deed is a recorded deed that is not in the chain of title, usu. because a previous instrument connected to the chain of title has not been recorded. BLACK'S LAW DICTIONARY (9th ed. 2009).
[11] *See* 65 AM. JUR.2D *Quieting Title* s. 2 (2012).

be recovered.[12] The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney's fees.[13] A tort claim is not actionable as slander of title if the defendant acted without malice and with the belief that he or she had a valid claim against the property and was entitled to record that claim.[14]

Florida Recording Statute

Florida has a recording statute which states:

> No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.[15]

Section 695.01, F.S., is a notice-recording statute and "Florida courts over time have described and applied Florida's recording statute in a manner that is consistent with a 'notice' type of recording statute."[16] The recording system serves two purposes: it protects existing property owners and protects new buyers.[17] The system does so by allowing access to any person such as a creditor, tax collector, or prospective purchaser to ascertain who owns the property and what encumbrances might exist to the title. Because these records are open for the public to rely on and have the potential to call into question the owner's clear title to the property, having accurate property records is vital. Clerks of court have very little control over which documents are recorded, because the law generally does not require that the clerk examine a document for its validity or accuracy.[18]

III. Effect of Proposed Changes:

The bill creates s. 817.535, F.S., which creates the offense of filing or directing to file, with the intent to defraud or harass another, a document in an official record which contains materially false, fictitious, or fraudulent statements or representations that affect the owner's interest in property described in the document. A person who commits the new offense commits a third-degree felony. If a person commits this offense a second or subsequent time, the person commits a second-degree felony. The bill reclassifies the felony degree of these offenses (increasing them by one felony degree) if:

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[12] *Id.*
[13] Section 86.081, F.S., and *see also Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984).
[14] *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566 (Fla. 4th DCA 2008).
[15] Section 695.01(1), F.S.
[16] *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).
[17] John G. Sprankling, UNDERSTANDING PROPERTY Law, 394-95 (2000).
[18] *Cf.* Sprankling, 395.

- The owner of the property is a public officer or employee.
- The offender is convicted of the crime while incarcerated or on probation.
- The owner of the property incurs financial loss as a result of the document being recorded in the official record.

The bill also provides that a person who fraudulently records a claim for a construction lien pursuant to part I of chapter 713, F.S., is subject to penalties under the Construction Lien Law, and not the offense created under the bill. If a person is convicted of the offense created in the bill, the court must issue an order declaring the document forming the basis of the conviction void and may enjoin the person convicted of the offense from filing any document in an official record without review and approval by a circuit or county judge. The court may order the document forming the basis of the conviction to be sealed from the official record and removed from any applicable electronic database.

The bill gives a cause of action to a person adversely affected by a document filed in an official record which contains a materially false, fictitious, or fraudulent statement or representation. A *notice of lis pendens*[19] must be filed which specifically describes the document under challenge and the real or personal property affected by the document.

Upon a finding that the instrument contains a materially false, fictitious, or fraudulent statement or representation such that the instrument does not establish a legitimate property or lien interest in favor of another person:

- The court shall determine whether the entire instrument or certain parts thereof are null and void ab initio. If the court finds the instrument void in its entirety, it may order the instrument sealed from the official record and removed from any electronic database used for indexing or locating instruments in the official record. The court may also, permanently or for a period of time, enjoin the defendant who filed the instrument or who directed the filer to file an instrument, from filing or directing a person to file an instrument in the official records without prior review and approval for filing by a circuit or county court judge, provided that as to third parties who may have given value for an interest described or granted by any instrument filed in violation of the injunction, the instrument shall be deemed validly filed and provides constructive notice, notwithstanding any failure to comply with the terms of the injunction.
- The court shall award actual damages and punitive damages to the person adversely affected by the instrument, if the court finds that the violation of this section involved the intent to defraud or harass the person adversely affected by the instrument. The court may also levy a civil penalty of $2,500 for each instrument determined to be in violation of the statute.
- The court may grant such other relief or remedy that the court determines is just and proper within its sound judicial discretion.

[19] "The term lis pendens means a pending suit" Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 8:25 (2007 ed.). "The notice must be recorded in the office of the clerk of the circuit court of the county where the property is located. [The notice of lis pendens] must contain the name of the court, the names of all of the parties, the time of institution of the action, a description of the property affected and a statement of the relief sought concerning the property." *Id.* and s. 48.23(1), F.S.

The prevailing party in the civil cause of action created in the bill may recover costs and reasonable attorney fees.

The custodian of any official record must, upon payment of appropriate fees, provide a certified copy of the sealed document to the person who is adversely affected by the document for use in subsequent court proceedings or in addressing or correcting adverse effects on the person's credit or property rights. The custodian of any official record must, upon payment of appropriate fees, provide a certified copy of the sealed instrument to a federal, state, or local law enforcement agency. If feasible, the custodian of the official record where the document is recorded must record any court order finding that parts of the document or that the entire document is void. The bill requires the voided instrument be removed from electronic databases used for recording instruments in the public record, but be maintained so that the document may be reduced to paper form. The bill authorizes a government agency to provide legal representation to a public officer or employee if the document at issue appears to have been filed to defraud or harass the public officer or employee on account of the performance of that officer's or employee's official duties. If the public officer or employee is the prevailing party, the award of reasonable attorney fees must be paid to the government agency that provided the legal representation.

The bill provides that the requirements of the bill do not apply to the procedures for sealing or expunging criminal history records in ss. 943.0585 and 943.059, F.S.

The bill amends s. 843.0855, F.S., relating to criminal actions under color of law or through use of simulated legal process, to revise definitions. For purposes of s. 843.0855, F.S., the bill defines the term, "public officer or employee" to include, but not be limited to: a person elected or appointed to a state or federal office, including a person serving on an advisory body, board, commission, committee, council, or authority; an employee of a state, county, municipal, political subdivision, school district, educational institution, or special district agency or entity, including all judges, attorneys, law enforcement officers, deputy clerks of courts or marshals; a state or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or services for any executive, legislative, or judicial office, agency, officer, or employee; a person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee hearing officer, or consultant to any state or local governmental entity; and a person who is a candidate for public office or judicial position.

The bill provides it is a third-degree felony for a person to impersonate a public officer or employee or falsely, under the color of law, intimidate a public officer or employee.

The bill revises the offense severity ranking chart of the Criminal Punishment Code to provide the following rankings for offenses:

Level 7

- Filing false lien or other unauthorized document (s. 817.535(2)(a), F.S.).
- Impersonation of a public officer or employee. (s. 843.0855(2), F.S.)
- Unlawful simulation of legal process. (s. 843.0855(3), F.S.)
- Intimidation of a public officer or employee. (s. 843.0855(4), F.S.)

Level 8

- Second or subsequent offense of issuing or filing a false document. (s. 817.535(2)(b), F.S.)
- Filing of a false lien or other unauthorized document; property owner is public officer or employee. (s. 817.535(3)(a), F.S.)

Level 9

- Second or subsequent offense; issuing or filing false document; property owner is public officer or employee. (s. 817.535(3)(b), F.S.)

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires that upon payment of the appropriate fee the custodian of any official record must provide a certified copy of the sealed instrument to the party who is adversely affected by the filing of a fraudulent record.

Additionally, the custodian of any official record must upon payment of appropriate fees, provide a certified copy of the sealed instrument to a federal, state, or local law enforcement agency.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator has not completed a judicial impact statement for the bill as amended.

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of legislation. The CJIC has not yet considered the impact of this bill on prison beds.

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/CS by Criminal Justice on March 18, 2013:

- Corrects descriptions of offenses and references to felony degree in provisions of the bill that rank offenses in the offense severity ranking chart of the Criminal Punishment Code.
- Rewords (but does not substantively change) provisions involving relief the court may provide for violations involving the filing of false instruments.
- Provides for a severability clause.

CS by Judiciary on March 6, 2013:

The committee substitute revises the elements of the offense of fraudulently filing a document in the official records. The committee substitute provides circumstances for which an enhanced punishment may be imposed for violating the offense created in the committee substitute. The committee substitute specifies additional civil remedies to grant relief to public officers or employees affected by the offense of filing of false statements or claims. The committee substitute ranks offenses created in the committee substitute in the severity ranking chart under the Criminal Punishment Code for purposes of sentencing.

B. Amendments:

None.

215638

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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	.	

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

1 **Senate Amendment**
2
3 Delete line 100
4 and insert:
5
6 (3) If a person is convicted of violating subsection (2)
7 and the owner of the property subject to the false

711720

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Criminal Justice (Dean) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 122 - 125
4 and insert:
5
6 If a person convicted of violating this subsection committed the
7 offense while incarcerated in a jail or correctional
8 institution, the sentencing court shall issue a written finding
9 that the offense occurred while the person was incarcerated in a
10 jail or correctional institution and direct that a copy of the
11 written finding and judgment of conviction be forwarded to the
12 appropriate state institution or county facility for

711720

13 consideration of disciplinary action, including forfeiture of
14 all gain-time or any early release credits accumulated up to the
15 date of the violation.

691104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Criminal Justice (Dean) recommended the following:

1 **Senate Amendment**
2
3 Delete line 126
4 and insert:
5
6 (5) If the person is convicted of violating subsection (2)
7 and the owner of property covered by the false

160476

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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	.	

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

Senate Amendment

Delete lines 162 - 186
and insert:

legitimate property or lien interest in favor of another person.

1. The court shall determine whether the entire instrument or certain parts thereof are null and void ab initio. If the court finds the instrument null and void in its entirety, it may order the instrument sealed from the official record and removed from any electronic database used for indexing or locating

160476

13 instruments in the official record. The court may also,
14 permanently or for a period of time, enjoin the defendant who
15 filed the instrument or who directed the filer to file the
16 instrument, from filing or directing a person to file an
17 instrument in the official records, without prior review and
18 approval for filing by a circuit or county court judge, provided
19 that as to third parties who may have given value for an
20 interest described or granted by any instrument filed in
21 violation of the injunction, the instrument shall be deemed
22 validly filed and provides constructive notice, notwithstanding
23 any failure to comply with the terms of the injunction.
24 2. Upon a finding of intent to defraud or harass, the court
25 shall award actual damages and punitive damages, subject to the
26 criteria in s. 768.72, to the person adversely affected by the
27 instrument. The court may also levy a civil penalty of $2,500
28 for each instrument determined to be in violation of subsection
29 (2).
30 3. Granting such other relief or remedy that the court
31 determines is just and proper within its sound judicial
32 discretion.

627916

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Between lines 219 and 220
4 insert:
5 (11) If any provision of this section or its application to
6 any person or circumstance is held invalid, the invalidity shall
7 not affect other provisions or applications of this section
8 which can be given effect without the invalid provision or
9 application, and to this end the provisions of this section are
10 severable.
11
12 ========== T I T L E A M E N D M E N T ==========

627916

13 And the title is amended as follows:
14 Delete line 29
15 and insert:
16
17 certain circumstances; providing for severability;
18 amending s. 843.0855, F.S.;

104420

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Criminal Justice (Dean) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 398 - 400
4 and insert:
5

843.0855(2)	3rd	Impersonation of a public officer or employee.

6

843.0855(3)	3rd	Unlawful simulation of legal process.

7

104420

843.0855(4)	3rd	Intimidation of a public officer or employee.

8
9

863968

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete line 465
4 and insert:
5

817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.

6
7

436258

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete line 527
4 and insert:
5

817.535(3)(b)	1st	Second or subsequent offense issuing or filing false document; property owner is a public officer or employee.

6

By the Committee on Judiciary; and Senator Dean

590-01979A-13 2013112c1

A bill to be entitled

An act relating to filing false documents against real or personal property; creating s. 817.535, F.S.; defining terms; prohibiting a person from filing or causing to be filed, with intent to defraud another, a document relating to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property, which the person knows contains a material misstatement or misrepresentations; providing criminal penalties; establishing reclassified penalties that increase criminal penalties for persons who commit the specified offenses a second or more times, who are convicted offenders who commit unlawful acts while incarcerated in a jail or participating in community correctional programs, and when the victim of the offense is a public officer or employee under certain circumstances; authorizing the court to issue injunction; authorizing a court to seal specified public or private records under certain circumstances; providing that the subject of the false statements has a cause of action against the perpetrator; providing for actual and punitive damages; providing that the prevailing party is entitled to costs and reasonable attorney fees; providing duties of the custodian of the official record; providing applicability; requiring that attorney fees be paid to the government agency that provides legal representation, under certain circumstances; amending s. 843.0855, F.S.;

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

590-01979A-13 2013112c1

revising definitions; defining the term "public officer or employee"; providing criminal penalties for a person who impersonates a public official or employee or who, under color of law, intimidates certain specified officials; amending s. 921.0022, F.S.; revising provisions of the offense severity ranking chart of the Criminal Punishment Code to conform to changes made by the act; providing an effective date.

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

Section 1. Section 817.535, Florida Statutes, is created to read:

817.535 Unlawful filing of false documents or records against real or personal property.—

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

(a) "File" means to present an instrument for recording in an official record or to cause an instrument to be presented for recording in an official record.

(b) "Filer" means the person who presents an instrument for recording in an official record, or causes an instrument to be presented for recording in an official record.

(c) "Instrument" means any judgment, mortgage, assignment, pledge, lien, financing statement, encumbrance, deed, lease, bill of sale, agreement, mortgage, notice of claim of lien, notice of levy, promissory note, mortgage note, release, partial release or satisfaction of any of the foregoing, or any other document that relates to or attempts to restrict the ownership,

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

59 transfer, encumbrance of or claim against real or personal
60 property, or any interest in real or personal property.
61 (d) "Official record" means the series of instruments,
62 regardless of how they are maintained, which a clerk of the
63 circuit court, or any person or entity designated by general
64 law, special law, or county charter, is required or authorized
65 by law to record. The term also includes a series of instruments
66 pertaining to the Uniform Commercial Code filed with the
67 Secretary of State or with any entity under contract with the
68 Secretary of State to maintain Uniform Commercial Code records
69 and a database of judgment liens maintained by the Secretary of
70 State.
71 (e) "Public officer or employee" means, but is not limited
72 to:
73 1. A person elected or appointed to a state or federal
74 office, including any person serving on an advisory body, board,
75 commission, committee, council, or authority;
76 2. An employee of a state, county, municipal, political
77 subdivision, school district, educational institution, or
78 special district agency or entity, including all judges,
79 attorneys, law enforcement officers, deputy clerks of court, and
80 marshals;
81 3. A state or federal executive, legislative, or judicial
82 officer, employee, or volunteer authorized to perform actions or
83 services for any executive, legislative, or judicial office,
84 agency, officer, or employee;
85 4. A person who acts as a general or special magistrate,
86 auditor, arbitrator, umpire, referee, hearing officer, or
87 consultant to any state or local governmental entity; and

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

88 5. A person who is a candidate for public office or
89 judicial position.
90 (2)(a) A person who files or directs a filer to file, with
91 the intent to defraud or harass another, any instrument
92 containing a materially false, fictitious, or fraudulent
93 statement or representation that purports to affect the owner's
94 interest in the property described in the instrument commits a
95 felony of the third degree, punishable as provided in s.
96 775.082, s. 775.083, or s. 775.084.
97 (b) A person who violates paragraph (a) a second or
98 subsequent time commits a felony of the second degree,
99 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
100 (3) If the owner of the property subject to the false
101 instrument is a public officer or employee, such offense shall
102 be reclassified as follows:
103 (a) In the case of a felony of the third degree, to a
104 felony of the second degree, punishable as provided in s.
105 775.082, s. 775.083, or s. 775.084.
106 (b) In the case of a felony of the second degree, to a
107 felony of the first degree, punishable as provided in s.
108 775.082, s. 775.083, or s. 775.084.
109 (4) If a person is convicted of violating subsection (2)
110 while incarcerated in a jail or correctional institution or
111 while participating in a pretrial diversion program under any
112 form of pretrial release or bond, on probation or parole, or
113 under any postrelease supervision, the offense for which the
114 person is convicted shall be reclassified as follows:
115 (a) In the case of a felony of the third degree, to a
116 felony of the second degree, punishable as provided in s.

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

117 775.082, s. 775.083, or s. 775.084.
118 (b) In the case of a felony of the second degree, to a
119 felony of the first degree, punishable as provided in s.
120 775.082, s. 775.083, or s. 775.084.
121
122 Any person convicted of violating this subsection while
123 incarcerated in a jail or correctional institution shall forfeit
124 all gain-time or any early release credits accumulated before
125 the date of the violation.
126 (5) If the owner of the property covered by the false
127 instrument incurs financial loss as a result of the instrument
128 being recorded in the official record, including costs and
129 attorney fees incurred in correcting, sealing, or removing the
130 false instrument from the official record as described herein,
131 such an offense shall be reclassified as follows:
132 (a) In the case of a felony of the third degree, to a
133 felony of the second degree, punishable as provided in s.
134 775.082, s. 775.083, or s. 775.084.
135 (b) In the case of a felony of the second degree, to a
136 felony of the first degree, punishable as provided in s.
137 775.082, s. 775.083, or s. 775.084.
138 (6) A person who fraudulently records a claim of lien in
139 the official records pursuant to part I of chapter 713 is
140 subject to the fraud provisions of s. 713.31 and not this
141 section.
142 (7) If a person is convicted of violating this section, the
143 court shall issue an order declaring the instrument forming the
144 basis of the conviction null and void and may enjoin the person
145 from filing any instrument in an official record absent prior

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

146 review and approval by a circuit or county court judge. The
147 court may also order the instrument forming the basis of the
148 conviction sealed from the official record and removed from any
149 applicable electronic database used for recording instruments in
150 the official record.
151 (8)(a) Any person adversely affected by an instrument filed
152 in the official record which contains a materially false,
153 fictitious, or fraudulent statement or representation has a
154 civil cause of action under this section without regard to
155 whether criminal charges are pursued under subsection (2). A
156 notice of lis pendens in accord with s. 48.23 shall be filed
157 which specifically describes the instrument under challenge and
158 the real or personal property affected by the instrument.
159 (b) Upon a finding that the instrument contains a
160 materially false, fictitious, or fraudulent statement or
161 representation such that the instrument does not establish a
162 legitimate property or lien interest in favor of another person,
163 the court shall enter judgment:
164 1. Determining whether the entire instrument or certain
165 parts thereof are null and void ab initio. If the court finds
166 the instrument void in its entirety, it may order the instrument
167 sealed from the official record and removed from any electronic
168 database used for indexing or locating instruments in the
169 official record.
170 2. Awarding actual damages and punitive damages upon a
171 finding of an intent to defraud or harass, awarding the person
172 adversely affected by the instrument a civil penalty of $2,500
173 for each instrument determined to be in violation of subsection
174 (2).

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

175 3. Enjoining the defendant who filed the instrument,
176 permanently or for a period of time, from filing any other
177 instrument in the official records without prior review and
178 approval for filing by a circuit or county court judge, provided
179 that as to third parties who may have given value for an
180 interest described or granted by any instrument filed in
181 violation of the injunction, the instrument shall be deemed
182 validly filed and provides constructive notice, notwithstanding
183 any failure to comply with the terms of the injunction.
184 4. Granting such other relief or remedy that the court
185 determines is just and proper within its sound judicial
186 discretion.
187 (c) The prevailing party in such a suit is entitled to
188 recover costs and reasonable attorney fees.
189 (d) The custodian of any official record shall, upon
190 payment of appropriate fees, provide a certified copy of the
191 sealed instrument to the party seeking relief under this section
192 for use in subsequent court proceedings, in addressing or
193 correcting adverse effects upon the person's credit or property
194 rights, or reporting the matter for investigation and
195 prosecution; or in response to a subpoena seeking the instrument
196 for criminal investigative or prosecution purposes.
197 (e) Upon request, the custodian of any official record
198 shall, upon payment of appropriate fees, provide a certified
199 copy of the sealed instrument to any federal state or local law
200 enforcement agency.
201 (f) If feasible, the custodian of the official record where
202 the instrument is recorded shall record any court order finding
203 that the instrument is null and void in its entirety or in

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

204 certain parts thereof.
205 (g) An instrument removed from an electronic database used
206 for recording instruments in the public record pursuant to this
207 section shall be maintained in a manner in which the instrument
208 can be reduced to paper form.
209 (9) A government agency may provide legal representation to
210 a public officer or employee if the instrument at issue appears
211 to have been filed to defraud or harass the public officer or
212 employee on account of the performance in that officer's or
213 employee's official duties. If the public officer or employee is
214 the prevailing party, the award of reasonable attorney fees
215 shall be paid to the government agency that provided the legal
216 representation.
217 (10) This section does not apply to the procedures for
218 sealing or expunging criminal history records as provided in ss.
219 943.0585 and 943.059.
220 Section 2. Section 843.0855, Florida Statutes, is amended
221 to read:
222 843.0855 Criminal actions under color of law or through use
223 of simulated legal process.—
224 (1) As used in this section:
225 (a) The term "legal process" means a document or order
226 issued by a court or filed or recorded with an official court of
227 this state or the United States or with any official
228 governmental entity of this state or the United States for the
229 purpose of exercising jurisdiction or representing a claim
230 against a person or property, or for the purpose of directing a
231 person to appear before a court or tribunal, or to perform or
232 refrain from performing a specified act. "Legal process"

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

233 includes, but is not limited to, a summons, lien, complaint,
234 warrant, injunction, writ, notice, pleading, subpoena, or order.
235 (b) The term "person" means an individual, public or
236 private group incorporated or otherwise, legitimate or
237 illegitimate legal tribunal or entity, informal organization,
238 official or unofficial agency or body, or any group of
239 individuals associated in fact, whether a legal entity or not
240 ~~assemblage of individuals~~.
241 (c) The term "public officer or employee" includes, but is
242 not limited to:
243 1. A person elected or appointed to a state or federal
244 office, including a person serving on an advisory body, board,
245 commission, committee, council, or authority;
246 2. An employee of a state, county, municipal, political
247 subdivision, school district, educational institution, or
248 special district agency or entity, including all judges,
249 attorneys, law enforcement officers, deputy clerks of court, or
250 marshals;
251 3. A state or federal executive, legislative, or judicial
252 officer, employee, or volunteer authorized to perform actions or
253 services for any executive, legislative, or judicial office,
254 agency, officer, or employee;
255 4. A person who acts as a general or special magistrate,
256 auditor, arbitrator, umpire, referee, hearing officer, or
257 consultant to any state or local governmental entity; and
258 5. A person who is a candidate for public office or
259 judicial position
260 ~~(c) The term "public officer" means a public officer as~~
261 ~~defined by s. 112.061~~.

262 ~~(d) The term "public employee" means a public employee as~~
263 ~~defined by s. 112.061.~~
264 (2) A ~~Any~~ person who deliberately impersonates or falsely
265 acts as a public officer or employee ~~tribunal, public employee~~
266 ~~or utility employee, including, but not limited to, marshals,~~
267 ~~judges, prosecutors, sheriffs, deputies, court personnel, or any~~
268 ~~law enforcement authority~~ in connection with or relating to any
269 legal process affecting persons and property, or otherwise takes
270 any action under color of law against persons or property,
271 commits a felony of the third degree, punishable as provided in
272 s. 775.082, ~~or~~ s. 775.083, or s. 775.084. It is the intent of
273 the Legislature that this section applies if a person acts as an
274 officer or employee purporting to supersede or override any
275 legislation or statute of this state, or to supersede or
276 override any action of any court, of this state.
277 (3) A ~~Any~~ person who simulates legal process, including,
278 but not limited to, actions affecting title to real estate or
279 personal property, indictments, subpoenas, warrants,
280 injunctions, liens, orders, judgments, or any legal documents or
281 proceedings, knowing or having reason to know the contents of
282 any such documents or proceedings or the basis for any action to
283 be fraudulent, commits a felony of the third degree, punishable
284 as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.
285 (4) A ~~Any~~ person who falsely under color of law attempts in
286 any way to influence, intimidate, harass, retaliate against, or
287 hinder a public officer or employee involving ~~or law enforcement~~
288 ~~officer in~~ the discharge of his or her official duties by means
289 of, but not limited to, threats of or actual physical abuse or
290 harassment, or through the use of simulated legal process,

291 commits a felony of the third degree, punishable as provided in
292 s. 775.082, ~~or~~ s. 775.083, or s. 775.084.
293 (5)(a) ~~Nothing in~~ This section does not ~~shall~~ make unlawful
294 any act of any law enforcement officer or legal tribunal which
295 is performed under lawful authority.
296 (b) ~~Nothing in~~ This section does not ~~shall~~ prohibit
297 individuals from assembling freely to express opinions or
298 designate group affiliation or association.
299 (c) ~~Nothing in~~ This section does not ~~shall~~ prohibit or in
300 any way limit a person's lawful and legitimate access to the
301 courts or prevent a person from instituting or responding to
302 legitimate and lawful legal process.
303 Section 3. Paragraphs (g) through (i) of subsection (3) of
304 section 921.0022, Florida Statutes, are amended to read:
305 921.0022 Criminal Punishment Code; offense severity ranking
306 chart.—
307 (3) OFFENSE SEVERITY RANKING CHART
308 (g) LEVEL 7
309

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.

459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.

483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register;

		failure to renew driver's license or identification card; other registration violations.
339		
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
340		
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
341		
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
342		
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
343		
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
344		
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
345		
784.045(1)(a)1.	2nd	Aggravated battery; intentionally

		causing great bodily harm or disfigurement.
346		
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
347		
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
348		
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
349		
784.048(7)	3rd	Aggravated stalking; violation of court order.
350		
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
351		
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
352		
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
353		
784.081(1)	1st	Aggravated battery on specified official or employee.
354		
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

355

784.083(1)	1st	Aggravated battery on code inspector.

356

787.06(3)(a)	1st	Human trafficking using coercion for labor and services.

357

787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

358

790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

359

790.16(1)	1st	Discharge of a machine gun under specified circumstances.

360

790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.

361

790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

362

790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

363

790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

364

790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.

365

794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.

366

796.03	2nd	Procuring any person under 16 years for prostitution.

367

800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

368

800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.

369

806.01(2)	2nd	Maliciously damage structure by fire or explosive.

370

810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed;

			no assault or battery.
371			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
372			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
373			
	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
374			
	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
375			
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
376			
	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
377			
	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
378			
	812.0145(2)(a)	1st	Theft from person 65 years of age or

			older; $50,000 or more.
379			
	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
380			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
381			
	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
382			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
383			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
384			
	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
385			
	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
386			
	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.

387
388
825.102(3)(b) 2nd Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
389
825.103(2)(b) 2nd Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
390
827.03(2)(b) 2nd Neglect of a child causing great bodily harm, disability, or disfigurement.
391
827.04(3) 3rd Impregnation of a child under 16 years of age by person 21 years of age or older.
392
837.05(2) 3rd Giving false information about alleged capital felony to a law enforcement officer.
393
838.015 2nd Bribery.
394
838.016 2nd Unlawful compensation or reward for official behavior.
395
838.021(3)(a) 2nd Unlawful harm to a public servant.
396

838.22 2nd Bid tampering.
397
843.0855(2) 2nd Impersonation of public officer or tribunal.
398
843.0855(3) 3rd Unlawful simulation of legal process.
399
843.0855(4) 3rd Intimidation of public officer or tribunal.
400
847.0135(3) 3rd Solicitation of a child, via a computer service, to commit an unlawful sex act.
401
402
847.0135(4) 2nd Traveling to meet a minor to commit an unlawful sex act.
403
872.06 2nd Abuse of a dead human body.
404
874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
405
893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or

		state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300

but less than $20,000.

943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender;

		harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.

439	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
440	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
441	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
442	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
443	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
444	777.03(2)(a)	1st	Accessory after the fact, capital felony.
445	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery,

			robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
446	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
447	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
448	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
449	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
450	787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.
451	787.06(3)(f)	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the

		state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
800.04(4)	2nd	Lewd or lascivious battery.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.

812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Second or subsequent offense issuing or filing false document.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner public officer or employee.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.

469

837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.

470

837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.

471

860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.

472

860.16	1st	Aircraft piracy.

473

893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

474

893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

475

893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

476

893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.

477

893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.

478

893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.

479

893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.

480

893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.

481

893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.

482

893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.

483

893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.

484

893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.

485

893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.

893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.

775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.

787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
787.06(3)(g)	1st,PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
787.06(4)	1st	Selling or buying of minors into human trafficking.
790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than

		18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
796.035	1st	Selling or buying of minors into prostitution.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.

817.535(3)(b)	1st	Property owner is public official or employee.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.

893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade

		reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 4. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

March 11, 2013

The Honorable Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request you place Senate Bill 112, relating to Property Fraud, on your Criminal Justice Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Amanda Cannon, Staff Director

REPLY TO:
❒ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
❒ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
❒ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/18/2013
Meeting Date

Topic: Filing False Documents Against Real or Personal Property

Bill Number: SB 112 *(if applicable)*

Name: Michael Ramage

Amendment Barcode: *(if applicable)*

Job Title: General Counsel

Address: 2331 Phillips Road
Street

Tallahassee, FL 32308
City, State, Zip

Phone: 850-410-7676

E-mail: michaelramage@fdle.state.fl.us

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

Representing: Florida Department of Law Enforcement

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: FILING FALSE DOCUMENTS

Bill Number: SB 0112 *(if applicable)*

Name: JIM GABBARD

Amendment Barcode: *(if applicable)*

Job Title: CHIEF of Police (RETIRED)

Address: 1100 31st AVE.
Street

VERO BEACH FLA. 32960
City *State* *Zip*

Phone: 772-473-7966

E-mail: gabb221@gmail.com

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

Representing: THE FLORIDA POLICE CHIEFS ASSOCIATION

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic _____

Bill Number 112 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.18.13
Meeting Date

Topic: False Liens

Bill Number: 112 *(if applicable)*

Name: Sarah Carroll

Amendment Barcode: *(if applicable)*

Job Title: Asst Exe. Director

Address: 2617 Mahan Dr
Street

Tallahassee FL 32308
City *State* *Zip*

Phone: 284.5993

E-mail: Scarroll@flsheriffs.org

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

Representing: Florida Sheriff Association

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Fla's young People

Bill Number: 112 *(if applicable)*

Name: Guy Steven

Amendment Barcode: _____ *(if applicable)*

Job Title: DJJ Board member

Address: 9166 Sunrise Dr
Street

Largo, Fla 33773
City, State, Zip

Phone: _____

E-mail: _____

Speaking: ☐ For ☐ Against ☒ Information

Representing: Florida Families

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 148

INTRODUCER: Senators Altman and Soto

SUBJECT: Sentencing in Capital Felonies

DATE: March 7, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon/Cannon	Cannon	CJ	**Pre-meeting**
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

SB 148 makes four changes in the death sentencing law in Florida. The bill requires that:

- If the jury is going to recommend the death penalty, the jury must first find that sufficient aggravating circumstances exist that are not outweighed by mitigating evidence.
- The jury must agree by a unanimous vote on any aggravators which support the jury's death recommendation.
- The jury vote on the aggravating circumstances must be recorded on a special verdict form.
- The jury must also agree unanimously to recommend the death penalty. Currently a jury must agree by a simple majority to recommend a death sentence.

This bill substantially amends sections 921.141 and 921.142 of the Florida Statutes.

II. Present Situation:

Florida's Capital Sentencing Law

In Florida, after a guilty verdict in a capital case, the jury issues a sentencing recommendation – death or life imprisonment – unless the jury is waived.[1] During the sentencing phase the jury

[1] With the issue of guilt or innocence disposed of, the jury can then view the question of penalty as a separate and distinct issue. The fact that the defendant has committed the crime no longer determines automatically that he must die in the absence of a mercy recommendation. They must consider from the facts presented to them-facts in addition to those necessary to prove the commission of the crime-whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty. *State v. Dixon*, 283 So.2d 1(Fla. 1973).

hears evidence to establish statutory aggravating factors and statutory or nonstatutory mitigating circumstances.[2] The aggravating factors must be established beyond a reasonable doubt.[3] The fact-finder must only be convinced by the greater weight of the evidence (a lower standard of proof than beyond a reasonable doubt) as to the existence of mitigating factors.[4]

If the jury finds one or more aggravating circumstances and determines that these circumstances are sufficient to recommend the death penalty, it must determine whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances. Based upon these considerations, the jury must recommend whether the defendant should be sentenced to life imprisonment or death.[5] However, even if the aggravating circumstances are found to outweigh the mitigating circumstances, the jury is never required to return a recommendation for death and must be so instructed.[6]

A simple majority of the jury is necessary for recommendation of the death penalty. It is not necessary for the jury to list on the verdict the aggravating and mitigating circumstances it finds or to disclose the number of jurors making such findings.[7]

---

[2] "An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim." Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.

[3] "An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven." **…** "If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole." *Id*.

[4] "Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed." *Id*.

[5] "The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor." *Id.*

[6] "The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death." *Id*.

[7] "If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be:

A majority of the jury by a vote of _____, to _____ advise and recommend to the court that it impose the death penalty upon (defendant).

The aggravating and mitigating circumstances and the method by which they must be determined to apply for sentencing are set forth in s. 921.141, F.S., as follows:

> (2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:
> (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
> (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
> (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.
> (3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:
> (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
> (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.
> In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.
> (5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:
> (a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
> (b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
> (c) The defendant knowingly created a great risk of death to many persons.
> (d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary;

On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:
The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole." *Id*.

kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
(f) The capital felony was committed for pecuniary gain.
(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
(h) The capital felony was especially heinous, atrocious, or cruel.
(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
(l) The victim of the capital felony was a person less than 12 years of age.
(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.
(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.
(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.
(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:
(a) The defendant has no significant history of prior criminal activity.
(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
(c) The victim was a participant in the defendant's conduct or consented to the act.
(d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
(e) The defendant acted under extreme duress or under the substantial domination of another person.
(f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
(g) The age of the defendant at the time of the crime.

> (h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.[8]

After receiving the jury's recommendation the judge must then decide the appropriate sentence.[9] The judge weighs the jury's recommendation and conducts his or her own analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge's decision-making process on the sentence handed down.[10] The judge may sentence a defendant in a different manner than the jury recommends – this is known as an "override."

The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in a meaningful review.[11] The judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of Florida.[12]

The Florida Supreme Court engages in proportionality review in all cases in which the death penalty is handed down. Proportionality review is the comparison of one case in which the defendant was sentenced to death with other similar death cases.

When the U.S. Supreme Court upheld Florida's current death penalty sentencing law in 1976, the court seemed to rely quite heavily on the Florida Supreme Court's promise to give each death case a meaningful review.[13] The *Proffitt* court stated:

> [T]he Florida statute has a provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. The Supreme Court of Florida reviews each death sentence to ensure that similar results are reached in similar cases….In fact, it is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences (citations omitted).[14]

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[8] Aggravating and mitigating circumstances appear in s. 921.142, F.S. which applies to Capital Drug Trafficking Felonies. Section 921.142, F.S., is also amended by this bill.

[9] "The punishment for this crime is either death or life imprisonment without the possibility of parole. The final decision as to which punishment shall be imposed rests with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to which punishment should be imposed upon the defendant." Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.

[10] What is referred to as the *Tedder "Great Weight" Standard* was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the court determined that "[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ."The same consideration by the sentencing judge is expected of a death recommendation as a life recommendation. *Grossman v. State*, 525 So.2d 833, 839, n.1 (Fla. 1988).

[11] *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

[12] s. 921.141. F.S.

[13] *Proffitt v. Florida*, 428 U.S. 242 (1976). It is important to note that *Proffitt* was decided on 8th and 14th Amendment grounds (cruel or unusual punishment and due process), not on 6th Amendment (right to a jury trial) grounds. (For an extensive discussion of the history of Florida's death penalty see: Eaton, Stetson Law Review Fall 2004, 34 Stet.L.R. 9).

[14] *Id*., 258-259.

To date, Florida's capital sentencing scheme has withstood challenges based on the 8th, 14th and 6th Amendments.[15]

Other States

Currently 33 states in the U.S. have a death penalty statute. In those states in which the jury has sole discretion in capital sentencing, the decision to sentence the defendant to death must be unanimous. Florida and Alabama are the only states that do not require a unanimous vote of the jury in order to impose the death penalty.

In Alabama, a 10-2 vote is sufficient for the jury to recommend a death sentence. The jury provides an advisory verdict that is not binding on the court. If the jury cannot reach an advisory verdict recommending a sentence, or for other manifest necessity, the court can declare a mistrial and another sentencing hearing can be conducted before another jury. The parties and the court can agree to waive the advisory verdict after one or more mistrials and the court will determine the sentence without a jury recommendation.[16]

State v. Steele

Although the U.S. Supreme Court issued rulings in two death penalty cases that indicated that aggravating factors operate as the "functional equivalent of an element of a greater offense,"[17] and therefore must be decided by a jury, the Florida Supreme Court has not yet held that those decisions apply within the context of Florida's death penalty sentencing scheme.[18]

In *Steele*, Justice Cantero wrote for the majority:

> Even if *Ring* did apply in Florida—an issue we have yet to conclusively decide—we read it as requiring only that the jury make the finding of "an element of a greater offense." *Id.* That finding would be that at least one aggravator exists-not that a specific one does. But given the requirements of section 921.141 and the language of the standard jury instructions, such a finding already is implicit in a jury's recommendation of a sentence of death. Our interpretation of *Ring* is consistent with the United States Supreme Court's assessment of Florida's capital sentencing statute. In *Jones v. United States*, 526 U.S. 227, 250–51, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), the Court noted that in its decision in *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989), in which it concluded that the Sixth Amendment does not require explicit jury findings on aggravating circumstances, "a jury made a sentencing recommendation of death, thus necessarily engaging in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved." In requiring the jury to consider by majority vote each particular

[15] Cruel or unusual punishment, due process and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).
[16] Ala. Code § 13A-5-44-53.
[17] See *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (ruling that aggravating circumstances must be determined by the jury and established beyond a reasonable doubt; quoting *Apprendi v. New Jersey*, 530 U.S. 466 (2000)
[18] *State v. Steele*, 921 So.2d 538 (Fla. 2005).

> aggravator submitted rather than merely specifying whether one or more aggravators exist, the trial court in this case imposed a greater burden than the one the Supreme Court imposed in reviewing Arizona's judge-only capital sentencing scheme in *Ring*.[19]

The *Steele* opinion contained "suggestions" from the court that "in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury's recommendations."[20]

The court set forth the death penalty sentencing requirements of the other 37 states (at the time of the opinion) and concluded that "Florida is now the only state in the country that allows a jury to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote."[21] Finally, Justice Cantero wrote: "Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state."[22]

Florida-Specific Statistical Information

Table 1 shows that under current law and practice only 20 percent of death cases over the last twelve years had unanimous jury verdicts. Based on this analysis it is impossible to predict with any degree of accuracy whether requiring a unanimous jury recommendation would result in a marked decline in death cases. It would appear from the current practice that a decline is likely if this bill becomes law, but the degree of the decline is uncertain.

TABLE 1

Distribution of Jury Votes in Death Cases by Calendar Year of Disposition by Florida Supreme Court [i] (N=296)

Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	Total	%[ii]	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	32	11%	11%
8-4	4	6	2	6	2	0	3	0	**2**	9	2	1	5	42	14%	25%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	66	22%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	54	18%	66%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	42	14%	80%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	60	20%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	296	100%	
Other[iii]	3	1	2	3	4	2	0	0	1	4	3	1	0	24		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	320		

Table 2 analyzes the degree to which a unanimous jury vote results in the case being more likely be to affirmed by the Florida Supreme Court on direct appeal. Sixty-three percent of the 12-0 cases were affirmed by the court compared to 53 percent of the 7-5 cases. It appears then that a unanimous jury vote is not as strongly correlated with an affirmed sentence as perhaps logically predicted.

[19] *Id*.
[20] *Id*. at 548.
[21] *Id*.
[22] *Id*. at 549.

TABLE 2

Distribution of Jury Votes in Death Cases Disposed by the Florida Supreme Court on Direct Appeal from Calendar Year 2000 to 2012[iv] (N=296)					
Original Jury Vote For Death	TOTAL	Death Sentence Affirmed	Percent Affirmed	Death Sentence Not Affirmed[v]	Percent Not Affirmed
7 to 5	32	17	53%	15	47%
8 to 4	42	31	74%	11	26%
9 to 3	66	48	73%	18	27%
10 to 2	54	39	72%	15	28%
11 to 1	42	37	88%	5	12%
12 to 0	60	38	63%	22	37%
TOTAL	296	210	71%	86	29%

In summary, both Tables 1 and 2 illustrate the wide variability in voting practices in these complex and emotionally charged death cases. Given this wide variability, it is difficult to predict the impact on future death cases and voting practices if SB 148 passes and becomes law.

Workload Study Commission

The Supreme Court Workload Study Commission was created as part of Chapter 2000-237, Laws of Florida. The task of the Commission was to "develop recommendations for addressing workload issues, including, but not limited to, the need for additional justices on the supreme court." The discussion and testimony heard by the Commission included statistics and anecdotal evidence related to the death penalty caseload of the court.

Two recommendations of the Commission were related to the death penalty sentencing law. One of those recommendations was that the Legislature further study the potential to reduce the supreme court's workload by requiring a super majority vote of the jury (of no less than 9 to 3) before a trial judge could impose the death penalty. [23]

The Commission heard testimony that advocated requiring either a supermajority or unanimous jury recommendation in favor of the death penalty before the trial judge could impose the death penalty. Those witnesses argued that if the number of death sentences were reduced, the Court's workload would be appreciably reduced. The Chief Justice said that requiring a supermajority jury verdict for imposition of the death penalty would appreciably reduce his workload as much as 30-40 percent. [24]

The Commission heard testimony from representatives of the Attorney General's Office and the Florida Prosecuting Attorney's Association who were of the opinion that juries who believed the death penalty was the appropriate sentence in a case would reach the required vote - even a

[23] Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.
[24] Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.

supermajority vote - in order to issue that verdict, therefore the number of death penalty cases would not decrease if the statute were modified.[25]

Recognizing that there are other policy issues involved, the Commission declined to recommend that the Legislature approve a supermajority vote. However, the Commission approved a finding that requiring a supermajority vote of the jury before a trial judge could impose the death penalty would reduce the workload of the court.

America Bar Association Report

In September of 2006, the American Bar Association (ABA) issued a report entitled " Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report." The authors of the report acknowledged that the Florida Supreme Court has consistently rejected the claims under the U.S. Supreme Court's decision in *Ring v. Arizona* that the jury must make a unanimous advisory sentence.[26] Despite this recognition and Florida's practice of not requiring unanimity, the ABA report asserts that by not requiring a unanimous recommendation meaningful jury deliberation is lessened.[27] The ABA report cites to a survey of Florida capital jurors who were not required to reach a unanimous vote to recommend a death sentence.[28] The ABA report argues that these jurors were less likely to take longer than 3 hours to reach a sentencing decision and less likely to demonstrate emotional commitment to the punishment decision.[29]

Multi-State Studies of Capital Case Juries

The chief criticisms of pure jury-driven sentencing comes from the belief that juries may be confused by the court's instructions, may act out of passion rather than reason, or may not understand or accept their role in the sentencing structure. These issues were studied by The Capital Jury Project (CJP) a multi-state research effort, funded by the National Science Foundation.

In 1990, the CJP researchers began interviewing jurors who had served in capital cases. Analysis of the data began appearing as early as 1993, with the latest article being published in June, 2001. According to the Cornell Death Penalty Project, the CJP researcher interviewed 1,115 jurors who sat on 340 capital trials in fourteen different states.[30]

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[25] Minutes of the January 29, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, pages 11-12.
[26] " Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report", American Bar Association, Death Penalty Moratorium Implementation Project (2006), pg. 287.
[27] *Id*. pg. 303.
[28] *Id*.
[29] *Id*. pg. 304.
[30] Cornell Death Penalty Project, Cornell Law School, www.lawschool.cornell.edu/lawlibrary/death/cjp.htm.

Juror Responsibility:
One article based on the data gathered by the Capital Jury Project examined juror responsibility.[31]

There are many ways in which a juror may shift sentencing responsibility, given all the "actors" in a capital case. This shifting of responsibility, according to some critics, leads to a capital sentencing law which makes death sentences unreliable and too easy to impose.[32]

In attempting to examine whether capital sentencing jurors assume responsibility for the sentences they impose, the authors utilized data from interviews of 153 South Carolina jurors. It was found that most jurors accept responsibility for their capital sentencing decision (59%), as far as their role in the system is concerned, although a significant minority do not. The study found that the "average juror understands and accepts the key role he plays in determining the defendant's sentencing; does not view the law as forcing him to reach a particular sentence; does not view a death decision as something that the courts will likely reverse; and finds his service on a capital jury emotionally upsetting. On the other hand, he does not think it very likely that any death sentence he imposes will actually ever be carried out."[33]

Juror Confusion:
One criticism of the capital jury's involvement in sentencing is that the jury may not fully understand the mechanics of deciding between the death penalty and life imprisonment. One example of this potential for juror confusion is explored in the article *Correcting Deadly Confusion: Responding to Jury Inquiries in Capital Cases* which examines the Virginia case of Lonnie Weeks.[34] In that case, the jury was instructed in the law, but had a question about the instructions with regard to whether the jury was *required* to impose the death penalty under certain circumstances.[35] In answering the jury's question, the trial court simply referred the jury's attention back to the specific instruction about which it had the question.[36]

In a 5-4 decision, the U.S. Supreme Court held that the *Weeks* jury was adequately instructed, and affirmed the conviction. The Court stated: "At best, petitioner has demonstrated only that there exists a slight possibility that the jury considered itself precluded from considering mitigating evidence. Such a demonstration is insufficient to prove a constitutional violation….".[37]

In the *Correcting Deadly Confusion* study which was based on the facts of the *Weeks* case, a mock jury of 154 people was used to test jury confusion with regard to the instructions given in the Weeks trial. The study modified one variable in the jury instruction. The study showed that

[31] *Jury Responsibility in Capital Sentencing: An Empirical Study*, by Theodore Eisenberg, Stephen P. Garvey, and Martin T. Wells (44 Buff.L.Rev. 339).
[32] *Id*. pg. 340.
[33] *Id*. pg. 368
[34] Stephen P. Garvey, Sheri Lynn Johnson and Paul Marcus, 85 Cornell Law Review 627 (2000).
[35] *Id*.
[36] *Id*.
[37] *Weeks v. Angelone*, 528 U.S. 225, 236 (2000).

jurors who understood the instruction were more likely to vote for life compared to jurors who misunderstood it.[38]

"Among jurors who understood that death was not required even if heinousness is proven, sixty-three percent voted for a life sentence, whereas the corresponding figure among those who believed death was required dropped to fifty-two percent. The results were similar for future dangerousness: sixty-two percent of the jurors who understood the rule voted for life, compared to fifty-three percent who did not."[39]

III. Effect of Proposed Changes:

The bill changes the capital case sentencing law in four ways.

First, rather than having the sentencing jury be able to render a recommendation for the death penalty by a simple majority vote, the bill requires a unanimous recommendation.

The bill also requires that the jury be provided with a special verdict form "for each aggravating circumstance found."

The jury must unanimously vote for each aggravating circumstance it uses in support of a recommended sentence of death.

Finally, the jury must find that "sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist." This is the opposite of current law that requires sufficient mitigators outweigh any aggravators found to exist.

Other Potential Implications:

Although the new sentencing provisions are effective for offenses committed on or after October 1, 2013, it cannot be ruled out that persons sentenced to death prior to the effective date will nonetheless raise the issue of the application of the provisions to their cases. This could result in a substantial number of appeals, and whether they are factually, facially, invalid claims, the appeals must be answered by the Attorney General.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[38] *Id*.
[39] *Id*.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a fiscal impact to the Attorney General's Office and the court system that is a result of the potential appellate practice resulting from this bill. According to historical Supreme Court documents, legislation requiring a unanimous jury vote may have a notable workload reduction to the Supreme Court.[40]

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.

[i] Thirteen years of data compiled by the Supreme Court Clerk's Office.
[ii] Calculated percentage excludes the "other" category.
[iii] Includes: waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.
[iv] Source document: Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2000 to 2012
[v] Includes: reversal and remand for trial, reduced to life, dismissal, deceased defendant, and acquittal.

[40] Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.

By Senator Altman

16-00200-13 2013148__

A bill to be entitled

An act relating to sentencing in capital felonies; amending ss. 921.141 and 921.142, F.S.; requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug-trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist; requiring the court to instruct the jury that each aggravating circumstance used to support the jury's recommendation of death be proven beyond a reasonable doubt by a unanimous vote; requiring that the court provide a special verdict form for each aggravating circumstance found; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 921.141, Florida Statutes, are amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as

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

16-00200-13 2013148__

enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

Effective for an offense committed on or after October 1, 2013, an advisory sentence of death must be made by a unanimous recommendation of the jury. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist. The court shall further instruct the jury that each aggravating circumstance used to support the jury's recommendation of death must be proven beyond a reasonable doubt by a unanimous vote. The court shall provide a special verdict form for each aggravating circumstance found.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of ~~a majority of~~ the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5);~~,~~ and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

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

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

Section 2. Subsections (3) and (4) of section 921.142, Florida Statutes, are amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(3) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (6);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

Effective for an offense committed on or after October 1, 2013, an advisory sentence of death must be made by a unanimous recommendation of the jury. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh any mitigating

circumstances found to exist. The court shall further instruct the jury that each aggravating circumstance used to support the jury's recommendation of death must by proven beyond a reasonable doubt by a unanimous vote. The court shall provide a special verdict form for each aggravating circumstance found.

(4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of ~~a majority of~~ the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (6);~~,~~ and

(b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (6) and (7) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082, and the defendant is ~~that person shall be~~ ineligible for parole.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: Sentencing

Bill Number: 148 *(if applicable)*

Name: Bob Dillinger

Amendment Barcode: *(if applicable)*

Job Title: Public Defender

Address: CFC
Street

Clearwater
City *State* *Zip*

Phone: 727-464-6866

E-mail: pdb@wearethehope.org

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

Representing: PD Assoc

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic _____ Bill Number 148 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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

Representing JUSTICE-2-JESUS

Appearing at request of Chair: [ ] Yes [✓] No Lobbyist registered with Legislature: [ ] Yes [✓] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: SENTENCING CAPITAL FELONY

Bill Number: SB 148 *(if applicable)*

Name: GLENN HESS

Amendment Barcode: _____ *(if applicable)*

Job Title: STATE ATTORNEY - 14th

Address: 421 MAGNOLIA AVE
Street

PANAMA CITY FL 32401
City *State* *Zip*

Phone: 850 832-5566

E-mail: judgehess@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: FLORIDA PROSECUTING ATTORNEY ASSN

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/8/13
Meeting Date

Topic: Sentencing in Cap Felonies

Bill Number: SB 148 (if applicable)

Name: Ron Bilbao

Amendment Barcode: (if applicable)

Job Title: SR. Legislative Asso.

Address: 4500 Biscayne Blvd
Street

Miami, FL 33137
City, State, Zip

Phone: 919-928-7288

E-mail: rbilbao@aclufl.org

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

Representing: ACLU of Florida

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 504

INTRODUCER: Criminal Justice Committee; Senator Brandes; and others

SUBJECT: Animal Cruelty

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.			ACJ	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 504 clarifies that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. The bill also clarifies that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

The bill designates misdemeanor cruelty to animals as “animal cruelty” and designates felony cruelty to animals as “aggravated animal cruelty.”

Finally, the bill amends the definition of “racketeering activity” to include violations of s. 828.122, F.S., relating to animal fighting and baiting in s. 895.02, F.S.

This bill substantially amends sections 828.12 and 895.02 of the Florida Statutes.

II. Present Situation:

Cruelty to Animals

Section 828.12(1) and (2), F.S., provides the following:

> (1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a first degree misdemeanor or by a fine of not more than $5,000, or both.
> (2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a third degree felony or by a fine of not more than $10,000, or both.

A circuit judge in the First Judicial Circuit recently held that, "a single act of cruelty injuring multiple animals will be insufficient to establish a basis for multiple convictions." The court also stated, "the confinement of animals without sufficient food, water, or exercise charges are not distinguishable into separate acts merely because of an allegation that individual animals are kept in separate pens."[1] Based upon the court's ruling, acts of animal cruelty committed upon more than one animal would have to be prosecuted in the First Circuit as one act despite the fact that more than one animal suffered the cruelty. There is no similar judicial precedent at the circuit or appellate level. The trial court ruling makes the First Circuit the only circuit in the state with this particular interpretation of current law.

Animal Fighting or Baiting

Section 828.122(3), F.S., makes it a third degree felony for a person to:

> (3)(a) Bait, breed, train, transport, sell, own, possess, or use any wild or domestic animal for the purpose of animal fighting or baiting;
> (b) Own, possess, or sell equipment for use in any activity in paragraph (a).
> (c) Owning, leasing, managing, operating, or having control of any property kept or used for any activity described in paragraph (a) or paragraph (b);
> (d) Promoting, staging, advertising, or charging any admission fee to a fight or baiting between two or more animals;
> (e) Performing any service or act to facilitate animal fighting or baiting, including, but not limited to, providing security, refereeing, or handling or transporting animals or being a stakeholder of any money wagered on animal fighting or baiting;
> (f) Removing or facilitating the removal of any animal impounded under this section from an agency where the animal is impounded or from a location designated by the court under subsection (4), subsection (5), or subsection (7), without the prior authorization of the court;

[1] State v. Kervin, Sr. Case No.000887A, (Fla. 1st Cir. Ct., 2012).

(g) Betting or wagering any money or other valuable consideration on the fighting or baiting of animals; or
(h) Attending the fighting or baiting of animals.
Notwithstanding any provision of this subsection to the contrary, possession of the animal alone does not constitute a violation of this section. …

(9) This section shall not apply to:
(a) Any person simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture, provided s. 828.12 is not violated.
(b) Any person using animals to pursue or take wildlife or to participate in any hunting regulated or subject to being regulated by the rules and regulations of the Fish and Wildlife Conservation Commission.
(c) Any person using animals to work livestock for agricultural purposes.
(d) Any person violating s. 828.121.
(e) Any person using dogs to hunt wild hogs or to retrieve domestic hogs pursuant to customary hunting or agricultural practices.
(10) This section shall not prohibit, impede, or otherwise interfere with recognized animal husbandry and training techniques or practices not otherwise specifically prohibited by law.

Racketeer Influenced and Corrupt Organization (RICO) Act

It is a first degree felony, ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart to violate Florida's RICO statute for a person:

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property;
- Who is employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; or
- To conspire or endeavor to violate any of the above-described provisions.

Section 895.02, F.S., defines the term "racketeering activity," in part, to mean to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crimes that are chargeable by indictment or information that are specifically listed in s. 895.02(1)(a), F.S.

There are over 50 crimes currently listed in s. 895.02(1)(a), F.S., ranging from evasion of payment of cigarette taxes to homicide. Violations of the RICO Act may be investigated and prosecuted by the Office of Statewide prosecution.[2]

III. Effect of Proposed Changes:

The bill designates a violation of s. 828.12(1), F.S., as "animal cruelty," and a violation of s. 828.12(2), F.S., as "aggravated animal cruelty."

The bill adds a new subsection (3) to s. 828.12, F.S., specifying that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon. This provision brings the First Judicial Circuit back in line with the rest of the state after a court ruling in a particular case in that circuit had ruled otherwise.[3]

Finally, the bill amends the definition of "racketeering activity" to include violations of s. 828.122, F.S., relating to animal fighting and baiting in s. 895.02, 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.

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[2] 16.56 Office of Statewide Prosecution.—
(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:
(a) Investigate and prosecute the offenses of:
3. Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason.

[3] State v. Kervin, Sr. Case No.000887A, (Fla. 1st Cir. Ct., 2012).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections reports that there have been no admissions to prison under s. 828.12, F.S., during the last three fiscal years. However, it is uncertain if the modifications made in the bill will lead to prison admissions. The following chart reflects the number of admissions to community supervision during the last three fiscal years.

Primary Offense Description	Supervision Admission Years		
	FY 09/10	FY 10/11	FY 11/12
Tortures Animals w/Intent	73	53	89

Prison bed impact will be determined by the Criminal Justice Impact Conference at its next meeting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on March 18, 2013:
Deleted section 2 of the bill relating to evidentiary matters regarding baiting and fighting animals.

B. Amendments:

None.

272052

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 82 - 158.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 7 - 13
8 and insert:
9 cruelty; amending s. 895.02, F.S.; including

By Senator Brandes

22-00627D-13 2013504__

A bill to be entitled

An act relating to animal cruelty; amending s. 828.12, F.S.; specifying that a person who commits multiple acts of animal cruelty against one animal or acts of animal cruelty against multiple animals may be charged with a separate offense for each such act of animal cruelty; amending s. 828.122, F.S.; specifying certain equipment and paraphernalia that are illegal to own, possess, or sell for use in animal fighting or baiting; providing criminal penalties; providing factors that may be used in determining whether an object is animal-fighting or animal-baiting paraphernalia; amending s. 895.02, F.S.; including illegal animal fighting or baiting as an offense within the definition of the term "racketeering activity" for purposes of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act; providing an effective date.

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

Section 1. Section 828.12, Florida Statutes, is amended to read:

828.12 Cruelty to animals.—

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, commits animal cruelty, ~~is~~

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

22-00627D-13 2013504__

~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than $5,000, or both.

(2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, commits aggravated animal cruelty, ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than $10,000, or both.

(a) A person convicted of a violation of this subsection, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, shall be ordered to pay a minimum mandatory fine of $2,500 and undergo psychological counseling or complete an anger management treatment program.

(b) A ~~Any~~ person convicted of a second or subsequent violation of this subsection shall be required to pay a minimum mandatory fine of $5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person shall be released only upon expiration of sentence, is ~~shall~~ not ~~be~~ eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection.

(3) A person who commits multiple acts of animal cruelty or aggravated animal cruelty against an animal may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each

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

59 animal such cruelty was committed upon.
60 (4) ~~(3)~~ A veterinarian licensed to practice in the state
61 shall be held harmless from either criminal or civil liability
62 for any decisions made or services rendered under the provisions
63 of this section. Such a veterinarian is, therefore, under this
64 subsection, immune from a lawsuit for his or her part in an
65 investigation of cruelty to animals.
66 (5) ~~(4)~~ A person who intentionally trips, fells, ropes, or
67 lassos the legs of a horse by any means for the purpose of
68 entertainment or sport shall be guilty of a third degree felony,
69 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
70 As used in this subsection, "trip" means any act that consists
71 of the use of any wire, pole, stick, rope, or other apparatus to
72 cause a horse to fall or lose its balance, and "horse" means any
73 animal of any registered breed of the genus *Equus*, or any
74 recognized hybrid thereof. The provisions of this subsection
75 shall not apply when tripping is used:
76 (a) To control a horse that is posing an immediate threat
77 to other livestock or human beings;
78 (b) For the purpose of identifying ownership of the horse
79 when its ownership is unknown; or
80 (c) For the purpose of administering veterinary care to the
81 horse.
82 Section 2. Subsection (3) of section 828.122, Florida
83 Statutes, is amended, present subsections (4) through (10) of
84 that section are renumbered as subsections (5) through (11),
85 respectively, and a new subsection (4) is added to that section,
86 to read:
87 828.122 Fighting or baiting animals; offenses; penalties.—

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88 (3) A ~~Any~~ person who knowingly commits any of the following
89 acts commits a felony of the third degree, punishable as
90 provided in s. 775.082, s. 775.083, or s. 775.084:
91 (a) Baiting, breeding, training, transporting, selling,
92 owning, possessing, or using any wild or domestic animal for the
93 purpose of animal fighting or baiting;
94 (b) Owning, possessing, or selling equipment or
95 paraphernalia for use in any activity described in paragraph
96 (a), including, but not limited to:
97 1. A pen, pit, ring, or enclosure.
98 2. A gaff, sparring glove, muff, blade, slasher, or other
99 implement designed to be attached to a bird in the location of
100 its natural spurs.
101 3. A betting slip, a document or record relating to a
102 fight, training and fighting literature, or a fight trophy or
103 award.
104 4. A cat mill, slat mill, treadmill, jenny, rape stand,
105 spring pole, flirt pole, break stick, supplement, drug, or scale
106 when found in combination with or in proximity to any other item
107 listed in subparagraphs 1.-3.;
108 (c) Owning, leasing, managing, operating, or having control
109 of any property kept or used for any activity described in
110 paragraph (a) or paragraph (b);
111 (d) Promoting, staging, advertising, or charging any
112 admission fee to a fight or baiting between two or more animals;
113 (e) Performing any service or act to facilitate animal
114 fighting or baiting, including, but not limited to, providing
115 security, refereeing, or handling or transporting animals or
116 being a stakeholder of any money wagered on animal fighting or

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117 baiting;
118 (f) Removing or facilitating the removal of any animal
119 impounded under this section from an agency where the animal is
120 impounded or from a location designated by the court under
121 ~~subsection (4),~~ subsection (5), subsection (6), or subsection
122 (8) ~~(7)~~, without the prior authorization of the court;
123 (g) Betting or wagering any money or other valuable
124 consideration on the fighting or baiting of animals; or
125 (h) Attending the fighting or baiting of animals.
126
127 Notwithstanding any provision of this subsection to the
128 contrary, possession of the animal alone does not constitute a
129 violation of this section.
130 (4) In determining whether an object is animal-fighting or
131 -baiting paraphernalia, a court or other authority or a jury
132 shall consider, in addition to all other logically relevant
133 factors, the following:
134 (a) Statements by the owner or by anyone in control of the
135 object concerning its use.
136 (b) The proximity of the object, in time and space, to a
137 violation of subsection (3).
138 (c) The proximity of the object to an animal fight.
139 (d) The existence of any blood on the object.
140 (e) Direct or circumstantial evidence of the intent of the
141 owner, or of anyone in control of the object, to deliver the
142 object to a person who he or she knows, or should reasonably
143 know, intends to use the object to facilitate a violation of
144 this section.
145 (f) Instructions, oral or written, provided with the object

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146 concerning its use.
147 (g) Descriptive materials accompanying the object which
148 explain or depict its use.
149 (h) Any advertising concerning the object's use.
150 (i) The manner in which the object is displayed for sale.
151 (j) The existence and scope of legitimate uses for the
152 object in the community.
153 (k) Expert testimony concerning the object's use.
154
155 A conviction for a violation of paragraph (3)(a) is not required
156 in order for a court or other authority or a jury to find that
157 the object is intended for use, or designed for use, as animal-
158 fighting or -baiting paraphernalia.
159 Section 3. Paragraph (a) of subsection (1) of section
160 895.02, Florida Statutes, is amended to read:
161 895.02 Definitions.—As used in ss. 895.01-895.08, the term:
162 (1) "Racketeering activity" means to commit, to attempt to
163 commit, to conspire to commit, or to solicit, coerce, or
164 intimidate another person to commit:
165 (a) Any crime that is chargeable by petition, indictment,
166 or information under the following provisions of the Florida
167 Statutes:
168 1. Section 210.18, relating to evasion of payment of
169 cigarette taxes.
170 2. Section 316.1935, relating to fleeing or attempting to
171 elude a law enforcement officer and aggravated fleeing or
172 eluding.
173 3. Section 403.727(3)(b), relating to environmental
174 control.

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175 4. Section 409.920 or s. 409.9201, relating to Medicaid
176 fraud.
177 5. Section 414.39, relating to public assistance fraud.
178 6. Section 440.105 or s. 440.106, relating to workers'
179 compensation.
180 7. Section 443.071(4), relating to creation of a fictitious
181 employer scheme to commit reemployment assistance fraud.
182 8. Section 465.0161, relating to distribution of medicinal
183 drugs without a permit as an Internet pharmacy.
184 9. Section 499.0051, relating to crimes involving
185 contraband and adulterated drugs.
186 10. Part IV of chapter 501, relating to telemarketing.
187 11. Chapter 517, relating to sale of securities and
188 investor protection.
189 12. Section 550.235 or s. 550.3551, relating to dogracing
190 and horseracing.
191 13. Chapter 550, relating to jai alai frontons.
192 14. Section 551.109, relating to slot machine gaming.
193 15. Chapter 552, relating to the manufacture, distribution,
194 and use of explosives.
195 16. Chapter 560, relating to money transmitters, if the
196 violation is punishable as a felony.
197 17. Chapter 562, relating to beverage law enforcement.
198 18. Section 624.401, relating to transacting insurance
199 without a certificate of authority, s. 624.437(4)(c)1., relating
200 to operating an unauthorized multiple-employer welfare
201 arrangement, or s. 626.902(1)(b), relating to representing or
202 aiding an unauthorized insurer.
203 19. Section 655.50, relating to reports of currency

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

204 transactions, when such violation is punishable as a felony.
205 20. Chapter 687, relating to interest and usurious
206 practices.
207 21. Section 721.08, s. 721.09, or s. 721.13, relating to
208 real estate timeshare plans.
209 22. Section 775.13(5)(b), relating to registration of
210 persons found to have committed any offense for the purpose of
211 benefiting, promoting, or furthering the interests of a criminal
212 gang.
213 23. Section 777.03, relating to commission of crimes by
214 accessories after the fact.
215 24. Chapter 782, relating to homicide.
216 25. Chapter 784, relating to assault and battery.
217 26. Chapter 787, relating to kidnapping or human
218 trafficking.
219 27. Chapter 790, relating to weapons and firearms.
220 28. Chapter 794, relating to sexual battery, but only if
221 such crime was committed with the intent to benefit, promote, or
222 further the interests of a criminal gang, or for the purpose of
223 increasing a criminal gang member's own standing or position
224 within a criminal gang.
225 29. Section 796.03, s. 796.035, s. 796.04, s. 796.05, or s.
226 796.07, relating to prostitution and sex trafficking.
227 30. Chapter 806, relating to arson and criminal mischief.
228 31. Chapter 810, relating to burglary and trespass.
229 32. Chapter 812, relating to theft, robbery, and related
230 crimes.
231 33. Chapter 815, relating to computer-related crimes.
232 34. Chapter 817, relating to fraudulent practices, false

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233 pretenses, fraud generally, and credit card crimes.
234 35. Chapter 825, relating to abuse, neglect, or
235 exploitation of an elderly person or disabled adult.
236 36. Section 827.071, relating to commercial sexual
237 exploitation of children.
238 37. Section 828.122, relating to fighting or baiting
239 animals.
240 38.~~37.~~ Chapter 831, relating to forgery and counterfeiting.
241 39.~~38.~~ Chapter 832, relating to issuance of worthless
242 checks and drafts.
243 40.~~39.~~ Section 836.05, relating to extortion.
244 41.~~40.~~ Chapter 837, relating to perjury.
245 42.~~41.~~ Chapter 838, relating to bribery and misuse of
246 public office.
247 43.~~42.~~ Chapter 843, relating to obstruction of justice.
248 44.~~43.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
249 or s. 847.07, relating to obscene literature and profanity.
250 45.~~44.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
251 s. 849.25, relating to gambling.
252 46.~~45.~~ Chapter 874, relating to criminal gangs.
253 47.~~46.~~ Chapter 893, relating to drug abuse prevention and
254 control.
255 48.~~47.~~ Chapter 896, relating to offenses related to
256 financial transactions.
257 49.~~48.~~ Sections 914.22 and 914.23, relating to tampering
258 with or harassing a witness, victim, or informant, and
259 retaliation against a witness, victim, or informant.
260 50.~~49.~~ Sections 918.12 and 918.13, relating to tampering
261 with jurors and evidence.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 5, 2013

I respectfully request that **Senate Bill #504**, relating to Animal Cruelty, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 / 18 /2013
Meeting Date

Topic _____ Bill Number 504 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

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

Representing JUSTICE-2-JESUS

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic: ANIMAL CRUELTY

Bill Number: 504 *(if applicable)*

Name: BOB DILLINGER

Amendment Barcode: *(if applicable)*

Job Title: PUBLIC DEFENDER, 6TH JUDICIAL CIR

Address: CJC
Street

CLEARWATER
City *State* *Zip*

Phone: 727-464-6866

E-mail: pd6@WEARARETHEHOPE.ORG

Speaking: ☐ For ☐ Against ☑ Information

Representing: FLORIDA PUBLIC DEFEND

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Animal Cruelty

Bill Number: SB 504 (if applicable)

Name: Andrew Seltz

Amendment Barcode: (if applicable)

Job Title: Director, Leon County Animal Control

Address: 501-B Appleyard Dr.
Street

Tallahassee, FL 32304
City, State, Zip

Phone: 850-606-5400

E-mail: seltzae@leoncountyfl.gov

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

Representing: Leon County

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/18/13
Meeting Date

Topic: ANIMAL CRUELTY

Bill Number: SB 504 *(if applicable)*

Name: JIM BROWN

Amendment Barcode: *(if applicable)*

Job Title: PALM BCH COUNTY SHERIFF DETECTIVE

Address: 3228 GUN CLUB Rd WPB FL 33406
Street

City *State* *Zip*

Phone: 561-776-2102

E-mail: BROWNJK@PBSO.ORG

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

Representing: PALM BEACH COUNTY SHERIFFS OFFICE

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: Animal Cruelty

Bill Number: SB 504 *(if applicable)*

Name: Cassie Kovacs

Amendment Barcode: *(if applicable)*

Job Title: Detective (Palm Beach Sheriff)

Address: 3228 GunClub Rd
Street

~~[illegible]~~ WPB FL 33406
City *State* *Zip*

Phone: 561-371-9475

E-mail: KovacsC@pbso.org

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

Representing: Palm Beach Sheriff Office

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: ANIMAL CRUELTY

Bill Number: SB 0504 *(if applicable)*

Name: JEFF DOYLE

Amendment Barcode: *(if applicable)*

Job Title: ANIMAL CONTROL SUPERVISOR - CITY OF TALLAHASSEE

Address: 1125 EASTERWOOD DRIVE
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone: 891-2972

E-mail:

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

Representing: TALLAHASSEE ANIMAL SERVICES

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

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

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

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

S-001 (10/20/11)

TESTIFY LAST PLEASE

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

3/18/13
Date

SB-504
Bill Number

Name MARION HAMMER

Phone 222-9518

Address P.O. BOX 1387
Street

E-mail

TALLAHASSEE FL 32302
City State Zip

Job Title

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

Appearing at request of Chair [ ]

Subject ANIMAL CRUELTY

Representing NRA & UNIFIED SPORTSMEN OF FLORIDA

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

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___.m. to ____ ___.m.

S-001 (08/2005)

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 Committee on Criminal Justice

BILL: CS/CS/SB 654

INTRODUCER: Criminal Justice Committee; Agriculture Committee; and Senator Montford

SUBJECT: Agricultural Storage and Shipping

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Halley	AG	**Fav/CS**
2.	Clodfelter	Cannon	CJ	**Fav/CS**
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 654 provides statutory protection for stamped or marked containers used for storage or transportation of agricultural or other commercial goods in addition to the types of containers that are presently provided protection by being enumerated in the statutes. The bill creates similar protection for owners of plastic bulk merchandise containers by providing definitions, setting forth procedures that must be followed for sale and purchase of five or more such containers, establishing record-keeping requirements, and establishing criminal penalties for violation of these terms. In addition, it authorizes an owner of plastic bulk merchandise containers to bring a civil action for damages from a person who violates these terms. It also provides exemptions for licensed waste haulers and charitable organizations.

The bill substantially amends section 506.19, Florida Statutes. The bill creates sections 506.265 and 506.266, Florida Statutes.

II. Present Situation:

Chapter 506, F.S., provides protection for owners of marked or branded field boxes, pallets, crates, containers, or receptacles used in the production, harvesting, packing, transportation, or

marketing of fruits or vegetables or their byproducts upon the filing and recording of identifying data with the Department of Agriculture and Consumer Services by establishing penalties for:

- unauthorized possession of protected containers,
- alteration or obliteration of marks or brands on protected containers,
- purchase of protected containers from other than owner,
- refusal to deliver protected containers to the registered owner upon demand, and
- sending protected containers out of state.[1]

Other sections of ch. 506, F.S., provide protection for owners of shopping carts, laundry carts, dairy cases, egg baskets, poultry boxes, and bakery containers.[2]

The above statutory protection is exclusive to items listed and that sort of protection does not cover similar items used for transportation or storage of agricultural products not listed or other consumer goods.

Theft of Plastic Containers and Pallets

There have recently been a number of incidents that appear to reflect an escalation in the theft of plastic pallets and other reusable containers. Examples of these incidents include:

- The Los Angeles County Sheriff's Department has formed a five-person task force to track tens of thousands of pallets and crates that are stolen from businesses, shredded, recycled, and resold to the firms from which they were taken. The newspaper article that reported this activity describes this scheme as being similar to the better known recycling crime – stealing copper wire and other metals – and relates that this type of crime is becoming a nationwide problem due to the rise in the price of oil, which has driven up the cost of plastic. In the last year, that LA task force turned over 47 cases for criminal prosecution and recovered more than $6 million in stolen plastic.[3]
- In the summer of 2012, law enforcement agents in Michigan charged four men with stealing plastic pallets from industrial yards and then fencing the pallets through legitimate and illegitimate businesses as part of an alleged organized crime operation.[4]
- The State of Arizona passed a law in 2011 to help track down people who stole plastic pallets for their value at recycling centers and it was estimated then that Arizona businesses were losing about $3 million a year due to this type of theft.[5] In California, a law requiring proof of ownership or permission to sell pallets that have ownership markings became effective on January 1, 2013.[6]
- In Seminole County, a man who was arrested for allegedly stealing plastic pallets from the parking lot of a big-box hardware store was originally charged with petit theft but entered a

[1] ss. 506.24-506.28, F.S.
[2] ss. 506.501-506.519.
[3] *See* http://articles.latimes.com/print/2012/nov/25/local/la-me-plastics-20121126 (last viewed on March 13, 2013).
[4] *See* http://detroit.cbslocal.com/2012/07/06/four-charged-in-organized-crime-crackdown/ (last viewed on March 13, 2013); http://www.michigan.gov/ag/0,4534,7-164-46849_47203-281856--,00.html (last viewed on March 13, 2013).
[5] Ariz. Rev. Stat. s. 44-1799.81 (2012). *See also* http://azstarnet.com/business/local/new-rules-aim-to-stop-theft-of-plastic-pallets/article_6e5bbf87-9cf7-554e-a760-4bcd1c1f95cc.html (last viewed on March 13, 2013).
[6] Cal. Bus & Prof Code s. 21609.7 (2012).

plea to disorderly conduct.[7] In another incident in southeast Florida in October 2012, police officers made an arrest for grant theft when they investigated a report of a suspicious vehicle behind a strip center and found a trailer with 10 plastic pallets that had been taken from the back of a large grocery store.[8]

- In another area of Florida, in December 2012, a company that rents plastic pallets had reason to track a pallet with an imbedded built-in radio-frequency identification (RFID) tag. The company's investigator found 252 of its pallets on a vacant lot. After the lot owner failed to return the pallets as agreed, a follow-up investigation disclosed that the 252 pallets were gone and 98 other pallets were on a trailer parked on the vacant lot.[9]

III. Effect of Proposed Changes:

Section 1 amends s. 506.19, F.S., to expand the protections provided to owners of marked or branded field boxes or other specified containers used for fruits or vegetables to cover owners of containers used in the storage or transport of agricultural or other commercial goods. The bill also makes technical and grammatical changes.

Section 2 creates s. 506.265, F.S., to establish procedures covering the purchase of plastic bulk merchandise containers as follows:

- It creates the following definitions:
  - "Bona fide purchaser" means a good faith purchaser without knowledge of another person's outstanding rights.
  - "Plastic bulk merchandise container" means a plastic crate or shell, including a plastic pallet, used by a product manufacturer, distributor, or retailer for bulk transportation.
  - "Proof of ownership" means a bill of sale or other evidence showing that the owner is a bona fide purchaser who purchased the item for fair market value.
- It requires a person who purchases five or more plastic bulk merchandise containers from one seller to obtain proof of the seller's ownership and maintain a record with specific details about the seller and the containers. The purchaser must verify the seller's identity with a valid driver's license or government-issued photo identification card and keep a copy. A noncash payment must be made and recorded. The bill defines "non-cash payment" as payment by a method other than use of coins or currency.
- It requires these records to be maintained for two years from the date of purchase or delivery, whichever is later, and that the records be made available for inspection by state attorneys of the judicial circuit on reasonable notice.
- It exempts licensed waste haulers and entities that are exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code from compliance with this section.

Section 3 creates s. 506.266, F.S., to provide penalties for violation of s. 506.265, F.S., as follows:

---

[7] *See* http://www.palletenterprise.com/articledatabase/view.asp?articleID=3659 (last viewed on March 13, 2013). See also http://www.thelawman.net/Recent-Cases/Theft-from-Home-Depot.shtml (last viewed on March 13, 2013).
[8] Phone conversation February 26, 2013 with Luis Tanzi, Field Enforcement Regional Manager, IGPS Company, LLC.
[9] *Ibid*. The incident is still under investigation.

- "Value" is defined by referring to the definition contained in ch. 812, F.S., Florida's general criminal statutes.
- If the transaction is valued at $10,000 or less, it is a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.
- If the transaction is valued at more than $10,000, it is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.
- The violator is liable to the owner for three times the replacement value of the stolen plastic bulk merchandise containers. The owner is authorized to bring action in a court of competent jurisdiction to recover money damages and attorney fees and costs.

Section 4 provides that this act shall take effect October 1, 2013.

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:

Owners of branded, plastic bulk merchandise containers that wish to avail themselves of the protections offered by this bill will incur some additional expense of an unknown amount in order to comply with the registration and record-keeping requirements of the bill.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services estimates that it would incur a minimal fiscal or operational impact in order to comply with the recording requirements of the bill.

The Criminal Justice Impact Conference has not yet considered whether the bill would have on impact on requirements for prison bed space, but it is not likely to be significant.

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/CS by Criminal Justice on March 18, 2013:
The CS defines "noncash payment" as a method of payment other than the use of coins or currency. It also provides an exemption for possession of plastic bulk merchandise containers by charitable organizations.

CS by Agriculture on March 4, 2013:
The CS defines "value" when used to determine whether a violation is a misdemeanor or felony by reference to the definition in ch. 812, F.S., the Florida general criminal statutes. It changes a violation involving a value in excess of $10,000 from a first degree felony to a third degree felony.

B. Amendments:

None.

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

743390

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete lines 60 - 88
4 and insert:
5 506.265 Purchase of plastic bulk merchandise containers.—
6 (1) As used in this section, the term:
7 (a) "Bona fide purchaser" means a person who in good faith
8 makes a purchase without knowledge of another person's
9 outstanding rights.
10 (b) "Noncash payment" means payment by a method other than
11 the use of coins or currency.
12 (c) "Plastic bulk merchandise container" means a plastic

743390

13 crate or shell used by a product manufacturer, distributor, or
14 retailer for the bulk transportation or storage of goods and
15 includes a plastic pallet used as a portable platform upon which
16 containers, products, or materials may be placed to facilitate
17 handling.
18 (d) “Proof of ownership” means a bill of sale or other
19 evidence showing that a person who claims to be the owner of an
20 item is the bona fide purchaser who purchased the item for fair
21 market value.
22 (2) A person who purchases five or more plastic bulk
23 merchandise containers from one seller must:
24 (a) Obtain proof of ownership from the seller of the
25 containers and maintain a record that includes the date of the
26 transaction; the seller’s or consignee’s name, address, and
27 telephone number; and a description of the containers, including
28 the number of containers being sold, each container’s serial
29 number, and other identifying marks.
30 (b) Verify the seller’s identity with a valid driver
31 license or other government-issued photo identification card and
32 maintain a copy thereof in the record of sale.
33 (c) Make a noncash payment and record the method of payment
34 used in each transaction.

172104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 93 - 95
4 and insert:
5 (4) This section does not apply to:
6 (a) The collection, receipt, or recycling of plastic bulk
7 merchandise containers by a licensed waste hauler; or
8 (b) The possession of plastic bulk merchandise containers
9 by an entity exempt from federal income tax under s. 501(c)(3)
10 of the Internal Revenue Code.
11
12 ========== T I T L E A M E N D M E N T ==========

172104

13 And the title is amended as follows:
14 Delete line 17
15 and insert:
16 providing an exception for licensed waste haulers and
17 certain tax-exempt entities;

By the Committee on Agriculture; and Senator Montford

575-01864-13 2013654c1

A bill to be entitled

An act relating to agricultural storage and shipping containers; amending s. 506.19, F.S.; providing that an owner of containers used for the storage or transport of agricultural or other commercial products may adopt for his or her exclusive use a particular mark or brand to designate and distinguish ownership of the containers; making technical and grammatical changes; creating s. 506.265, F.S.; providing definitions; requiring that a person who purchases five or more plastic bulk merchandise containers from one seller obtain proof of ownership, verify the seller's identity, pay noncash, and record and maintain other information for a specified period of time; providing that prosecuting attorneys may inspect the records at any time upon reasonable notice; providing an exception for licensed waste haulers; creating s. 506.266, F.S.; providing criminal and civil penalties; providing an effective date.

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

Section 1. Section 506.19, Florida Statutes, is amended to read:

506.19 Protection of owners of marked or branded field boxes or other specified containers; recordation.—Any person who owns ~~being the owner of~~ field boxes, pallets, crates, containers, or receptacles used in the general production, harvesting, packing, transportation, or marketing of fruits or

575-01864-13 2013654c1

vegetables or their byproducts or used for the storage or transport of agricultural or other commercial goods in this ~~the~~ state may adopt for his or her exclusive use and ownership a ~~particular~~ mark or brand that designates or distinguishes ~~to designate and distinguish~~ his or her ownership ~~thereof~~ and may identify his or her field boxes, pallets, crates, containers, or receptacles ~~so used~~ with a ~~such~~ mark or brand using ~~in the form of such combinations,~~ initials, symbols, designs, ~~or~~ names, or any combination thereof ~~as he or she may desire~~, by plainly and distinctly stamping, stenciling, painting, cutting, etching, or burning the mark or brand ~~same~~ into or upon both ends or sides of the ~~such~~ field boxes, pallets, crates, receptacles, or containers. For purposes of any court or administrative proceeding, if a copy of the mark or brand has been filed and recorded in the office of the Department of Agriculture and Consumer Services as provided in this chapter, ~~and~~ the presence of this ~~such~~ identifying mark or brand and the required registration number on any field box, pallet, crate, container, or receptacle is ~~whenever a copy or description thereof shall have been filed and recorded in the office of the Department of Agriculture and Consumer Services as herein provided for, shall, in any court and in any proceedings in this state, be~~ prima facie evidence of ~~the~~ ownership ~~of such boxes, pallets, crates, containers, or receptacles by the person in whose name such mark or brand may have been recorded, provided such mark or brand shall have been recorded with the Department of Agriculture and Consumer Services as herein provided and shall bear the registered number herein provided for~~.

Section 2. Section 506.265, Florida Statutes, is created to

read:

506.265 Purchase of plastic bulk merchandise containers.—

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

(a) "Bona fide purchaser" means a person who in good faith makes a purchase without knowledge of another person's outstanding rights.

(b) "Plastic bulk merchandise container" means a plastic crate or shell used by a product manufacturer, distributor, or retailer for the bulk transportation or storage of goods and includes a plastic pallet used as a portable platform upon which containers, products, or materials may be placed to facilitate handling.

(c) "Proof of ownership" means a bill of sale or other evidence showing that a person who claims to be the owner of an item is the bona fide purchaser who purchased the item for fair market value.

(2) A person who purchases five or more plastic bulk merchandise containers from one seller shall:

(a) Obtain from the seller proof of ownership of the containers and maintain a record that includes the date of the transaction; the seller's or consignee's name, address, and telephone number; and a description of the containers, including the number of containers being sold, each container's serial number, and other identifying marks.

(b) Verify the seller's identity with a valid driver license or other government-issued photo identification card and maintain a copy thereof in the record of sale.

(c) Make a noncash payment for five or more plastic bulk merchandise containers and record the method of payment used in

each transaction.

(3) The purchaser shall maintain required records for at least 2 years after the date of purchase or delivery, whichever is later. State attorneys of the judicial circuits in this state may inspect these records at any time upon reasonable notice.

(4) This section does not apply to the collection, receipt, or recycling of plastic bulk merchandise containers by a licensed waste hauler.

Section 3. Section 506.266, Florida Statutes, is created to read:

506.266 Penalties.—

(1) As used in subsections (2) and (3), the term "value" has the same meaning as in s. 812.012.

(2) A person who violates s. 506.265 in a transaction in which the value of the plastic bulk merchandise containers is $10,000 or less commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who violates s. 506.265 in a transaction in which the value of the plastic bulk merchandise containers is more than $10,000 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who violates s. 506.265 is liable to the owner of a stolen plastic bulk merchandise container for three times the replacement value of the stolen plastic bulk merchandise container. The owner of the plastic bulk merchandise container may bring an action in a court of competent jurisdiction to recover money damages and attorney fees and costs incurred in maintaining the action.

Section 4. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SENATOR BILL MONTFORD
Democratic Policy Chair
3rd District

March 6, 2013

The Honorable Greg Evers, Chair
Senate Criminal Justice Committee
303 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Evers:

I respectfully request that you place CS/SB 654, relating to Agricultural Storage and Shipping Containers on your next meeting agenda. The bill is designed to help prevent theft of plastic containers and plastic pallets used in transporting and storing merchandise.

I look forward to presenting this bill before your committee.

Thank you for your consideration and please let me know if you have any questions.

Sincerely,

Bill

William J. Montford, III
State Senator, District 3

BJM/mam

cc: Amanda Cannon, Staff Director

REPLY TO:
☐ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
☐ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: CONTAINERS

Bill Number: SB 654 *(if applicable)*

Name: RON MEYER

Amendment Barcode: _____ *(if applicable)*

Job Title: ATTORNEY

Address: POB 1547
Street

TALLAHASSEE FL 32302
City *State* *Zip*

Phone: 850-878-5212

E-mail: RMEYER@MEYERBROOKSLAW.COM

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

Representing: IGPS

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

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

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

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

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 Committee on Criminal Justice

BILL: CS/SB 664

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: State Taxes on Motor Fuel

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Favorable**
2.	Erickson	Cannon	CJ	**Fav/CS**
3.			AFT	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 664 requires that certain motor fuel taxes paid by a county sheriff's office be returned to the sheriff's office and used to offset ongoing fuel costs and authorizes a sheriff's office, if licensed as a local government user, to take a credit on the monthly diesel fuel tax return as specified.

This bill substantially amends the following sections of the Florida Statutes: 206.41 and 206.625.

II. Present Situation:

Section 206.41, F.S., imposes specified taxes on motor fuel and provides for certain refunds. Specifically, s. 206.41(4)(d), F.S., provides for a refund of the fuel sales tax imposed by s. 206.41(1)(g), F.S.,[1] paid by a municipality or county on motor fuel or diesel fuel[2] for use in a

[1] The provisions of s. 206.41, F.S., are made applicable to diesel fuel pursuant to s. 206.97, F.S., as far as lawful and practicable and to the extent that s. 206.41, F.S., does not conflict with any provision of part II of ch. 206, F.S.

[2] The fuel sales tax rate on each net gallon of motor fuel and diesel fuel for 2013 is 12.9 cents. Florida Department of Revenue website: http://dor.myflorida.com/dor/tips/pdf/12b05-02_chart.pdf, *2013 Florida Fuel Tax, Collection Allowance, Refund, and Pollutants Tax Rates*, retrieved February 28, 2013.

motor vehicle operated by the municipality or county. That paragraph further authorizes a municipality or county, when licensed as a local government user, to take a credit on the monthly diesel fuel tax return not to exceed the county fuel tax and the fuel sales tax on those gallons which would otherwise be eligible for refund.

Section 206.625(1), F.S., requires that the county fuel tax imposed by s. 206.41(1)(b), F.S.,[3] collected from a municipality or county on motor fuel for use in a motor vehicle operated by it be returned to the governing body of each such municipality or county in accordance with the procedures in s. 206.41, F.S., for construction, reconstruction, and maintenance of roads and streets within the respective municipality or county.

Section 206.874(1), F.S., contains exemptions from provisions requiring the payment of taxes on diesel fuel, including without limitation, diesel fuel that satisfies specified dyeing and marking requirements. Subsection (3) of that section lists allowable purposes for which dyed diesel fuel may be purchased and used, including without limitation, exclusive use of a local government; but that subsection does not include county sheriffs' offices. Further, subsection (4) of s. 206.874, F.S., provides that to qualify for the use of dyed or otherwise untaxed diesel fuel in motor vehicles, each county, municipality, and school district must first register with the Department of Revenue (DOR) as a local government user of diesel fuel. The definition of "local government user of diesel fuel" in s. 206.86(11), F.S., includes any county, municipality, or school district licensed by DOR to use untaxed diesel fuel in motor vehicles, but it does not include county sheriffs' offices.

Section 206.874(4)(c), F.S., requires any county, municipality, or school district not licensed as a local government user of diesel fuel to pay directly to DOR the diesel fuel taxes imposed by s. 206.87(1), F.S.,[4] for any highway use of untaxed diesel fuels. And lastly, s, 206.874(4)(d), F.S., provides that each county, municipality, or school district may receive a credit for additional taxes paid under s. 206.87, F.S., for the highway use of diesel fuel, if the diesel fuel purchases meet the requirements relating to refunds for motor fuel purchases under s. 206.41, F.S. Again, county sheriffs' offices are not included in the requirement to pay diesel fuel taxes for any highway use of untaxed diesel fuels if the sheriff's office is not licensed as a local government user of diesel fuel and are not included in the authorization to receive the specified credit.

III. Effect of Proposed Changes:

Section 1: Amends s. 206.41(4)(d), F.S., to provide that the portion of the specified fuel sales tax resulting from the collection of such tax paid by a county sheriff's office on motor fuel or diesel fuel for use in a motor vehicle operated by it shall be returned to the sheriff's office and used to offset ongoing fuel costs; and to provide that a county sheriff's office, if licensed as a local government user, is entitled to take a credit on the monthly diesel fuel tax return if the amount of the credit does not exceed the one-cent county fuel tax and the 12.9-cent fuel sales tax on those gallons which would otherwise be eligible for refund.

[3] One cent per net gallon, designated as the "county fuel tax."
[4] Upon each net gallon of diesel fuel, an excise tax of four cents, an additional one cent tax known as the "ninth-cent fuel tax," an additional six cents known as the "local option fuel tax," an additional SCETS Tax at a 2013 rate of 7.1 cents, and the additional fuel sales tax at a 2013 rate of 12.9 cents.

Section 2: Amends. s. 206.625, F.S., to require that those portions of the county fuel tax imposed by s. 206.41(1)(b), F.S., which result from the collection of such tax paid by a county sheriff's office on motor fuel for use in a motor vehicle operated by the sheriff's office be returned to the sheriff's office to offset ongoing fuel costs.

In short, the fuel sales taxes paid by a county sheriff's office on motor fuel or diesel fuel must be returned to the sheriff's office to offset ongoing fuel costs. A county sheriff's office registered as a local government user is authorized to take a credit on the monthly diesel fuel tax return if the credit does not exceed the county fuel tax and fuel sales tax on those gallons which would otherwise be eligible for refund. Lastly, the county fuel tax paid by a county sheriff's office must be returned to the sheriff's office to offset ongoing fuel costs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet analyzed the fiscal impact of this bill.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 16, 2013, the Florida Revenue Estimating Conference reviewed SB 664 and adopted the middle estimate (Florida Department of Highway Safety and Motor Vehicles' data and a survey by the Florida Sheriff Association) less the amount for the sheriff's fuel sales tax refund.

YEAR	GR		TRUST		LOCAL/OTHER		CASH	
	Cash	**Recurring**	**Cash**	**Recurring**	**Cash**	**Recurring**	**Cash**	**Recurring**
2013-14	(0.2)[5]	(0.2)	(2.4)	(2.6)	0.0	0.0	(2.6)	(2.8)
2014-15	(0.2)	(0.2)	(2.7)	(2.7)	0.0	0.0	(2.9)	(2.9)
2015-16	(0.2)	(0.2)	(2.8)	(2.8)	0.0	0.0	(3.0)	(3.0)
2016-17	(0.3)	(0.2)	(2.9)	(2.9)	0.0	0.0	(3.2)	(3.2)
2017-18	(0.3)	(0.2)	(3.0)	(3.0)	0.0	0.0	(3.3)	(3.3)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on March 18, 2013:

- Inserts the term "county sheriff's office" in s. 206.86(11), F.S., to include sheriffs' offices in the definition of "local government user of diesel fuel," along with a county, municipality, or school district.
- Inserts the term "county sheriff's office" in s. 206.874(3)(b), F.S., to make purchase and use of dyed diesel fuel for exclusive use by a county sheriff's office exempt from taxes under part II of ch. 206, F.S., as is a local government.
- Inserts the term "county sheriff's offices" or "county sheriff's office," as appropriate, in s. 206.874(4)(a), (c), and (d), F.S., to require a county sheriff's office to register as a local government user of diesel fuel; to require a county sheriff's office not licensed as a local government user of diesel fuel to pay the diesel fuel tax imposed by s. 206.87(1), F.S., for any highway use of untaxed diesel fuels; and to authorize a county sheriff's office to receive a credit for additional taxes paid under s. 206.87, F.S., for the highway use of diesel fuel, as specified, all as are currently applicable to a county, municipality, or school district.

[5] In millions of dollars.

B. Amendments:

None.

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

211192

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 61 - 62
4 and insert:
5 Section 3. Subsection (11) of section 206.86, Florida
6 Statutes, is amended to read:
7 206.86 Definitions.—As used in this part:
8 (11) "Local government user of diesel fuel" means a ~~any~~
9 county, municipality, ~~or~~ school district, or county sheriff's
10 office licensed by the department to use untaxed diesel fuel in
11 motor vehicles.
12 Section 4. Paragraph (b) of subsection (3) and subsection

211192

13 (4) of section 206.874, Florida Statutes, are amended to read:
14 206.874 Exemptions.—
15 (3) Dyed diesel fuel may be purchased and used only for the
16 following purposes:
17 (b) Exclusive use by ~~of~~ a local government, school
18 district, or county sheriff's office.
19 (4)(a) Notwithstanding the provisions of this section
20 allowing local governments, ~~and~~ school districts, and county
21 sheriff's offices to use dyed or otherwise untaxed diesel fuel
22 in motor vehicles, each county, municipality, ~~and~~ school
23 district, and county sheriff's office ~~to qualify for such use~~,
24 must first register with the department as a local government
25 user of diesel fuel.
26 (b) Local government users of diesel fuel must ~~shall be~~
27 ~~required to~~ file a return accounting for diesel fuel
28 acquisitions, inventory, and use, and remit a tax equal to 3
29 cents of the 4-cent tax required under s. 206.87(1)(a), plus the
30 taxes required under s. 206.87(1)(b), (c), and (d) each month to
31 the department.
32 (c) Any county, municipality, ~~or~~ school district, or county
33 sheriff's office not licensed as a local government user of
34 diesel fuel is ~~shall be~~ liable for the taxes imposed by s.
35 206.87(1) directly to the department for any highway use of
36 untaxed diesel fuels.
37 (d) Each county, municipality, ~~or~~ school district, or county
38 sheriff's office may receive a credit for additional taxes paid
39 under s. 206.87 for the highway use of diesel fuel if~~, provided~~
40 the purchases of diesel fuel meet the requirements relating to
41 refunds for motor fuel purchases under s. 206.41.

211192

42
43 ========== T I T L E A M E N D M E N T ==========
44 And the title is amended as follows:
45 Delete line 6
46 and insert:
47 amending ss. 206.86 and 206.874, F.S.; conforming
48 provisions to changes made by the act; providing an
49 effective date.

By Senator Simmons

10-00810-13 2013664__

A bill to be entitled

An act relating to state taxes on motor fuel; amending ss. 206.41 and 206.625, F.S.; requiring that certain motor fuel taxes paid by a county sheriff's office be returned and used to offset ongoing fuel costs; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(4)

(d) The portion of the fuel sales tax imposed by paragraph (1)(g) which results from the collection of such tax ~~taxes~~ paid by a municipality, ~~or~~ county, or county sheriff's office on motor fuel or diesel fuel for use in a motor vehicle operated by it shall be returned to the governing body of such municipality or county or to the sheriff's office, as applicable. The municipality or county shall use the refund for the construction, reconstruction, and maintenance of roads and streets within the municipality or county; the sheriff's office shall use the refund to offset ongoing fuel costs. If licensed as a local government user, a municipality, ~~or~~ county, or county sheriff's office is~~, when licensed as a local government user, shall be~~ entitled to take a credit on the monthly diesel fuel tax return if the amount of the credit does not ~~to~~ exceed the tax imposed under paragraphs (1)(b) and (g) on those gallons which would otherwise be eligible for refund to the respective

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

10-00810-13 2013664__

local government user.

Section 2. Section 206.625, Florida Statutes, is amended to read:

206.625 Return of tax to municipalities, counties, sheriff's offices, and school districts.—

~~(1)~~ Those portions of the county fuel tax imposed by s. 206.41(1)(b) which result from the collection of such tax paid by:

(1) A municipality or county on motor fuel for use in a motor vehicle operated by it shall be returned to the governing body of each such municipality or county according to the administrative procedures in s. 206.41 for the construction, reconstruction, and maintenance of roads and streets within the respective municipality or county.

(2) A county sheriff's office on motor fuel for use in a motor vehicle operated by the sheriff's office shall be returned to the sheriff's office to offset ongoing fuel costs.

(3)~~(2) Those portions of the county fuel tax imposed by s. 206.41(1)(b) which result from the collection of such tax paid by~~ A school district, or ~~by~~ a private contractor operating school buses for a school district, on motor fuel for use in a motor vehicle operated by such district or private contractor shall be returned to the governing body of each such school district according to the administrative procedures in s. 206.41 to be used to fund construction, reconstruction, and maintenance of roads and streets within the school district resulting from ~~required as a result of~~ new school construction or renovation of existing schools. The school board shall select the projects to be funded; however, first priority shall be given to projects

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

59 resulting from ~~required as the result of~~ new school
60 construction, unless a waiver is granted by the affected county
61 or municipal government.
62 Section 3. This act shall take effect July 1, 2013.

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

The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 11, 2013

I respectfully request that **Senate Bill 664**, relating to State Taxes on Motor Fuel, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.15.13
Meeting Date

Topic: Fuel Tax

Bill Number: 6604 *(if applicable)*

Name: Sarah Carroll

Amendment Barcode: _____ *(if applicable)*

Job Title: ASSt. Executive Director

Address: 2617 Mahan Drive
Street

Tallahassee FL 32308
City *State* *Zip*

Phone: 284.5993

E-mail: scarroll@flsheriffs.org

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

Representing: Florida Sheriffs Association

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 812

INTRODUCER: Senators Gibson and Bullard

SUBJECT: Youth in Solitary Confinement

DATE: March 13, 2013 REVISED:

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

I. Summary:

SB 812 creates new requirements for the Department of Corrections and local correctional facilities when dealing with prisoners who are either under 18 years of age or who have been sentenced as a youthful offender pursuant to ch. 958, F.S. It requires the department and local jails to establish three types of confinement for these "youth prisoners": disciplinary cell confinement; emergency cell confinement; and protective custody, with minimum requirements for access to.

This bill creates section 958.155 of the Florida Statutes. The bill substantially amends sections 944.09 and 951.23 of the Florida Statutes.

II. Present Situation:

Department of Corrections – Youthful Offenders

Chapter 958, F.S., establishes requirements for the treatment of youthful offenders. As of February 8, 2013, the department had custody of 152 youthful offenders under 18 years of age, 2,363 youthful offenders 18 years of age or older, and 19 inmates classified as young adult offenders and housed with youthful offenders.[1]

Section 958.11, F.S., requires the department to designate separate institutions and programs for youthful offenders and requires personnel to be specially qualified by training and experience to

[1] Department of Corrections 2013 Analysis of Senate Bill 812, p. 2.

operate the institutions and programs. The department has designated four institutions to house youthful offenders:

- Lancaster Correctional Institution in Trenton, housing males aged 19-24;
- Sumter Correctional Institution in Bushnell, housing males aged 14-18;
- Lake City Correctional Facility in Lake City, housing males aged 19-24; and
- Lowell Correctional Facility in Lowell, housing all female youthful offenders[2]

Youthful offenders in these institutions are involved in the department's Extended Day Program (EDP). The EDP is a 16-hour per day program that includes vocational and academic education programs, counseling, work assignments, behavior modification, military-style drills, systematic discipline, and other programs. It is structured into three phases to recognize progress, and also includes a remedial phase. Inmates housed in facilities designated for youthful offenders are subject to the same disciplinary standards as non-youthful offenders. However, when appropriate, the remedial phase is imposed instead of disciplinary confinement.[3]

A court may sentence a felony defendant as a youthful offender if the defendant is between 18 and 21 years old at the time of sentencing, or is under 18 years of age but was prosecuted as an adult. However, a young defendant is not eligible for youthful offender sentencing if he or she was found guilty of a capital or life felony or had previously been classified as a youthful offender.[4]

Among the options that the court has for sentencing a qualified defendant as a youthful offender is a split sentence of incarceration for a maximum of four years followed by community supervision, with the combined sentence not exceeding six years.[5] In theory, this means that an inmate who is a youthful offender could be no more than 24 years old. However, a youthful offender can be resentenced to more than six years in prison if he or she commits a substantive violation of community supervision. In such a case, the inmate will retain the designation as a youthful offender throughout the extended prison sentence even though he or she may be much older than the intended age range.[6]

An inmate who is less than 25 years old and who was not sentenced as a youthful offender can still be classified as a youthful offender by the department if the inmate:

- Met the eligibility criteria to be sentenced as a youthful offender by the court, but was not;[7] or
- Was ineligible for youthful offender sentencing by the court only because he or she was more than 21 years old at the time of sentencing, and has a total sentence not exceeding ten years.[8]

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[2] *Id.*, p. 1.
[3] *Id.*, pp. 1-2.
[4] Section 958.04(1), F.S.
[5] Section 958.04, F.S.
[6] *See Long v. State*, 99 So.3d 997 (Fla. 5th Dist. 2012).
[7] Section 958.045(8)(a), F.S.
[8] Section 958.11(4), F.S.

The department is required to assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender. These "young adult offenders" may continue to be assigned to the youthful offender facility until reaching 22 years of age if it is in the inmate's best interests and does not pose an unreasonable risk to other inmates.[9] The department may also assign an inmate who is less than 20 years old, except a capital or life felon, to a youthful offender facility until age 20 if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.[10]

There are limited circumstances in which the department can assign a youthful offender to an adult facility. These include commission of a new felony, serious violations of rules that create a serious management problem affecting the other program participants, and transfers required for medical treatment or other needed services.[11]

Department of Corrections - Confinement and Protective Management

Administrative confinement provides for "the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded." [12] All inmates, regardless of age, are subject to the same considerations for placement in administrative confinement. Administrative confinement is typically used while an investigation or administrative process is pending, such as processing a request for protective management or investigation of a disciplinary report that requires removing the inmate from the general population. Department rule requires that inmates in administrative confinement be treated as much like the general population as possible.

Inmates are required to be given a pre-confinement health assessment prior to placing the inmate in administrative confinement. This assessment includes a physical and mental health evaluation that is documented in the inmate's health care record. The Institutional Classification Team (ICT) is required by rule to review placement of inmates in administrative confinement within 72 hours.

Corrections staff is required by rule to conduct regular visits to administrative confinement on no less than the following schedule:

- Every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain.

[9] Section 944.1905(5)(a), F.S.
[10] Section 958.11(6), F.S.
[11] Section 958.11(3), F.S.
[12] This definition and other rules concerning administrative confinement are found in Rule 33-602.220, F.A.C.

- Weekly by the warden.
- Weekly by the assistant wardens.
- Once a week by a classification officer.
- Weekly by a member of the ICT.

A mental health professional is required to conduct a psychological screening assessment to determine the mental condition of any inmate who is in administrative confinement for more than 30 days. Follow-up screenings are required to be conducted at least every 90 days.

Disciplinary confinement is "a form of punishment in which inmates found guilty of committing violations of the department rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct."[13] All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314, F.A.C., Rules of Prohibited Conduct and Penalties for Infractions.

Department rule requires that an inmate who is to be confined must be given a pre-confinement medical evaluation by medical staff before being placed in disciplinary confinement.

The requirements for staff visits to inmates in disciplinary confinement are the same as those for inmates in administrative confinement, except that a member of the ICT must visit as frequently as necessary, but not less than once every 30 days, to ensure that the inmate's welfare is properly provided for and to determine the time and method of release. In addition, if the inmate is in disciplinary confinement for more than 60 consecutive days, the State Classification Officer must visit as frequently as necessary to ensure the inmate's welfare and to determine if he or she should be released.

Protective Management is "a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible."[14] Protective management is not disciplinary in nature, and inmates in protective management are not in confinement. Department rule requires that the treatment of inmates in protective management be as near to that of the general population as security concerns and the individual inmate's safety permit. However, a younger prisoner who is housed in a protective management unit may be subject to more restrictions than older protective management inmates because of safety and security concerns.

Basic requirements for confinement or protective management
Inmates in confinement or in protective management are allowed by rule to retain many normal privileges. However, there may be some restriction of the privileges that are available to the general population based upon security concerns, management objectives, and logistical issues. The following basic provisions for treatment are among the requirements set forth in rule:

Exercise – Those inmates in administrative confinement or disciplinary confinement who are confined on a 24-hour basis, excluding showers and clinic trips, may exercise in their cells. If confinement extends beyond 30 days, they are allowed a minimum of three hours per week of

[13] This definition and other rules concerning disciplinary confinement are found in Rule 33-602.222, F.A.C.
[14] This definition and other rules concerning protective management are found in Rule 33-602.221, F.A.C.

exercise out-of-doors. Inmates in protective management for any length of time are allowed a minimum of three hours per week of outside exercise.

Showers – Inmates in administrative confinement or protective management shower a minimum of three times per week and on days that they work. Inmates in disciplinary confinement shower a minimum of three times per week.

Clothing – Inmates in either type of confinement or protective management are provided the same clothing as the general inmate population unless exceptions are necessary on an individual basis for the welfare of the inmate or the security of the institution.

Correspondence – Inmates in either type of confinement or protective management have the same opportunities for correspondence that are available to the general inmate population, except that an inmate in disciplinary confinement may be restricted from a particular correspondence if the disciplinary infraction involved that correspondence.

Meals – Inmates in administrative confinement receive normal institutional meals. However, if any item on the normal menu creates a security problem in the confinement unit, another item of comparable quality is substituted. A special management meal is authorized for any inmate who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

- Inmates in disciplinary confinement receive meals representative of the food served to the general population, but are not necessarily given a choice of every item. The special management meal can be served to an inmate when warranted by the inmate's conduct.
- Inmates in protective management are fed in the dining room unless separate dining is required by safety considerations for an individual inmate.

Mental health treatment– Inmates in either type of confinement are allowed out of their cells to receive regularly scheduled mental health services, unless within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others. If so, they can receive treatment in their cell. Inmates in protective management receive counseling either in cell or out of cell when deemed necessary by mental health staff.

Telephone privileges – Inmates in either type of confinement or protective management are allowed to use the telephone for emergency situations, when necessary to ensure access to attorneys or the courts, or in specially authorized circumstances. In addition, inmates in protective management are allowed to make one 15 minute call per week. If telephones are available in the housing unit's dayroom, protective management inmates are allowed to make calls in the same manner as general population inmates.

Visits – Inmates in either type of confinement are permitted personal visits only when specifically authorized by the warden or his or her representative. Inmates in protective management are given a minimum of two hours a week to receive visits. Visiting takes place in a separate facility from the general population if a separate facility is available. Visiting can be limited if security concerns due to the inmate's special management status cannot be reduced to an acceptable level.

Legal visits – are not restricted except when there is evidence that the visit is a threat to security and order.
Legal Access – Inmates in administrative confinement generally have access to legal materials to the same extent as inmates in the general population. However, security concerns may require that legal business be conducted by correspondence rather than a personal visit to the law library.

- Inmates in disciplinary confinement are permitted to have access to their personal legal papers and law books, to correspond with the law library, to have the law library deliver research materials to their cells, and to have face-to-face interaction with certified inmate law clerks. However, they are not allowed to personally visit the law library.
- Inmates in protective management have access to the law library during evening or other hours when general population inmates are not present. If security reasons prevent a personal visit, access is provided through correspondence or visits from an inmate research aide.

Counties – Detention or Jailing of Young Offenders

Juveniles may be confined as a function of the juvenile justice system or while awaiting trial and serving sentences when charged as an adult. Juveniles who are awaiting the resolution of charges in the juvenile justice system may be confined under the care of the Department of Juvenile Justice, or they may be confined in a secure juvenile detention facility in counties where one has been established. Juveniles who are waiting trial as an adult or who are serving an adult sentence may be confined in the county jail or detention facility.

The housing of juveniles in adult jails or in a county's youth detention facility must be in accordance with the Florida Model Jail Standards.[15] Under the Model Standards, juveniles who are awaiting trial as an adult must be housed separately from adult inmates to prohibit regular sight and sound contact with incarcerated adults. This sight and sound separation must permit no more than haphazard or accidental contact between juveniles awaiting trial and incarcerated adults. Juvenile pre-trial detainees must be housed in a separate section of the jail and must be physically observed and checked on by a facility correctional officer at least every 15 minutes. Except for these restrictions, the requirements for treatment of juveniles housed in county jails while awaiting trial or serving an adult sentence are the same as those of adult prisoners.

A juvenile who has been sentenced as an adult may be housed with adults in the same classification level both during service of the sentence and during any subsequent jail admissions.[16]

Inmates who are found to have committed violations of the facility's rules may be placed in administrative confinement after a due process hearing. They may also be placed in administrative confinement for the purpose of ensuring immediate control and supervision if they pose a threat to themselves, to others, or to the safety and security of the detention facility. Inmates in administrative confinement receive housing, food, clothing, medical care, exercise,

[15] The Florida Model Jail Standards are available at https://www.flsheriffs.org/uploads/FMJS%2008-30-11rev_logo2.pdf (last viewed on March 14, 2013).
[16] Sections 985.56, 985.556, and 985.557, F.S.

visitation, showers, and other services and privileges comparable to those available to the general population. There may be exceptions based upon the inmate's classification status or if the inmate has special needs. The Model Rules provide that inmates in administrative confinement should be checked by medical staff at least every 72 hours and are required to bathe twice weekly.

The Model Standards provide additional requirements for the care and custody of juveniles who are detained in a Youth Detention Facility operated by the county.[17]

III. Effect of Proposed Changes:

This bill creates the "Youth in Solitary Confinement Reduction Act." It establishes new statutory requirements for the treatment of young prisoners[18] in the custody of the department or a local correctional facility. The requirements apply to the treatment of all prisoners who are either under 18 years of age or who have been sentenced as a youthful offender pursuant to ch. 958, F.S. These persons are referred to in the bill as "youth prisoners." The requirements of the bill are substantially different than the current policies of the department and also differ from the Florida Model Jail Standards that are used by county sheriffs in administering their jails and detention facilities.

Solitary confinement is defined in the bill as "involuntary confinement in a cell for more than 20 hours a day, in isolation from persons other than a cellmate, guards, facility staff, and attorneys." The bill provides that a youth prisoner cannot be housed in solitary confinement unless the confinement is under conditions established in the bill for one of three types of cell confinement: emergency cell confinement; disciplinary cell confinement; and protective custody. All three types of cell confinement require that youth prisoners receive access to the same type of medical treatment, contact with parents and legal guardians, and legal assistance as provided to prisoners in the general population. Other requirements of each type of cell confinement are described below.

Emergency cell confinement means the confinement to a cell of a youth who needs to be temporarily removed from the general population of prisoners because he or she presents an immediate, serious danger to the security or safety of himself or herself or others. It cannot be utilized unless all other less restrictive options have been exhausted. Emergency cell confinement must be for no longer than is required to address the safety risk and is limited to a period of 24 hours.

A youth prisoner who is placed in emergency cell confinement must receive a face-to-face evaluation by a mental health clinician[19] within the first hour and no less than every four hours thereafter to determine if he or she should remain in such confinement. The youth prisoner cannot be held in emergency cell confinement if the mental health clinician determines that it is detrimental to the youth's mental or physical health.

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[17] Chapter 20, Florida Model Jail Standards.

[18] "Prisoner" is defined in the bill as "a person incarcerated in a county or regional jail or in a department facility who is accused of, convicted of, or sentenced for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or a diversionary program."

[19] The bill defines a "mental health clinician" as a psychiatrist, psychologist, social worker, or nurse practitioner.

The bill requires facility staff to visually check on a youth prisoner who is in emergency cell confinement at least every 15 minutes, including speaking to the youth if he or she is awake. The youth prisoner's status must be documented after each visual check.

Additional requirements apply to youth prisoners who are placed in emergency cell confinement if they have exhibited suicidal behavior or committed acts of self-harm. For those youth prisoners, an individualized suicide crisis intervention plan must be implemented within four hours, and a mental health clinician shall closely monitor the youth's condition in order to reduce or eliminate the risk of self-harm. The youth prisoner must be moved to a mental health receiving facility if the suicide risk is not resolved within 24 hours.

In addition to the common requirements for cell confinement, youth prisoners in emergency cell confinement must have access to a minimum of one hour of out-of-cell large muscle exercise, including opportunity for outdoor recreation when the weather permits. They must also have access to the same meals and drinking water as prisoners in the general population.

Disciplinary cell confinement is a disciplinary sanction for a major rule violation. There is no limit to the length of time that a youth prisoner can be in disciplinary cell confinement, except that the youth prisoner cannot be held by himself or herself for longer than 72 hours. The bill defines "major rule violation" to mean an act that:

- Is an act of violence which results in or is likely to result in serious injury or death to another;
- Occurs in connection with an act of nonconsensual sex;
- Consists of two or more discrete acts that cause serious disruption to the security or order of the detention center or facility operations; or
- Is an escape, attempted escape, or conspiracy to escape from within a security perimeter or custody or both.

This definition of major rule violation is less inclusive than that currently used by the department or by county detention facilities. The department asserts that restricting disciplinary cell confinement for use in addressing what it considers to be a limited range of offenses would undermine its efforts to maintain order and discipline.[20]

As with emergency cell confinement, the bill requires facility staff to visually check on a youth prisoner who is in disciplinary cell confinement at least every 15 minutes, including speaking to the youth if he or she is awake. The youth prisoner's status must be documented after each visual check.

In addition to the common requirements for cell confinement, youth prisoners in disciplinary cell confinement must be provided:

- At least two hours of daily out-of-cell large muscle exercise that includes access to outdoor recreation when the weather permits;
- Daily showers; and

[20] Department of Corrections 2013 Analysis of Senate Bill 812, p. 9.

- Access to the same standards of meals and drinking water (but not the same meals and drinking water), clothing, educational services, correspondence privileges as provided to prisoners in the general population.

The bill defines "prisoner" as "a person incarcerated in a county or regional jail or in a department facility who is accused of, convicted of, or sentenced for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or a diversionary program."

Protective custody is a status for a youth prisoner who requires protection because he or she is in danger of being victimized by other prisoners in the facility, including time spent pending review of a request for protection. The restrictions placed on youth prisoners in protective custody must be the least restrictive needed to maintain the safety of the youth prisoner and the institution. In addition to the previously stated requirements, protective custody must afford access to:

- Educational and programming opportunities consistent with the youth prisoner's safety and security and any federal and state law requirements;
- A minimum of five hours a day outside of the cell, including at least two hours of out-of-cell large muscle exercise with opportunity for outdoor recreation when the weather permits;
- The same meals and drinking water, clothing, correspondence privileges, and number of visits and phone calls as provided to prisoners in the general population;
- Personal property, including televisions and radios, and access to books, magazines, and other printed materials;
- Daily showers; and
- The law library.

The bill requires the department and the county commissions to review the necessity of their policies concerning solitary confinement or protective custody of youth prisoners. These entities are required to certify compliance with the provisions of the bill in a report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014. The bill also requires the department and county commissions to adopt any policies and procedures that are necessary to administer its provisions.

Section 2 of the bill amends s. 944.09, F.S., to require the department to adopt rules in compliance with the bill's provisions. Section 3 of the bill amends s. 951.23, F.S., to require the established working group of the Florida Sheriffs Association and the Florida Association of Counties to adopt model rules consistent with the requirements of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections indicates that it does not have the resources to comply with the provisions of the bill.[21] It assesses that the bill's overall fiscal impact on its operations is indeterminate, but that it is likely to be significant. One fiscal impact factor noted by the department was a possible requirement for additional mental health personnel.[22]

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.

[21] *Id.*, p.8.
[22] *Id.*, at p. 14.

By Senator Gibson

9-01052-13 2013812__

A bill to be entitled

An act relating to youth in solitary confinement; creating s. 958.155, F.S.; providing a short title; defining terms; prohibiting the Department of Corrections or a local government body from subjecting a youth to solitary confinement except under certain circumstances; limiting cell confinement of all youth prisoners; providing protection for youth prisoners held in emergency cell confinement; prohibiting a youth prisoner from being subjected to emergency cell confinement for more than 24 hours; requiring the placement in emergency cell confinement to be documented; requiring that a mental health clinician evaluate face-to-face within a specified time a youth prisoner who is subjected to emergency cell confinement; requiring staff to perform visual checks at specified intervals; providing for an individualized suicide crisis intervention plan, if applicable; providing for the protection of youth prisoners in disciplinary cell confinement; prohibiting a youth prisoner from being subjected to disciplinary cell confinement for more than 72 hours; requiring staff to perform visual checks at specified intervals; requiring that youth prisoners in disciplinary cells be allotted services and other benefits that are made available to prisoners in the general prison population; providing reduced isolation for youth prisoners in protective custody; requiring the department and counties to review their policies

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relating to youth prisoners to evaluate whether the policies are necessary; requiring a report to the Governor and Legislature; amending s. 944.09, F.S.; authorizing the department to adopt rules; amending s. 951.23, F.S.; requiring sheriffs to adopt standards relating to youth prisoners; providing an effective date.

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

Section 1. Section 958.155, Florida Statutes, is created to read:

958.155 Youthful offenders in solitary confinement.—

(1) SHORT TITLE.—This act may be cited as the "Youth in Solitary Confinement Reduction Act."

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

(a) "Disciplinary cell confinement" means a disciplinary sanction for a major rule violation in which a youth who is found guilty of committing a major rule violation is confined to a cell for a specified period of time.

(b) "Emergency cell confinement" means the confinement to a cell of a youth who needs to be temporarily removed from the general population of prisoners because he or she presents an immediate, serious danger to the security or safety of himself or herself or others.

(c) "Major rule violation" means an act that:

1. Is an act of violence which results in or is likely to result in serious injury or death to another;

2. Occurs in connection with an act of nonconsensual sex;

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59 3. Consists of two or more discrete acts that cause serious
60 disruption to the security or order of the detention center or
61 facility operations; or
62 4. Is an escape, attempted escape, or conspiracy to escape
63 from within a security perimeter or custody or both.
64 (d) "Mental health clinician" means a psychiatrist,
65 psychologist, social worker, or nurse practitioner.
66 (e) "Prisoner" means a person incarcerated in a county or
67 regional jail or in a department facility who is accused of,
68 convicted of, or sentenced for, violations of criminal law or
69 the terms and conditions of parole, probation, pretrial release,
70 or a diversionary program.
71 (f) "Protective custody" means a status for a youth who
72 requires protection because he or she is in danger of being
73 victimized by other prisoners in the facility, including time
74 spent pending review of the youth's request for protection.
75 (g) "Solitary confinement" means involuntary confinement in
76 a cell for more than 20 hours a day, in isolation from persons
77 other than a cellmate, guards, facility staff, and attorneys.
78 (h) "Youth" means a person who is younger than 18 years of
79 age, or a person who is sentenced as a "youthful offender" by a
80 court or classified as such by the department pursuant to
81 chapter 958.
82 (3) PROTECTING YOUTH FROM SOLITARY CONFINEMENT.—A youth
83 prisoner who is held under the jurisdiction of the department or
84 a local government body in this state may not be subjected to
85 solitary confinement, except as provided in this section. Cell
86 confinement of all youth prisoners shall be limited to the types
87 and parameters of confinement specified in this section.

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88 (4) PROTECTING YOUTH HELD IN EMERGENCY CELL CONFINEMENT.—
89 (a) A youth prisoner may be subjected to emergency cell
90 confinement for a period not to exceed 24 hours.
91 (b) A youth prisoner may not be subjected to emergency cell
92 confinement unless all other less restrictive options have been
93 exhausted. The placement of a youth prisoner in emergency cell
94 confinement shall be documented, including the justification for
95 the placement and all the attempts for other less restrictive
96 options before the placement.
97 (c) A youth prisoner may be subjected to emergency cell
98 confinement for the shortest time that is required to address
99 the safety risk and may not be held in such confinement if a
100 mental health clinician determines that the confinement is
101 detrimental to the youth's mental or physical health.
102 (d) A youth prisoner who is subjected to emergency cell
103 confinement shall be evaluated face-to-face by a mental health
104 clinician within 1 hour after placement and at least every 4
105 hours thereafter to determine if the youth should remain in cell
106 confinement. Each evaluation shall be documented and must
107 include the reason for continued placement in emergency cell
108 confinement.
109 (e) During the time a youth prisoner is subjected to
110 emergency cell confinement, the facility staff shall conduct
111 visual checks at least 4 times an hour and not longer than 15
112 minutes apart. During the time a youth is awake, the staff shall
113 speak to the youth during the visual checks. After each visual
114 check, the staff shall document the status of the youth.
115 (f) Within 4 hours of placing a youth prisoner who has
116 exhibited suicidal behavior or committed acts of self-harm in

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117 emergency cell confinement, an individualized suicide crisis
118 intervention plan must be implemented for the youth, and a
119 mental health clinician shall closely monitor the youth's
120 condition in order to reduce or eliminate the risk of self-harm.
121 If the youth's suicide risk is not resolved within 24 hours, the
122 youth shall be moved to a mental health receiving facility.
123 (g) A youth prisoner who is subjected to emergency cell
124 confinement shall be provided:
125 1. At least 1 hour of out-of-cell large muscle exercise
126 daily that includes access to outdoor recreation when the
127 weather permits; and
128 2. Access to the same meals and drinking water, medical
129 treatment, contact with parents and legal guardians, and legal
130 assistance as provided to prisoners in the general population.
131 (5) PROTECTING YOUTH HELD IN DISCIPLINARY CELL
132 CONFINEMENT.—
133 (a) A youth prisoner may be subjected to disciplinary cell
134 confinement by himself or herself for a period not to exceed 72
135 hours.
136 (b) During the time a youth prisoner is subjected to
137 disciplinary cell confinement in a cell by himself or herself,
138 the facility staff shall conduct visual checks at least 4 times
139 an hour and not longer than 15 minutes apart. During the time
140 the youth is awake, the staff shall speak to the youth during
141 the visual checks. After each visual check, the staff shall
142 document the status of the youth.
143 (c) A youth prisoner who is subjected to disciplinary cell
144 confinement shall be provided:
145 1. At least 2 hours of daily out-of-cell large muscle

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146 exercise that includes access to outdoor recreation when the
147 weather permits;
148 2. Daily showers; and
149 3. Access to the same standards of meals and drinking
150 water, clothing, medical treatment, educational services,
151 correspondence privileges, contact with parents and legal
152 guardians, and legal assistance as provided to prisoners in the
153 general population.
154 (6) REDUCING ISOLATION FOR YOUTH WHO REQUIRE PROTECTIVE
155 CUSTODY.—If a youth prisoner is subjected to protective custody,
156 the restrictions to which the youth prisoner is subjected due to
157 such custody status must be the least restrictive to maintain
158 the safety of the youth prisoner and the institution. At a
159 minimum, such youth prisoner shall have access to:
160 (a) Educational and programming opportunities consistent
161 with the youth prisoner's safety and security and any federal
162 and state law requirements;
163 (b) At least 5 hours a day of out-of-cell time, including a
164 minimum of 2 hours of daily out-of-cell large muscle exercise
165 that includes access to outdoor recreation when the weather
166 permits;
167 (c) The same meals and drinking water, clothing, and
168 medical treatment as provided to prisoners in the general
169 population;
170 (d) Personal property, including televisions and radios,
171 and access to books, magazines, and other printed materials;
172 (e) Daily showers;
173 (f) The law library; and
174 (g) The same correspondence privileges and number of visits

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175 and phone calls allowed to prisoners in the general population,
176 including, but not limited to, the same level of contact with
177 parents and legal guardians and the same level of legal
178 assistance.
179 (7) IMPLEMENTATION.—
180 (a) The department and the county commission of each county
181 that administers a detention facility or jail shall review their
182 policies relating to youth prisoners in solitary confinement or
183 protective custody to determine if the policies are necessary.
184 The department and the county commission of each county that
185 administers a detention facility or jail shall certify
186 compliance to the provisions of this section in a report that
187 the department and the commission shall submit to the Governor,
188 the President of the Senate, and the Speaker of the House of
189 Representatives by January 1, 2014. The department and the
190 county commission of each county shall adopt such policies and
191 procedures that are necessary to administer this act.
192 (b) This act does not conflict with any law providing
193 greater or additional protections to youth prisoners in this
194 state.
195 Section 2. Paragraph (s) is added to subsection (1) of
196 section 944.09, Florida Statutes, to read:
197 944.09 Rules of the department; offenders, probationers,
198 and parolees.—
199 (1) The department has authority to adopt rules pursuant to
200 ss. 120.536(1) and 120.54 to implement its statutory authority.
201 The rules must include rules relating to:
202 (s) Disciplinary procedures and punishment for youth
203 prisoners in compliance with the Youth in Solitary Confinement

204 Reduction Act.
205 Section 3. Paragraph (a) of subsection (4) of section
206 951.23, Florida Statutes, is amended to read:
207 951.23 County and municipal detention facilities;
208 definitions; administration; standards and requirements.—
209 (4) STANDARDS FOR SHERIFFS AND CHIEF CORRECTIONAL
210 OFFICERS.—
211 (a) There shall be established a five-member working group
212 consisting of three persons appointed by the Florida Sheriffs
213 Association and two persons appointed by the Florida Association
214 of Counties to develop model standards for county and municipal
215 detention facilities. By October 1, 1996, each sheriff and chief
216 correctional officer shall adopt, at a minimum, the model
217 standards with reference to:
218 1.a. The construction, equipping, maintenance, and
219 operation of county and municipal detention facilities.
220 b. The cleanliness and sanitation of county and municipal
221 detention facilities; the number of county and municipal
222 prisoners who may be housed therein per specified unit of floor
223 space; the quality, quantity, and supply of bedding furnished to
224 such prisoners; the quality, quantity, and diversity of food
225 served to them and the manner in which it is served; the
226 furnishing to them of medical attention and health and comfort
227 items; and the disciplinary treatment which may be meted out to
228 them.
229
230 Notwithstanding the provisions of the otherwise applicable
231 building code, a reduced custody housing area may be occupied by
232 inmates or may be used for sleeping purposes as allowed in

233 subsection (7). The sheriff or chief correctional officer shall
234 provide that a reduced custody housing area shall be governed by
235 fire and life safety standards which do not interfere with the
236 normal use of the facility and which affect a reasonable degree
237 of compliance with rules of the State Fire Marshal for
238 correctional facilities.
239 2. The confinement of prisoners by classification and
240 providing, whenever possible, for classifications which separate
241 males from females, juveniles from adults, felons from
242 misdemeanants, and those awaiting trial from those convicted
243 and, in addition, providing for the separation of special risk
244 prisoners, such as the mentally ill, alcohol or narcotic
245 addicts, sex deviates, suicide risks, and any other
246 classification which the local unit may deem necessary for the
247 safety of the prisoners and the operation of the facility
248 pursuant to degree of risk and danger criteria. Nondangerous
249 felons may be housed with misdemeanants.
250 3. The confinement of prisoners by classification and
251 providing for classifications which comply with the Youth
252 Solitary Confinement Reduction Act.
253 Section 4. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
9th District

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Communications, Energy, and Public Utilities
Criminal Justice
Regulated Industries

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

March 5, 2013

Senator Greg Evers, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Evers

I respectfully request that SB 812, relating to youth in solitary confinement, be placed on the next committee agenda.

SB 812, requires the Department of Corrections or a local government body to limit solitary cell confinement of all youth prisoners including youth held in emergency solitary confinement for protective purposes.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 9

REPLY TO:
☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2592
☐ 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3·18·2013
Meeting Date

Topic: Youth Confinement

Bill Number: 812 *(if applicable)*

Name: Major Mike Allen

Amendment Barcode: _____ *(if applicable)*

Job Title: Major

Address: 1891 Jim Keene Blvd
Street

Winter Haven, FL 33880
City *State* *Zip*

Phone: 863) 534 6142

E-mail: mallen@polksheriff.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Solitary Confinement Juveniles

Bill Number: SB 812 (if applicable)

Name: Angelia Reddick

Amendment Barcode: (if applicable)

Job Title: Mother

Address: 9645 Bay Meadows Rd
Street

Sax, FL 32256
City, State, Zip

Phone: 904-438-0652

E-mail: —

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

Representing: Self

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: SB 812

Bill Number: SB 812 *(if applicable)*

Name: Ian Kysel

Amendment Barcode: _____ *(if applicable)*

Job Title: Neier Fellow ACLU

Address: _____
Street

_____
City *State* *Zip*

Phone: _____

E-mail: ikysel@aclu.org

Speaking: ☐ For ☐ Against ☐ Information

Representing: ACLU / Human Rights watch

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: SB 812

Bill Number: 812 *(if applicable)*

Name: Ron Bilbao

Amendment Barcode: _____ *(if applicable)*

Job Title: Sr. Legislative Asso.

Address: _____
Street

Phone: 919-923-7288

Miami, FL 33137
City *State* *Zip*

E-mail: rbilbao@aclufl.org

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

Representing: ACLU of Florida

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Juvenile Solitary

Bill Number: SB812 *(if applicable)*

Name: Robert Henry

Amendment Barcode: *(if applicable)*

Job Title: Retired

Address: 840 E. Church St.
Street

Bartow, Fl 33830
City *State* *Zip*

Phone: 863 307 0943

E-mail: Churchstreet33830@yahoo.com

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

Representing: Private Citizen

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Reducing Isolation of Minors

Bill Number: 812 (if applicable)

Name: Cassandra Capobianco

Amendment Barcode: _____ (if applicable)

Job Title: Constituent / Mother / Attorney

Address: 14260 W Newberry Rd. #412
Street

Newberry, FL 32669
City, State, Zip

Phone: 352-375-2494 x1005

E-mail: Cassandra@floridalegal.org

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

Representing: _____

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/19/13
Meeting Date

Topic: Juvenile Solitary

Bill Number: SB 912 *(if applicable)*

Name: David Utter

Amendment Barcode: *(if applicable)*

Job Title: Policy + Legislative Director

Address: 4770 Biscayne Blvd
Street

Phone: 334/296-0727

Miami FL
City *State* *Zip*

E-mail: david.utter@splcenter.org

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

Representing: Southern Poverty Law Center - FL

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: SB812

Bill Number: SB812 *(if applicable)*

Name: Lisa Jobe

Amendment Barcode: *(if applicable)*

Job Title:

Address: 7842 Jean Chase Rd 33898
Street

Lake Wales Fl
City *State* *Zip*

Phone: 863 632 2331

E-mail: Jobe_Lisa@yahoo.com

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

Representing: Protect Our Lost Kids

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic: SB 812

Bill Number: 812 (if applicable)

Name: Brant S. Copeland

Amendment Barcode: (if applicable)

Job Title: Pastor, First Presbyterian Church

Address: 110 N. Adams (Street)

Tallahassee (City) FL (State) 32301 (Zip)

Phone: 850 222-4504

E-mail: brant@oldfirstchurch.org

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

Representing: Florida Council of Churches

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic: Juvenile Solitary Confinement

Bill Number: SB 812 (if applicable)

Name: Rev. Nancy Dahlberg

Amendment Barcode: (if applicable)

Job Title: PASTOR, United Church in Tallahassee

Address: 1834 MAHAN Dr.
Street

TALLAHASSEE, FL 32308
City State Zip

Phone: 850-878-7384

E-mail: ndahlberg@hotmail.com

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

Representing: NAT'L Religious Campaign Against Torture

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Youth in Solitary Confinement

Bill Number: 812 *(if applicable)*

Name: Christina Roberto

Amendment Barcode: _____ *(if applicable)*

Job Title: Public Policy Intern

Address: 502 N Adams Street
Street

TLH, FL 32301
City, State, Zip

Phone: 850 425 2500

E-mail: croberto@iamforkids.org

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

Representing: Children's Campaign

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Youth Solitary

Bill Number: 812 *(if applicable)*

Name: Greg Stevens

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 9166 Sunrise Dr.
Street

Largo, Fla. 33773
City *State* *Zip*

Phone: _____

E-mail: _____

Speaking: ☐ For ☐ Against ☒ Information

Representing: _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-19-13
Meeting Date

Topic: Relating to Youth in Confinement

Bill Number: SB 812 *(if applicable)*

Name: Will Kendrick

Amendment Barcode: *(if applicable)*

Job Title: Leg. Affairs Director

Address: 501 S. Calhoun St.
Street

Tallahassee FL 32399
City *State* *Zip*

Phone: 717-3030

E-mail: kendrick.will@mail.dc.state.fl.us

Speaking: ☐ For ☐ Against ☑ Information

Representing: Dept. of Corrections

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic _____ Bill Number 812 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☑ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

HUMAN RIGHTS WATCH

ACLU
AMERICAN CIVIL LIBERTIES UNION

Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

Summary

> Being in isolation to me felt like I was on an island all alone[,] dying a slow death from the inside out.
>
> —Letter from Kyle B. (pseudonym), from California to Human Rights Watch, May 3, 2012.

Every day, in jails and prisons across the United States, young people under the age of 18 are held in solitary confinement.[1] They spend 22 or more hours each day alone, usually in a small cell behind a solid steel door, completely isolated both physically and socially, often for days, weeks, or even months on end. Sometimes there is a window allowing natural light to enter or a view of the world outside cell walls. Sometimes it is possible to communicate by yelling to other inmates, with voices distorted, reverberating against concrete and metal. Occasionally, they get a book or bible, and if they are lucky, study materials. But inside this cramped space, few contours distinguish one hour, one day, week, or one month, from the next.

This bare social and physical existence makes many young people feel doomed and abandoned, or in some cases, suicidal, and can lead to serious physical and emotional consequences. Adolescents in solitary confinement describe cutting themselves with staples or razors, hallucinations, losing control of themselves, or losing touch with reality while isolated. They talk about only being allowed to exercise in small metal cages, alone, a few times a week; about being prevented from going to school or participating in any activity that promotes growth or change. Some say the hardest part is not being able to hug their mother or father.

The solitary confinement of adults can cause serious pain and suffering and can violate international human rights and US constitutional law. But the potential damage to young

[1] In the United States, and throughout the report, the term "jail" refers to a facility that generally holds individuals awaiting trial in the criminal justice system or sentenced to less than a year of incarceration; "prison" refers to a facility that generally holds individuals sentenced to one or more years of incarceration. This report uses various terms, including "youth," "teenagers," "children," "young people," and "adolescents," interchangeably to refer to youth under the age of 18. Throughout the report, the term "solitary confinement" is used to describe physical and social isolation for 22 to 24 hours per day and for one or more days, regardless of the purpose for which it is imposed. While solitary confinement is apparently used in juvenile facilities on occasion, this report focuses only on its use in adult jails and prisons.

people, who do not have the maturity of an adult and are at a particularly vulnerable, formative stage of life, is much greater.

Experts assert that young people are psychologically unable to handle solitary confinement with the resilience of an adult. And, because they are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate, or make more likely, short and long-term mental health problems. The most common deprivation that accompanies solitary confinement, denial of physical exercise, is physically harmful to adolescents' health and well-being.

Human Rights Watch and the American Civil Liberties Union estimate that in 2011, more than 95,000 youth were held in prisons and jails. A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or treat some of the young people who are held there. Solitary confinement of youth is, today, a serious and widespread problem in the United States.

This situation is a relatively recent development. It has only been in the last 30 years that a majority of jurisdictions around the country have adopted various charging and sentencing laws and practices that have resulted in substantial numbers of adolescents serving time in adult jails and prisons. These laws and policies have largely ignored the need to treat young people charged and sentenced as if adults with special consideration for their age, development, and rehabilitative potential.

Young people can be guilty of horrible crimes with significant consequences for victims, their families, and their communities. The state has a duty to ensure accountability for serious crimes, and to protect the public. But states also have special responsibilities not to treat young people in ways that can permanently harm their development and rehabilitation, regardless of their culpability.

This report describes the needless suffering and misery that solitary confinement frequently inflicts on young people; examines the justifications that state and prison officials offer for using solitary confinement; and offers alternatives to solitary confinement in the housing and management of adolescents. The report draws on in-person interviews and correspondence with more than 125 individuals who were held in jails or prisons while

under age 18 in 19 states, and with officials who manage jails or prisons in 10 states, as well as quantitative data and the advice of experts on the challenges of detaining and managing adolescents.

This report shows that the solitary confinement of adolescents in adult jails and prisons is not exceptional or transient. Specifically, the report finds that:

- Young people are subjected to solitary confinement in jails and prisons nationwide, and often for weeks and months.
- When subjected to solitary confinement, adolescents are frequently denied access to treatment, services, and programming adequate to meet their medical, psychological, developmental, social, and rehabilitative needs.
- Solitary confinement of young people often seriously harms their mental and physical health, as well as their development.
- Solitary confinement of adolescents is unnecessary. There are alternative ways to address the problems—whether disciplinary, administrative, protective, or medical—which officials typically cite as justifications for using solitary confinement, while taking into account the rights and special needs of adolescents.

Adult jails and prisons generally use solitary confinement in the same way for adolescents and adults. Young people are held in solitary confinement to punish them when they break the rules, such as those against talking back, possessing contraband, or fighting; they are held in solitary confinement to protect them from adults or from one another; they are held in solitary confinement because officials do not know how else to manage them; and sometimes, officials use solitary confinement to medically treat them.

There is no question that incarcerating teenagers who have been accused or found responsible for crimes can be extremely challenging. Adolescents can be defiant, and hurt themselves and others. Sometimes, facilities may need to use limited periods or forms of segregation and isolation to protect young people from other prisoners or themselves. But using solitary confinement harms young people in ways that are different, and more profound, than if they were adults.

Many adolescents reported being subjected to solitary confinement more than once while they were under age 18. Forty-nine individuals—more than a third—of the seventy-seven

interviewed and fifty with whom we corresponded described spending a total of between one and six months in solitary confinement before their eighteenth birthday.

Adolescents spoke eloquently about solitary confinement, and how it compounded the stresses of being in jail or prison—often for the first time—without family support. They talked about the disorientation of finding themselves, and feeling, doubly alone.

Many described struggling with one or more serious mental health problems during their time in solitary confinement and of sometimes having difficulty accessing psychological services or support to cope with these difficulties. Some young people, particularly those with mental disabilities (sometimes called psychosocial disabilities or mental illness, and usually associated with long-term mental health problems), struggled more than others. Several young people talked about attempting suicide when in isolation.

Adolescents in solitary confinement also experienced direct physical and developmental harm, a consequence of being denied physical exercise or adequate nutrition. Thirty-eight of those interviewed said they had experienced at least one period in solitary confinement when they could not go outside. A few talked about losing weight and going to bed hungry.

The report finds that young people in solitary confinement are deprived of contact with their families, access to education and to programming, and other services necessary for their growth, development, and rehabilitation. Twenty-one of the young people interviewed said they could not visit with loved ones during at least one period of solitary confinement. Twenty-five said they spent at least one period of time in solitary confinement during which they were not provided any educational programming at all. Sixteen described sitting alone in their cell for days on end without even a book or magazine to read.

But as a number of jail and prison officials recognize, solitary confinement is costly, ineffective, and harmful. There are other means to handle the challenges of detaining and managing adolescents. Young people can be better managed in specialized facilities, designed to house them, staffed with specially trained personnel, and organized to encourage positive behaviors. Punitive schemes can be reorganized to stress immediate and proportionate interventions and to strictly limit and regulate short-term isolation as a rare exception.

Solitary confinement of youth is itself a serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law. In addition, the conditions that compound the harm of solitary confinement (such as lack of psychological care, physical exercise, family contact, and education) often constitute independent, concurrent, and serious human rights violations. Solitary confinement cannot be squared with the special status of adolescents under US constitutional law regarding crime and punishment. While not unusual, it turns the detention of young people in adult jails and prisons into an experience of unquestionable cruelty.

It is time for the United States to abolish the solitary confinement of young people. State and federal lawmakers, as well as other appropriate officials, should immediately embark on a review of the laws, policies, and practices that result in young people being held in solitary confinement, with the goal of definitively ending this practice. Rather than being banished to grow up locked down in isolation, incarcerated adolescents must be treated with humanity and dignity and guaranteed the ability to grow, to be rehabilitated, and to reenter society.

Key Recommendations

To the US Federal Government and/or State Governments

- Prohibit the solitary confinement of youth under age 18.
- Prohibit the housing of adolescents with adults, or in jails and prisons designed to house adults.
- Strictly limit and regulate all forms of segregation and isolation of young people.
- Monitor and report on the segregation and isolation of adolescents.
- Ratify human rights treaties protecting young people without reservations.

STATE CASE STUDIES: FLORIDA

Youth in Adult Jails and Youth in Solitary Confinement

Pinellas County Sheriff's Office: ***"There are lights on but it is dark for me. It is like being sunk in a hole—it is a dark place—you know the jacket where your arms are tied and you are in a sponge room? That's how it feels.... What would you do if you were in a place by yourself? You wouldn't feel strange?"***

· Interview with Alyssa E. (pseudonym), April 2012, held in jail at age 16

Turner Guilford Knight Correctional Center: ***"The only thing left to do is go crazy—just sit and talk to the walls. A lot of people in here go on [suicide watch].... I catch myself [talking to the walls] every now and again. It's starting to become a habit because I have nothing else to do. Sometimes I go crazy and can't even control my anger anymore.... See, they say it's to make you better but really it didn't change me, it just gave me a worser [sic] attitude. I feel like I am alone, like no one cares about me. Sometimes I feel like, why am I even living?"***

· Interview with Henry R. (pseudonym), April 2012, held in jail at age 16

- **Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.**

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

Human Rights Watch and the American Civil Liberties Union have found that some Florida jails and prisons use solitary confinement to manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union corresponded with and interviewed 38 individuals who had been subjected to solitary confinement while under age 18 in jails in Bay, Citrus, Clay, Duval, Escambia, Highlands, Hillsboro, Jackson, Lee, Leon, Miami, Okaloosa, Okeechobee, Orange, Palm Beach, Pinellas, Polk, and St. Lucie Counties; and in a number of state prisons. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Alachua, Brevard, Broward, Charlotte, Collier, Franklin, Gadsen, Hamilton, Hernando, Lake, Levy, Manatee, Marion, Monroe, Osceola, Pasco, Putnam, Volusia, Walton, Sarasota, Seminole, St. Johns, and Wakulla Counties have reported detaining young people under age 18 in the last six years.[313] Human Right Watch also interviewed or corresponded with jail and prison officials in the state.

The Law and Policy Landscape

Florida law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.[314]

Florida Jails

By statute, young people under age 18 charged as if adults *must* be held in adult jails.[315] The state requires that young people held in adult jails be prevented from having sight and sound contact with adults and be held in a separate section of the jail.[316] A recent legal change, signed into law in 2011, also allows young people under age 18 *not* charged as if adults to be held in Florida jails, though few jails have yet to exercise this authority.[317] But

---

[313] Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

[314] Throughout the report, "solitary confinement" is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

[315] Fla. Stat. Ann. § 985.265.

[316] Fla. Stat. Ann. § 985.265.

[317] Florida law SB2112 on Juvenile Detention Facilities, effective July 1, 2011; David J. Utter, Southern Poverty Law Center, "One Florida County Wisely Says No to Putting Children in Adult Jails," May 8, 2012, http://www.splcenter.org/get-informed/news/one-florida-county-wisely-says-no-to-putting-children-in-adult-jails (accessed August 27, 2012).

there is no prohibition in state law against holding young people in solitary confinement in adult jails.[318]

In January 2012, Florida jails reported holding 579 young people under age 18 statewide.[319] Jail officials in Hernando, Pinellas, and St. Lucie counties reported that youth are subject to the same disciplinary rules as adults when confined in their facilities.[320] Officials in Duval county told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.[321] Such conditions constitute solitary confinement.

Florida Prisons

The Florida Department of Corrections (FL DOC) holds young people who have been convicted of criminal offenses and sentenced while under age 18. Youth and adults under age 21 who have been sentenced or designated as "youthful offenders" are detained in the youthful offender facilities (where young people and adults under age 19 are separated from older youthful offenders); some youth—including many of those sentenced for particularly serious offenses—are held in mainline prisons.[322] In fiscal year 2010-2011, the FL DOC reported holding 276 young people under age 18 (although 398 young people under age 18 were admitted to FL DOC custody) and 1,640 youthful offenders; the youngest was 14 years old and serving a sentence for robbery with a gun or deadly weapon.[323] There is no prohibition in state law or FL DOC policies or regulations against holding young people in solitary confinement in Florida prisons.

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[318] The various forms of solitary confinement are discussed in Section III of the report.

[319] Florida Department of Corrections, "Florida County Detention Facilities Average Inmate Population January 2012," January 2012, http://www.dc.state.fl.us/pub/jails/2012/01/FCDF.PDF (accessed August 27, 2012).

[320] Letter from Dan Carriveau, Classification Sergeant, Hernando County Detention Center, Florida, to Human Rights Watch, January 6, 2012; Letter from David Robinson, Lieutenant, Pinellas County Sheriff's Office, Florida, to Human Rights Watch, February 2, 2012; and Letter from F. Patrick Tighe, Major, St. Lucie County Jail, Florida, to Human Rights Watch, January 4, 2012.

[321] Human Rights Watch telephone interview with Daryl Tyus, Operations Lieutenant, Jackson County Correctional Facility, Florida, April 3, 2012.

[322] Florida Statutes Title 47, Ch. 958.04, 958.11; Human Rights Watch email correspondence with Ann Howard, Communications Director, Florida Department of Corrections, July 31, 2012.

[323] 2010-2011 Agency Annual Report, Florida Department of Corrections, "Inmate Population," http://www.dc.state.fl.us/pub/annual/1011/ar-im-population.html (accessed August 27, 2012); 2010-2011 Agency Annual Report, Florida Department of Corrections, "Inmate Admissions," http://www.dc.state.fl.us/pub/annual/1011/ar-im-admissions.html (accessed August 27, 2012); 2010-2011 Agency Annual Report, Florida Department of Corrections, "Youthful Offenders," http://www.dc.state.fl.us/pub/annual/1011/ar-additional-facts-youth.html (accessed August 27, 2012).

FL DOC officials reported that both youthful offenders and non-youthful offenders can be placed in confinement, including for disciplinary and other management purposes.[324] Inmates in FL DOC custody who are held in disciplinary confinement (DC) or administrative confinement (AC) are entitled out of their cell three times per week to take a shower and—but only after *thirty* days—an additional three hours per week to exercise.[325] Inmates in "Close Management, Level I" status (CM-1) are entitled out of their cell three times per week to take a shower and an additional six hours per week to exercise.[326] Conditions in AC, DC, and CM-1 constitute solitary confinement. FL DOC officials confirmed that there are no differences between the disciplinary rules for managing the behavior of young people under age 18 and those for managing the behavior of adults over age 18; that there are no age-specific limits on the use of close management, AC, or DC for young people under age 18; and that there are no restrictions on housing young people alone in AC, DC, or close management in DOC facilities.[327]

Research Findings

Florida Jails

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with four young people who reported being held in protective solitary confinement while in pre-trial detention in Florida jails. All of these young people reported spending three or more months in protective solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed 21 young people who reported being held in punitive solitary confinement while in pre-trial detention in Florida jails. Seven of those young people said they spent more than one period in punitive solitary confinement of 15 days at a time or longer. Fourteen young people reported being held in administrative solitary confinement, generally when accused of committing a disciplinary infraction, while in pre-trial detention in Florida jails. Five young people reported spending one or more period in medical solitary confinement, three of them after they attempted or spoke about having considered attempting suicide.

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[324] Human Rights Watch email correspondence with Ann Howard, July 31, 2012.

[325] Regulation 33-602.222, Florida Department of Corrections, " Disciplinary Confinement," https://www.flrules.org/gateway/ruleno.asp?id=33-602.222&Section=0 (accessed August 27, 2012), Sections 2(e) and 2(p); Regulation 33-602.220, Florida Department of Corrections, "Administrative Confinement," https://www.flrules.org/gateway/ruleno.asp?id=33-602.220&Section=0 (accessed August 27, 2012), Sections 5(e) and 5(p).

[326] Regulations 33-601.800, Florida Department of Corrections, "Close Management," https://www.flrules.org/gateway/ruleno.asp?id=33-601.800 (accessed August 27, 2012).

[327] Human Rights Watch email correspondence with Ann Howard, August 28, 2012.

Young people held in solitary confinement in Florida jails generally described being allowed out of their cell one hour each day, or for two hours, two or three times per week. Generally, young people were permitted to shower regularly and sometimes make phone calls to loved ones. Ten young people described spending a period of time in solitary confinement during which they were only allowed out of their cell for showers; seven reported being unable to call or visit with loved ones. Seven young people said they spent a period in solitary confinement during which they were unable to access any reading or writing materials in their cell. Four young people said they had attempted suicide while in solitary confinement.

Florida Prisons

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with six young people who reported being held in administrative solitary confinement while under age 18 in state prison in Florida. Three of those young people reported having spent three months or longer in administrative solitary confinement (in either CM-1 and AC status) while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed six young people who told us they were held in punitive solitary confinement while in Florida prisons. Human Rights Watch and the American Civil Liberties Union also interviewed seven young people who told us they spent time in DC with a cell-mate.[328]

Young people in solitary confinement in Florida prisons reported spending prolonged periods (sometimes longer than 30 days) without any out-of-cell exercise. Those who did get out-of-cell exercise described being able to exercise alone in a small fenced-in area. Young people reported being able to shower regularly, but not every day. Some young people under age 18 with intellectual disabilities reported receiving in-cell study packets; other young people under age 18 reported receiving no educational programming while in solitary confinement.

[328] This report does not address the practice of holding two individual in prolonged segregation but Human Rights Watch, mental health experts, and advocates have raised serious concerns about the practice.

SB 812

Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

Every day in jails and prisons across the United States, large numbers of young people under age 18 are held in solitary confinement. They spend 22 or more hours each day physically and socially isolated in a small cell, often for weeks or even months on end. Adolescents in solitary confinement are routinely denied access to needed treatment, services, and programming. The practice is serious and widespread.

The solitary confinement of adults can cause severe pain and suffering and can violate international human rights and US constitutional law. But the potential damage to young people, who do not have the maturity of an adult and are at a particularly vulnerable stage of life, is much greater. Yet, solitary confinement of young people is not necessary; there are alternative ways to address the problems that officials cite as justifications for using solitary confinement.

Human Rights Watch and the American Civil Liberties Union call on US federal and state governments to prohibit the solitary confinement of young people under age 18; prohibit the housing of adolescents with adults or in adult jails and prisons; strictly limit and regulate all forms of segregation and isolation; and monitor and report on the segregation and isolation of young people, whenever they are deprived of their liberty.

A cell at the Pinellas County jail, an adult facility where young people are held in solitary confinement. One girl interviewed for the report said she spent four months in isolation there.

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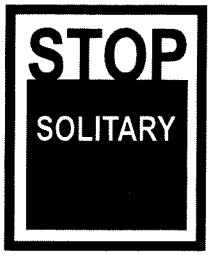
End the Solitary Confinement of Incarcerated Youth



THE UNITED STATES INCARCERATES CHILDREN IN PROLONGED SOLITARY CONFINEMENT

On any given day in the United States, thousands of youth under age 18 are confined in adult jails and prisons.[i] Not only are youth held in adult facilities, but they are also subjected to extended periods of solitary confinement. Without access to alternatives, jailors and corrections officials claim they need solitary confinement to separate youth from adults and to discipline them when they act out.[ii] Both protective and punitive isolation practices frequently involve placing youth alone in a cell for more than 22 hours a day; restricting contact with family members; limiting access to reading and writing materials; and providing limited, if any, educational programming, physical exercise, drug treatment, or mental health services.[iii] Before they are old enough to get a driver's license, enlist in the armed forces, or vote, children in America are held in solitary confinement for days, months—even years. The solitary confinement of youth is harmful and unnecessary.

SOLITARY CONFINEMENT HARMS INCARCERATED CHILDREN

Solitary confinement is well known to harm previously-healthy adults. Children, who have special developmental needs, are even more vulnerable to the harms of prolonged isolation.

- **Exacerbation of Mental Illness:** Youth in adult facilities often live with extreme fear, anxiety, confusion, and paranoia. There is a broad consensus among mental health experts that long-term solitary confinement is psychologically harmful for adults—especially those with pre-existing mental illness.[iv] And the impacts on children are even greater due to their unique developmental needs.[v] For children held in solitary confinement in adult jails this impact is especially dangerous due to the extremely high rate of untreated mental illness among incarcerated youth.[vi]

- **Increased Suicide Rates:** A serious and tragic consequence of the solitary confinement of youth is the increased risk of suicide and self-harm, including cutting and other acts of self-mutilation. In juvenile facilities more than 50% of all youth suicides in custody occur in isolation.[vii] For youth in adult jails the suicide rates are even higher. Suicides of youth in isolation occur nineteen times more often than in the general population; youth suicide rates are as much as thirty-six times higher in adult jail than in juvenile detention facilities.[viii]

- **Denial of Education and Rehabilitation:** Adult jails and prisons are ill-equipped to provide for the minimum educational, mental health, treatment, and nutritional requirements of youth.[xi] Failure to properly provide programming for youth hampers their ability to grow and develop normally, to prepare for trial, and to contribute to society upon their release.[x]

- **Stunted Development:** Young people's brains and bodies are still developing, placing youth at a higher risk of psychological harm when healthy development is impeded.[xi] Children experience time differently than adults, have a special need for social stimulation.[xii] And youth frequently enter the criminal justice system with histories of substance abuse, mental illness and childhood trauma, often untreated in isolation, which only exacerbates the harmful effects of solitary confinement.[xiii] Youth also need exercise and activity to support growing muscles and bones.[xiv]

THERE ARE BETTER SOLUTIONS FOR CHILDREN

Constitutional and international law provide special protections for children. International human rights law distinguishes between youth and adults—mandating that youth who commit crimes receive rehabilitative punishments appropriate to their age and status.[xv] The solitary confinement of youth is considered cruel, inhuman and degrading treatment and in some cases, torture.[xvi] Constitutional law also requires that youth and adults be treated differently regarding punishment.[xvii]

Alternatives to solitary confinement produce better results. National best-practices for managing youth in juvenile facilities uniformly propose strict limitations on the duration of and procedures for placing youth in isolation.[xviii] The negative effects of the prolonged isolation of youth, whether intended to protect or punish, far outweigh any purported benefits. Indeed, despite its pervasive use and documented harms to youth, prolonged isolation has no real positive outcome aside from physically and socially segregating the youth from the general population.[xix] There is no research to support use of prolonged isolation of children as a therapeutic tool or to promote positive behaviors. In fact, interactive treatment programs are more successful at reducing problem behavior and mental health problems in youth than isolation – which actually provokes and worsens these problems.[xx]

States are safely diverting youth from adult facilities. Adult jails and prisons are never the best place to house youth because they either face an extremely high risk of physical and sexual assault by adult inmates or staff, or suffer in solitary confinement which often leads to mental breakdown and sometimes to suicide. In either scenario, youth are denied critical rehabilitation programs and services in adult facilities. Faced with this reality, a growing number of states—including California, Virginia, Texas, Pennsylvania , and Colorado—have enacted legislation permitting detention in juvenile facilities for youth accused of an adult crime.[xxi]

As the nation's largest public interest law organization, with affiliate offices in every state and a legislative office in Washington D.C., the ACLU works daily in courts, legislatures, and communities to promote more effective criminal justice policies.

ENDNOTES

[i] The Bureau of Justice Statistics estimates the population at more than 7,500 at any given time – with some analysts suggesting that as many as 200,000 youth are charged as adult per year. See, U.S. Department of Justice, Bureau of Justice Statistics, "Jail Inmates at Midyear 2010 – Statistical Tables," April 2011, available at: http://bjs.ojp.usdoj.gov/content/pub/pdf/jim10st.pdf; U.S. Department of Justice, National Institute of Corrections, "You're an Adult Now," December 2011, available at: http://static.nicic.gov/Library/025555.pdf; Campaign for Youth Justice, "Jailing Juveniles," November 2007, available at: http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.

[ii] U.S. Department of Justice, National Institute of Corrections, "You're an Adult Now," December 2011, available at: http://static.nicic.gov/Library/025555.pdf; Testimony of Sheriff Gabriel Morgan, U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism and Homeland Security, February 2010, available at: http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg55066/pdf/CHRG-111hhrg55066.pdf; U.S. Department of Justice, Bureau of Justice Assistance, "Juveniles in Adult Prisons and Jails," October 2000, available at: https://www.ncjrs.gov/pdffiles1/bja/182503.pdf.

[iii] C.B. v. Walnut Grove Correctional Authority, Complaint, available at: http://www.aclu.org/files/assets/2010-11-16-WalnutGroveComplaint.pdf; Doe v. Montana, Complaint, available at: http://www.aclu.org/files/assets/2009-12-16-DoevMontana-Complaint.pdf; Chris Vogel, "For Their Own Good," Texas Observer, June 9, 2010, available at: http://www.texasobserver.org/mollyaward/columns/for-their-own-good; Campaign for Youth Justice, "Jailing Juveniles," November 2007, available at: http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf; Human Rights Watch, Letter to L.A. County Sheriff, June 2003, available at: http://hrw.org/press/2003/06/us062503-ltr.htm.

[iv] See, e.g., Stuart Grassian, Psychopathological Effects of Solitary Confinement, 140 AMERICAN JOURNAL OF PSYCHIATRY 1450 (1983); R. Korn, The Effects of Confinement in the High Security Unit at Lexington, 15 SOCIAL JUSTICE 8 (1988); S.L. Brodsky and F.R. Scogin, Inmates in Protective Custody: First Data on Emotional Effects, 1 FORENSIC REPORTS 267 (1988); Craig Haney, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, 49 CRIME & DELINQUENCY 124 (2003); H. Miller and G. Young, supra note 16; H. TOCH, Mosaic of Despair: Human Breakdown in Prison, Washington DC: American Psychological Association (1992).

[v] Policy Statement on Solitary Confinement of Juvenile Offenders, American Association of Child & Adolescent Psychologists, 2012, available at: http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; S. Simkins, M. Beyer, and L. Geis, The Harmful Use of Isolation in Juvenile Facilities: the Need for Post-Disposition Representation, 38 WASH. U.J.L. & POL'Y 241, 257-61 (2012).

[vi] LINDSAY M. HAYES, NAT'L CTR. ON INSTS. AND ALTS., JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY 3-4 (2004).

[vii] Margaret Noonan and E. Ann Carson, U.S. Department of Justice, Bureau of Justice Statistics, "Prison and Jail deaths in Custody, 2000-2009 - Statistical Tables," December 2011 available at: http://bjs.ojp.usdoj.gov/content/pub/pdf/pjdc0009st.pdf; Lindsay Hayes, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Juvenile Suicide in Confinement," February 2009, available at: http://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf; S. Fazel, J. Cartwright, et al., "Suicide in Prisoners: A systematic review of Risk Factors," J. Clin. Psychiatry 69 (2008); Christopher Muola, U.S. Department of Justice, Bureau of Justice Statistics, "Suicide and Homicide in State Prisons and Local Jails," August 2005, available at: http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf;

[viii] CAMPAIGN FOR YOUTH JUSTICE, supra note 7, at 10.

[ix] Testimony of Peg Ackerman, County Sheriffs of Colorado, Colorado State House Judiciary Committee, February 2012, available at: http://podcache-101.granicus.com/pstore1/coloradoga/coloradoga_d0c9ed72-c055-4de2-8a9a-730e8104df44.mp4; Physical Activity Guidelines Advisory Committee. Physical Activity Guidelines Advisory Committee Report, U.S. Department of Health and Human Services, 2008, available at: http://www.health.gov/PAguidelines/Report/pdf/CommitteeReport.pdf; U.S. Department of Agriculture and Department of Health and Human Services, "Dietary Guidelines for Americans," 2010, available at: http://www.cnpp.usda.gov/Publications/DietaryGuidelines/2010/PolicyDoc/PolicyDoc.pdf; Individuals with Disabilities Education Act, 20 U.S.C. 1400 (2004), available at: http://idea.ed.gov/download/statute.html; David E. Arredondo, "Principles of Child Development and Juvenile Justice Information for Decision-Makers," 5 J. Center for Families, Child & Courts 127, 2004.

[x] Task force on Community Preventive Services, U.S. Centers for Disease Control, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," November 2007, available at: http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf; Barry Holman and Jason Ziedenberg, Justice Policy Institute, "The Dangers of Detention," 2006, available at: http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

[xi] Laurence Steinberg, "Cognitive and affective development in adolescence," 2 Trends in Cognitive Science 9, February 2005, available at: http://www.temple.edu/psychology/lds/documents/CognitiveandAffectiveDEvelopmentTICS.pdf; Jay N. Giedd, "Structural Magnetic Resonance Imaging of the Adolescent Brain," Annals of the New York Academy of Science, vol. 1021 (2004), available at: http://intramural.nimh.nih.gov/research/pubs/giedd05.pdf.

[xii] Laurence Steinberg et al, "Age Differences in Future Orientation and Delay Discounting," 80 Child Development 28, February 2009, available at: http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADF0.pdf; Jennifer Woolard et al, "Juveniles in Adult Correctional Settings: Legal Pathways and Developmental Considerations," 4 International Journal of Forensic Mental Health 1, 2005, available at: http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf; Deborah Laible et al, "The Differential relations of Parent and Peer Attachment to Adolescent Adjustment," 29 Journal of Youth and Adolescence 45, February 2000, available at: http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1050&context=psychfacpub; David E. Arredondo, "Principles of Child Development and Juvenile Justice Information for Decision-Makers," 5 J. Center for Families, Child & Courts 127, 2004.

[xiii] Washburn et al, "Psychiatric disorders among detained youths: a comparison of youths processed in juvenile court and adult criminal court," 59 Psychiatric Services 965 September 2008, available at: ; Patricia Kerig et al, "Posttraumatic Stress as a Mediator of the Relationship Between Trauma and Mental Health Problems Among Juvenile Delinquents," 38 Journal of Youth Adolescence 1214, September 2008, available at: http://www.psych.utah.edu/people/people/kerig/pub/PosttraumaticStressasaMediator.pdf; Linda Teplin et al, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Psychiatric Disorders of Youth in Detention," April 2006, available at: https://www.ncjrs.gov/pdffiles1/ojjdp/210331.pdf; Lindsay Hayes, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Juvenile Suicide in Confinement," February 2009, available at: http://www.ncjrs.gov/pdffiles1/ojjdp/213691.pdf.

[xiv] Centers for Disease Control and Prevention, "How much physical activity do children need?," available at: http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html; US Department of Health and Human Services, "Physical Activity Guidelines for Americans," available at: http://www.health.gov/paguidelines/factsheetprof.aspx.

[xv] ICCPR, art. 10, 14(4); CRC; art. 3(1), 37, 40(3)-(4).

[xvi] UN General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, Juan Mendez, A/66/268, para. 77.

[xvii] See, e.g., Graham v. Florida, 130 S.Ct. 2011 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

[xviii] See, e.g., American Correctional Association, Standards for Juvenile Detention Facilities, 3d ed. (Latham, Maryland: ACA, 1991), p. 67 (5 days); Juvenile Detention Alternatives Initiative, Juvenile Detention Alternatives Initiative Facility Site Assessment Instrument, 2003 (72 hours); American Bar Association Task Force on Youth in the Criminal Justice System, Youth in the Criminal Justice System, 2001, citing IJA-ABA Juvenile Justice Standards Relating to Corrections Administration (1980) (10 days).

[xix] See, e.g., Finke, Linda M., RN, PhD, "Use of Seclusion is not Evidence-Based Practice," Journal of Child and Adolescent Psychiatric Nursing, Oct.-Dec. 2001, available at http://www.findarticles.com/p/articles/mi_qa3892/is_200110/ai_n8993463/print. Remarks of Steven H. Rosenbaum, Chief, Special Litigation Section, before the Fourteenth Annual National Juvenile Corrections and Detention Forum, May 16, 1999, available at http://www.usdoj.gov/crt/split/documents/juvspeech.htm.

[xx] S. Simkins, M. Beyer, and L. Geis, The Harmful Use of Isolation in Juvenile Facilities: the Need for Post-Disposition Representation, 38 WASH. U.J.L. & POL'Y 241, 257-58 (2012).

[xxi] Cal Welf. & Inst. Code § 207.1 and § 208 (West 2006); Virginia S.B. 259 (2010); Pennsylvania S.B. 1169 (2010); Texas S.B. 1209 (2011); Colorado H.B. 12-1139 (2012).

Statement of Lisa Jobe on Behalf of SB 812
Florida Senate Committee on Criminal Justice

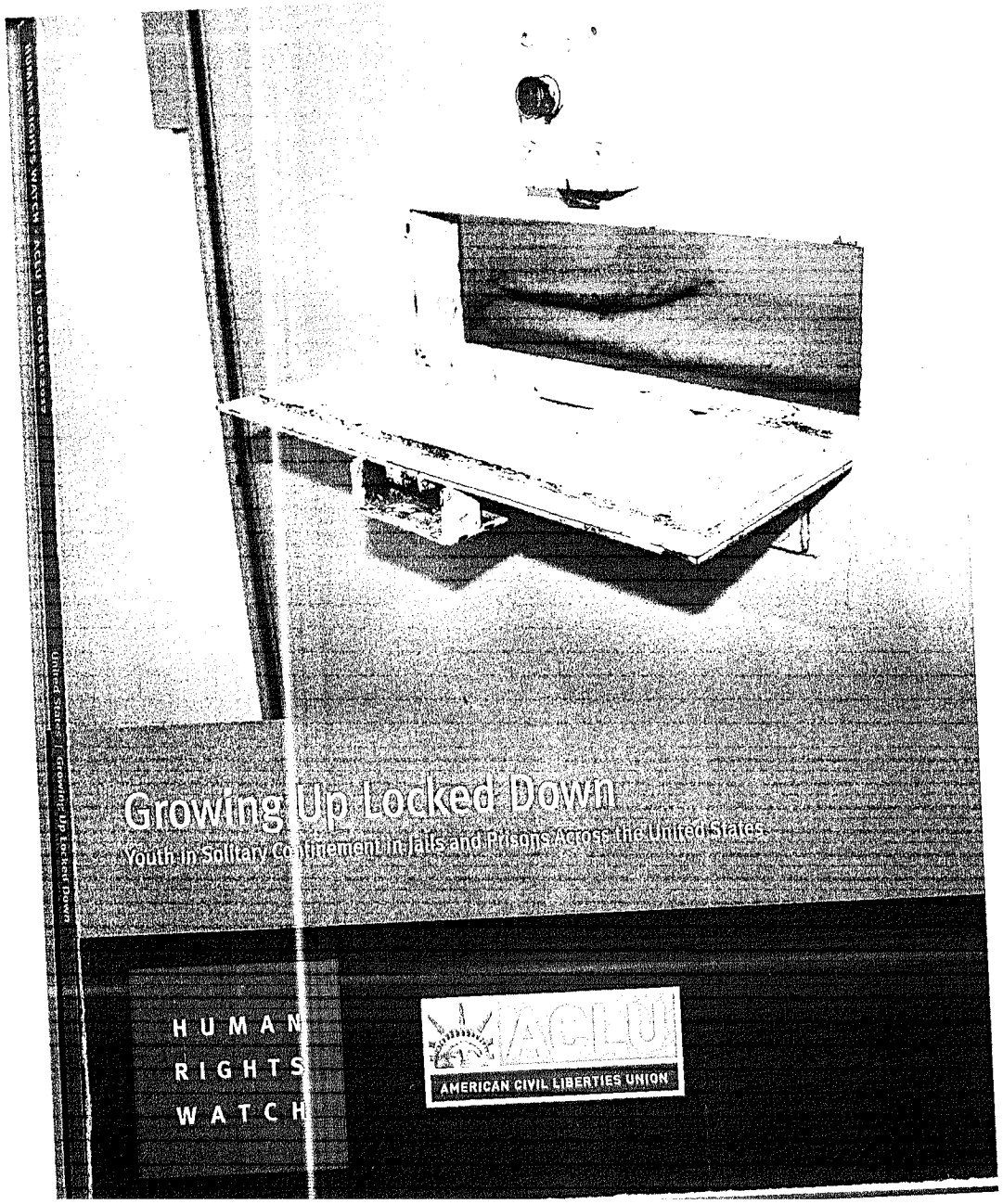
My name is Lisa Jobe and I am here to support this good bill. I speak today on behalf of my son and Protect Our Lost Kids, a group of parents, family and community whose children have been held in the Polk County Jail. Anyone who has ever had a child knows that their safety and well-being becomes the most important thing in your life. As a parent of a child held in an adult jail, I can tell you that my child's safety and well-being was not protected at the Polk County Jail.

There are two reasons why this committee should support SB 812. First, as I have learned through my son's experience at the Polk County Jail, an adult jail is not an appropriate place for a child. In order to save money, Sheriff Judd does not provide adequate programming or place sufficient numbers of staff at the jail to monitor youth to ensure their safety. As a result, children are left locked up and idle, leading to fights, which when detected, cause staff to use harsh chemical restraints and isolation against youth. The priority in this system is saving money, not the safety of the youth and their rehabilitation and development.

Second, the effect of solitary isolation on children and teens is devastating. As everyone in this room knows, kids need social interaction. They also have seemingly boundless energy, and locking them in a cell for hours at a time with little human contact and no exercise has incredibly damaging consequences on their physical and psychological health, especially when they are already dealing with the stress of being away from their families and loved ones. Children held in isolation report being terribly afraid, becoming agitated and even hearing voices.

and he said it was because I was fighting; he then closed the door in my face. No one ever told me how long I would be there. It seemed like I was there for more than two days. I was mad that I had to be in there again . . . I felt like I was going crazy at times, I kept hitting my head on the wall because I wanted to come out so bad. I couldn't even see out of the cell. All I saw was a wall and I had no windows. . . . I do not think people should be treated this way."

Please protect our youth, please support SB 812.



ACLU
AMERICAN CIVIL LIBERTIES UNION

HUMAN RIGHTS WATCH

Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

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Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

The American Civil Liberties Union is one of the foremost guardians of liberty, working in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution guarantees everyone in the United States. The ACLU has worked for more than 90 years to defend the rights of people regardless of their race, gender or sexual orientation. These rights include free speech, equal protection under the law and the right to due process. The ACLU tackles a vast array of issues including national security, criminal justice reform, reproductive freedom, separation of church and state, racial justice, rights for LGBT people, voting rights, and ending the death penalty.

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Growing Up Locked Down

Youth in Solitary Confinement in Jails and Prisons Across the United States

Summary 1

Key Recommendations 6

Methodology 7

I. Background: Kids in an Adult System 11

II. How Solitary Confinement Harms Youth 20
- Psychological Harm 23
  - Trying to Cope 25
  - Anxiety, Rage, and Insomnia 26
  - Cutting and Self-Harm 29
  - Suicidal Thoughts and Attempts: "The death-oriented side of life" 30
  - Struggling with Mental Disabilities and Past Trauma 32
  - Barriers to Accessing Care 35
- Physical Harm 37
  - Lack of Adequate Exercise 37
  - Physical Changes and Stunted Growth 39
- Social and Developmental Harm 41
  - Denial of Family Contact 41
  - Denial of Adequate Education 42
  - Struggling with Intellectual Disabilities 44
  - Failure to Provide for Rehabilitation or Social Development 46

III. Youth in Solitary Confinement in Adult Facilities: Corrections Practices, Numbers, and Duration 48
- Solitary Confinement to Punish Inmates 48
- Solitary Confinement to Manage Inmates 53
  - Protective Solitary Confinement 53
  - Administrative Solitary Confinement 57
- Solitary Confinement to Treat Inmates 60
  - Quarantine 62
  - Seclusion and SAMHSA 62
- Rates of Solitary Confinement 63
- Length of Time Spent in Solitary Confinement 65

IV. Violations of Fundamental Rights 70
International Law and Standards 70
Human Rights Violations 76
US Law 78
V. Alternatives to the Solitary Confinement of Youth 81
Getting Kids Out of Adult Facilities 81
Reviewing and Reforming 82
Borrowing from Juvenile Facilities 86
Limited Appropriate Uses of Segregation and Isolation 88
Recommendations 91
Acknowledgments 99
Appendix 1: Mapping Youth in Adult Jails and Prisons 101
Appendix 2: State Case Studies 112

Summary

> Being in isolation to me felt like I was on an island all alone[,] dying a slow death from the inside out.
>
> —Letter from Kyle B. (pseudonym), from California to Human Rights Watch, May 3, 2012.

Every day, in jails and prisons across the United States, young people under the age of 18 are held in solitary confinement.[1] They spend 22 or more hours each day alone, usually in a small cell behind a solid steel door, completely isolated both physically and socially, often for days, weeks, or even months on end. Sometimes there is a window allowing natural light to enter or a view of the world outside cell walls. Sometimes it is possible to communicate by yelling to other inmates, with voices distorted, reverberating against concrete and metal. Occasionally, they get a book or bible, and if they are lucky, study materials. But inside this cramped space, few contours distinguish one hour, one day, week, or one month, from the next.

This bare social and physical existence makes many young people feel doomed and abandoned, or in some cases, suicidal, and can lead to serious physical and emotional consequences. Adolescents in solitary confinement describe cutting themselves with staples or razors, hallucinations, losing control of themselves, or losing touch with reality while isolated. They talk about only being allowed to exercise in small metal cages, alone, a few times a week; about being prevented from going to school or participating in any activity that promotes growth or change. Some say the hardest part is not being able to hug their mother or father.

The solitary confinement of adults can cause serious pain and suffering and can violate international human rights and US constitutional law. But the potential damage to young

[1] In the United States, and throughout the report, the term "jail" refers to a facility that generally holds individuals awaiting trial in the criminal justice system or sentenced to less than a year of incarceration; "prison" refers to a facility that generally holds individuals sentenced to one or more years of incarceration. This report uses various terms, including "youth," "teenagers," "children," "young people," and "adolescents," interchangeably to refer to youth under the age of 18. Throughout the report, the term "solitary confinement" is used to describe physical and social isolation for 22 to 24 hours per day and for one or more days, regardless of the purpose for which it is imposed. While solitary confinement is apparently used in juvenile facilities on occasion, this report focuses only on its use in adult jails and prisons.

people, who do not have the maturity of an adult and are at a particularly vulnerable, formative stage of life, is much greater.

Experts assert that young people are psychologically unable to handle solitary confinement with the resilience of an adult. And, because they are still developing, traumatic experiences like solitary confinement may have a profound effect on their chance to rehabilitate and grow. Solitary confinement can exacerbate, or make more likely, short and long-term mental health problems. The most common deprivation that accompanies solitary confinement, denial of physical exercise, is physically harmful to adolescents' health and well-being.

Human Rights Watch and the American Civil Liberties Union estimate that in 2011, more than 95,000 youth were held in prisons and jails. A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or treat some of the young people who are held there. Solitary confinement of youth is, today, a serious and widespread problem in the United States.

This situation is a relatively recent development. It has only been in the last 30 years that a majority of jurisdictions around the country have adopted various charging and sentencing laws and practices that have resulted in substantial numbers of adolescents serving time in adult jails and prisons. These laws and policies have largely ignored the need to treat young people charged and sentenced as if adults with special consideration for their age, development, and rehabilitative potential.

Young people can be guilty of horrible crimes with significant consequences for victims, their families, and their communities. The state has a duty to ensure accountability for serious crimes, and to protect the public. But states also have special responsibilities not to treat young people in ways that can permanently harm their development and rehabilitation, regardless of their culpability.

This report describes the needless suffering and misery that solitary confinement frequently inflicts on young people; examines the justifications that state and prison officials offer for using solitary confinement; and offers alternatives to solitary confinement in the housing and management of adolescents. The report draws on in-person interviews and correspondence with more than 125 individuals who were held in jails or prisons while

under age 18 in 19 states, and with officials who manage jails or prisons in 10 states, as well as quantitative data and the advice of experts on the challenges of detaining and managing adolescents.

This report shows that the solitary confinement of adolescents in adult jails and prisons is not exceptional or transient. Specifically, the report finds that:

- Young people are subjected to solitary confinement in jails and prisons nationwide, and often for weeks and months.
- When subjected to solitary confinement, adolescents are frequently denied access to treatment, services, and programming adequate to meet their medical, psychological, developmental, social, and rehabilitative needs.
- Solitary confinement of young people often seriously harms their mental and physical health, as well as their development.
- Solitary confinement of adolescents is unnecessary. There are alternative ways to address the problems—whether disciplinary, administrative, protective, or medical—which officials typically cite as justifications for using solitary confinement, while taking into account the rights and special needs of adolescents.

Adult jails and prisons generally use solitary confinement in the same way for adolescents and adults. Young people are held in solitary confinement to punish them when they break the rules, such as those against talking back, possessing contraband, or fighting; they are held in solitary confinement to protect them from adults or from one another; they are held in solitary confinement because officials do not know how else to manage them; and sometimes, officials use solitary confinement to medically treat them.

There is no question that incarcerating teenagers who have been accused or found responsible for crimes can be extremely challenging. Adolescents can be defiant, and hurt themselves and others. Sometimes, facilities may need to use limited periods or forms of segregation and isolation to protect young people from other prisoners or themselves. But using solitary confinement harms young people in ways that are different, and more profound, than if they were adults.

Many adolescents reported being subjected to solitary confinement more than once while they were under age 18. Forty-nine individuals—more than a third—of the seventy-seven

interviewed and fifty with whom we corresponded described spending a total of between one and six months in solitary confinement before their eighteenth birthday.

Adolescents spoke eloquently about solitary confinement, and how it compounded the stresses of being in jail or prison—often for the first time—without family support. They talked about the disorientation of finding themselves, and feeling, doubly alone.

Many described struggling with one or more serious mental health problems during their time in solitary confinement and of sometimes having difficulty accessing psychological services or support to cope with these difficulties. Some young people, particularly those with mental disabilities (sometimes called psychosocial disabilities or mental illness, and usually associated with long-term mental health problems), struggled more than others. Several young people talked about attempting suicide when in isolation.

Adolescents in solitary confinement also experienced direct physical and developmental harm, a consequence of being denied physical exercise or adequate nutrition. Thirty-eight of those interviewed said they had experienced at least one period in solitary confinement when they could not go outside. A few talked about losing weight and going to bed hungry.

The report finds that young people in solitary confinement are deprived of contact with their families, access to education and to programming, and other services necessary for their growth, development, and rehabilitation. Twenty-one of the young people interviewed said they could not visit with loved ones during at least one period of solitary confinement. Twenty-five said they spent at least one period of time in solitary confinement during which they were not provided any educational programming at all. Sixteen described sitting alone in their cell for days on end without even a book or magazine to read.

But as a number of jail and prison officials recognize, solitary confinement is costly, ineffective, and harmful. There are other means to handle the challenges of detaining and managing adolescents. Young people can be better managed in specialized facilities, designed to house them, staffed with specially trained personnel, and organized to encourage positive behaviors. Punitive schemes can be reorganized to stress immediate and proportionate interventions and to strictly limit and regulate short-term isolation as a rare exception.

Solitary confinement of youth is itself a serious human rights violation and can constitute cruel, inhuman, or degrading treatment under international human rights law. In addition, the conditions that compound the harm of solitary confinement (such as lack of psychological care, physical exercise, family contact, and education) often constitute independent, concurrent, and serious human rights violations. Solitary confinement cannot be squared with the special status of adolescents under US constitutional law regarding crime and punishment. While not unusual, it turns the detention of young people in adult jails and prisons into an experience of unquestionable cruelty.

It is time for the United States to abolish the solitary confinement of young people. State and federal lawmakers, as well as other appropriate officials, should immediately embark on a review of the laws, policies, and practices that result in young people being held in solitary confinement, with the goal of definitively ending this practice. Rather than being banished to grow up locked down in isolation, incarcerated adolescents must be treated with humanity and dignity and guaranteed the ability to grow, to be rehabilitated, and to reenter society.

Key Recommendations

To the US Federal Government and/or State Governments

- Prohibit the solitary confinement of youth under age 18.
- Prohibit the housing of adolescents with adults, or in jails and prisons designed to house adults.
- Strictly limit and regulate all forms of segregation and isolation of young people.
- Monitor and report on the segregation and isolation of adolescents.
- Ratify human rights treaties protecting young people without reservations.

Methodology

This report is the product of a joint initiative—the Aryeh Neier fellowship—between Human Rights Watch and the American Civil Liberties Union to strengthen respect for human rights in the United States.

This report is based on interviews and correspondence undertaken between December 2011 and July 2012 with 127 individuals who were detained in jail or prison while under age 18 in Alabama, California, Colorado, Connecticut, Florida, Illinois, Kansas, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Ohio, Pennsylvania, South Carolina, Texas, Utah, Wisconsin, and Virginia. Of those, Human Rights Watch and the American Civil Liberties Union interviewed in person 77 individuals who, collectively, had been held at more than 50 jails and prisons in Colorado, Florida, Michigan, New York and Pennsylvania while under age 18. Of these, 66 were male and 11 were female; 57 of them were between 18 and 25 years old at the time of the interviews; 20 were under age 18. Of the 50 with whom Human Rights Watch corresponded, all were male; 24 were between the ages of 18 and 25, and 10 were under age 18.

In selecting jurisdictions for focused research, Human Rights Watch and the American Civil Liberties Union prioritized states that consistently report holding youth under age 18 in adult jails and prisons, and charging young people as if they are adults. Human Rights Watch and the American Civil Liberties Union identified individuals who had been subjected to solitary confinement in those jurisdictions through outreach to family members; contact with defense attorneys and advocacy networks; and through an advertisement in Prison Legal News (which has broad circulation in jails and in prisons). Human Rights Watch and the American Civil Liberties Union also identified some individuals by writing to or seeking to interview all adolescents under age 18 at a particular facility or within a particular Department of Rehabilitation or Correction; all young people convicted of certain offenses likely to be associated with isolation (such as battery by a prisoner, assault on a corrections officer, or throwing or expelling bodily fluids at or towards a public safety worker); or young people serving particularly long sentences, such as life without parole.

Human Rights Watch and the American Civil Liberties Union were not able to conduct interviews in every state that confines adolescents in adult jails and prisons, nor in every county in the states visited. Human Rights Watch and the American Civil Liberties Union did not seek individual administrative, disciplinary, or medical records for most individuals interviewed.

All individuals interviewed about their experience provided informed consent to participate in this research. Interviews in jails and prisons were conducted in private, with no jail or prison staff within earshot; interviews outside of jails and prisons were also conducted in private. For some of the interviews, the Human Rights Watch/American Civil Liberties Union researcher in charge of the project was accompanied by an attorney (including sometimes the individual's defense attorney), social worker, or NGO partner whose presence as an observer was explained to the interviewee. When accompanied by others, the Human Rights Watch/American Civil Liberties Union researcher led the questioning, using substantially the same semi-structured questionnaire for all interviews with those who had been held in jail or prison. The researcher repeatedly assured interviewees that they could end the interview at any time or decline to answer any and all questions. Also, the researcher gave no incentives to interviewees and took great care to avoid re-traumatizing them. One individual declined to be interviewed, and one individual refused to allow his or her testimony to be used for this research.

Some interviewees asked that their names be used in this report so they could more directly participate in bringing attention to their personal experience. But due to concerns over the safety of the many interviewees who did not want their identity disclosed, Human Rights Watch and the American Civil Liberties Union decided to use pseudonyms to disguise the identity of all interviewees who were held in jail or in prison, and of individuals whose cases Human Rights Watch and the American Civil Liberties Union learned of through attorneys or family members. In most cases, Human Rights Watch has also withheld certain other identifying information to protect an individual's privacy and safety.

Human Rights Watch sent surveys regarding the challenges of detaining and managing youth and the use of isolation to more than 590 county jail facilities and received responses from or interviewed, collectively, more than 98 county jail officials in Colorado, Florida, Kentucky, Massachusetts, Michigan, New York, Ohio, Oregon, Pennsylvania, and

Wisconsin. Human Rights Watch also interviewed or corresponded with state prison officials in Colorado, Florida, Michigan, New York, Ohio, Pennsylvania, and Wisconsin.

The Ohio Department of Rehabilitation and Correction refused Human Rights Watch's request to interview young people under their care due to the department's "long-standing practice not to provide media access to [the department's] incarcerated juveniles" and because "there [were] legal concerns about whether the juveniles can consent to interviews."[2] It also refused to allow us to privately interview inmates who had entered its care while under age 18 who were now adults, stating that it would only allow interviews of inmates who were screened "to determine if they are eligible and appropriate for participation" if "the Public Information Officer at [each] facility [were] to be present during th[ose] interviews."[3] Following our standard research methodology in situations of confinement, we declined to submit to official monitoring or selection of interviews.

The Wisconsin Department of Corrections also denied Human Rights Watch's request to interview individuals in their care. It cited concerns that interviewing young people identified through defense counsel and public records, "may introduce bias" in the results; that, if the intent was to obtain information about county facilities, interviews should be conducted "when the subject is in a county jail facility"; that the department would not permit questioning about experiences in county facilities without "written approval from the respective Jail Administration or Sheriff"; and that it would not permit interviews without prior approval of questions to be asked (about prolonged isolation) and any other "information necessary to take into account possible issues that could lead to any possible negative effects that the interview may have on the subject's mental health status."[4]

Human Rights Watch interviewed officials at the US Department of Justice and state officials charged with collecting data and monitoring compliance with federal law, such as the Juvenile Justice and Delinquency Prevention Act.

Finally, Human Rights Watch and the American Civil Liberties Union interviewed dozens (and had background discussions with scores) of third parties with relevant expertise or

[2] Human Rights Watch email correspondence with the Ohio Department of Rehabilitation and Corrections, January 10, 2012.
[3] Human Rights Watch email correspondence with the Ohio Department of Rehabilitation and Corrections, March 9, 2012.
[4] Human Rights Watch email correspondence with the Wisconsin Department of Corrections, March 5, 2012.

experience dealing with the consequences of the solitary confinement of adolescents, including prisoner's family members; victims of crime and their family members; attorneys; as well as medical, corrections, educational, and psychological experts.

This report, especially Appendix 1, contains substantial statistical data. Most of the descriptive statistics utilized in this report were extracted from three Bureau of Justice Statistics (BJS) data sources: the annual Prisoners in [Year] reports; the annual Jail Inmates at Midyear reports; and the raw Survey of Jails data files, which are used to generate the Jail Inmates at Midyear report. Further information on the statistical methodology used may be found in Appendix 1.

I. Background: Kids in an Adult System

> [C]hildren are constitutionally different from adults ... [J]uveniles have diminished culpability and greater prospects for reform ... [and] are less deserving of the most severe punishments ... [C]hildren have a lack of maturity and an underdeveloped sense of responsibility[;] ... [c]hildren are more vulnerable . . . to negative influences and outside pressures[;] ... [a]nd ... a child's character is not as well formed as an adult's.
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> —Miller v. Alabama, *United States Supreme Court*, 2012 (No. 10 - 9646, slip op. at 8 (2012)).

For much of the last century, people under the age of 18 who came into conflict with the law in the United States were detained (when necessary), tried or adjudicated, and held accountable in the juvenile justice system. In rare cases, and if in the best interests of the child and the public, juvenile court judges could waive a delinquency case into the adult criminal justice system. But this was far from common.[5]

Though they have since declined, in the late 1980s and through the mid-1990s, rates of some categories of juvenile crime, particularly serious violent crime, increased significantly.[6] Concern about this development led to a proliferation of new legal mechanisms for subjecting children to criminal trial and punishment as if they were adults.[7] The stated goal of most of these policies was deterrence through retributive punishment: "adult time for adult crime."[8]

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[5] Even when youth crime rates were at their highest, in the early 1990s, judicial waiver never exceeded 2 percent of all delinquency cases. United States General Accounting Office, "Juvenile Justice: Juveniles Processed in Criminal Court and Case Dispositions," August 1995, http://www.gao.gov/assets/230/221507.pdf (accessed June 7, 2012), p. 10. It is also important to note that for many years, some advocates actually pushed to have some youth in conflict with the law tried in the adult system to ensure the availability of constitutional protections that were unavailable in juvenile court.

[6] Many commentators warned against the rise of the so-called "'super-predator" youth. John DiIulio, *How to Stop the Coming Crime Wave* (New York: Manhattan Institute, 1996), p. 1. The analysis of data on crime rates is complicated. See, for example, James P. Lynch, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Trends in Juvenile Violent Offending: An Analysis of Victim Survey Data," October 2002, https://www.ncjrs.gov/pdffiles1/ojjdp/191052.pdf (accessed June 7, 2012).

[7] For more information about the variety of mechanisms to try youth, see Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, 1999 National Report Series, "Challenging the Myths," https://www.ncjrs.gov/pdffiles1/ojjdp/178993.pdf (accessed June 7, 2012).

[8] "P.A. Legislature: House to Weigh Bill on Violence," *The Vindicator*, October 24, 1995. In the summer of 1993, for example, Colorado legislators wrote, debated, and passed a broad overhaul of criminal laws in just 10 days during an extraordinary session, and radically transformed the state's criminal justice system as it related to youth. This was dubbed the "summer of violence." "Young Guns: Growing Number of States Get Tough," Associated Press, October 21, 1993; "Summer of Violence

As a result, each year tens of thousands of adolescents are now treated as adults. How young people come to be charged, detained, and punished as adults, however, is a function of a complex thicket of state and federal law and policy. There is no single approach within or among states. Yet the consequences for young people treated the same as adults are profound.

Youth Charged as if Adults

Nationally, young people held in adult facilities are charged and convicted of offenses ranging from drug and property crimes to the most serious violent crimes. The most common mechanisms for imposing "adult time for adult crime" include offense-based exclusion from the juvenile justice system, prosecutorial "direct-file" of youth cases in the adult system, and "once an adult always an adult" laws.[9] For many young people, entering the adult criminal justice system is a path of no return, as not all states have mechanisms to transfer or waive jurisdiction *back* to the juvenile system, or to impose a blended sentence of punishments in both the juvenile and adult systems.[10] Yet some evidence suggests that many adolescents charged as if adults are not actually sentenced to time in prison.[11]

Leaves Denver Demanding Answers," Associated Press, July 29, 1993. Wisconsin and New Hampshire lowered the upper age of juvenile court jurisdiction, deeming adulthood to begin at 17, not 18, for purposes of criminal prosecution. Patricia Torbet et al., Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Juveniles Facing Criminal Sanctions: Three States that Changed the Rules," April 2000, https://www.ncjrs.gov/pdffiles1/ojjdp/181203.pdf (accessed June 7, 2012), pp. xi-xii. By 1997, all states but three (Nebraska, New York, and Vermont) had changed their laws to make it easier and more likely that child offenders would stand trial and be sentenced in adult criminal courts. Howard N. Snyder and Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Juvenile Offenders and Victims: 1999 National Report," September 1999, http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html (accessed June 7, 2012), p. 15.

[9] Patrick Griffin et al., Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Trying Juveniles As Adults: An Analysis of State Transfer Laws and Reporting," September 2011, https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf (accessed June 7, 2012). Offense-based exclusion laws subject youth to the original jurisdiction of the adult criminal justice system on the basis of the charged offense (sometimes but not always with an additional age minimum). For example, Pennsylvania charges all homicide cases in adult criminal court, regardless of the age of the offender. Prosecutorial direct-file laws usually give charging officials the (sometimes unlimited) discretion to decide whether to file charges in juvenile court or in adult court (sometimes with age restrictions). Colorado recently raised the age minimum for direct-file eligible offenses (such as homicide) from 14 to 16, but other states, such as Florida, have no minimum age for a broad range of offenses. Finally, in some states, like Florida, once a youth has been convicted of an offense in adult criminal court, all subsequent offenses (even minor ones) are treated as if committed by an adult; for many offenses over which the juvenile court retains original jurisdiction, states have reduced the discretion of judges to prevent the case from being transferred to adult court.

[10] Pennsylvania just created an avenue to transfer youth back to the juvenile justice system; Michigan allows "blended" sentencing of youth.

[11] Campaign for Youth Justice, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," November 2007, http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf (accessed August 27, 2012), pp. 20-21.

Many of the young people interviewed for this report were accused, tried, or convicted for serious crimes, even homicide. Human Rights Watch and the American Civil Liberties Union interviewed more than a dozen young people serving life without parole for murder or felony murder.[17] But Human Rights Watch and the American Civil Liberties Union also interviewed young people arrested, tried, or convicted of non-violent offenses, drug, and property crimes. For example, of the 26 young people interviewed in Florida prisons, five were convicted of non-violent offenses, such as burglary or drug possession.[18]

Yet, regardless of their conduct, it is well established that adolescents have a potential for development and rehabilitation that is distinct from that of adults. In addition, adolescents deprived of their

Racial and socioeconomic disparities are pervasive within the criminal justice system. As Human Rights Watch has documented, in California, Connecticut, and Pennsylvania, black adolescents are significantly more likely to be serving a sentence of life without parole than white adolescents.[12] Other studies have found that minority adolescents receive harsher treatment than similarly-situated white adolescents at every stage of the criminal justice system.[13] Within the juvenile and adult criminal justice systems, young people of color are disproportionately represented at every stage, from arrest to sentencing.[14]

People with scant financial means are also often unable to afford bail, and as a result end up spending lengthy periods in pre-trial detention.[15] Consequently, economically disadvantaged adolescents, including those who are never convicted, can endure substantial adult jail time. These racial and socioeconomic disparities are interconnected: in New York City in 2010, blacks and Hispanics constituted 89 percent of all pretrial detainees held on bail of $1,000 or less.[16]

[12] Human Rights Watch and Amnesty International, *The Rest of Their Lives*, p.5.

[13] Alex R. Piquero, "Disproportionate Minority Contact," *The Future of Children*, vol. 18, no.2 (2008), p. 66, citing National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System* (Oakland: National Council on Crime and Delinquency, 2007); Neelum Arya and Ian Augarten, Campaign for Youth Justice, "Critical Condition: African-American Youth in the Justice System," September 2008, http://www.campaignforyouthjustice.org/documents/CFYJP8_CriticalCondition.pdf (accessed August 27, 2012).

[14] Piquero, "Disproportionate Minority Contact," *The Future of Children*, p. 62, citing National Council on Crime and Delinquency, *And Justice for Some: Differential Treatment of Youth of Color in the Justice System*.

[15] Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, December 3, 2010, http://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf, p. 20.

[16] Ibid., p. 48.

[17] As Human Rights Watch has documented elsewhere, some youth convicted of felony murder serving life without parole played a minor role in the crime. Indeed, in some jurisdictions, as many as half of youth offenders serving life without parole were convicted without having physically committed the underlying offense. See Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, October 12, 2005, http://www.hrw.org/reports/2005/10/11/rest-their-lives-0, pp. 27-28.

[18] A total list of crimes of conviction for these five youth (some of whom were convicted of a combination of these offenses) include burglary, grand theft, property damage/criminal mischief, attempted armed burglary, drug possession, and possession of a concealed weapon.

liberty have significant developmental needs and rights that are distinct from those of adults.

Youth Are Different

The cornerstone principle of the juvenile justice system in the United States is the idea that young people are different from adults. This is a reflection of psychological and physiological facts about how adolescents and their needs grow and change, as they become adults; it is also a principle of international and domestic law. The juvenile justice system seeks to rehabilitate young people and facilitate their development so that they may be reintegrated into society. The adult criminal justice system, with its focus on punishment, does not unequivocally prioritize rehabilitation, though the law of some states and international human rights law mandate it.[19]

Young people have needs that differ in nature and degree from those of adults because they are still developing physically and psychologically. These include specific physical needs for exercise and a balanced diet; as well as special psychological, social, and emotional needs. "As a transitional period," reports one study, "adolescence is marked by rapid and dramatic [individual] change in the realms of biology, cognition, emotion, and interpersonal relationships and by equally impressive transformations in the major contexts in which children spend time."[20]

[19] Human Rights Watch has documented the broad failure of adult jails and prisons (as well as shortcomings in the US juvenile justice system) to care for youth and other vulnerable populations, such as the elderly or persons with mental or intellectual disabilities. For examples see: Human Rights Watch, *No Minor Matter: Children in Maryland's Jails*, November 1, 1999, http://www.hrw.org/legacy/reports/1999/maryland/; Human Rights Watch and American Civil Liberties Union, *Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls*, September 25, 2006, http://www.hrw.org/sites/default/files/reports/us0906webwcover.pdf; Human Rights Watch, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, October 11, 2005, http://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf; Human Rights Watch, *No Escape: Male Rape in U.S. Prisons*, April 1, 2001, http://www.hrw.org/legacy/reports/2001/prison/report.html; Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*, January 28, 2012, http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf; Human Rights Watch and American Civil Liberties Union, *Deportation By Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, July 25, 2010, http://www.hrw.org/sites/default/files/reports/usdeportation0710webwcover_1_0.pdf; Human Rights Watch, *Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States*, January 4, 2012, http://www.hrw.org/sites/default/files/reports/us0112ForUpload_1.pdf.

[20] Laurence Steinberg et al., "The Study of Developmental Psychopathology in Adolescence: Integrating Affective Neuroscience with the Study of Context," in Dante Cicchetti and Donald Cohen, eds., *Developmental Psychopathology* (Oxford: John Wiley & Sons, 2006), p. 710.

Physiological Differences and Needs

During adolescence, the body changes significantly, including through the development of secondary sexual characteristics. Boys and girls gain height, weight, and muscle mass, as well as pubic and body hair; girls develop breasts and begin menstrual periods, and boys' genitals grow and their voices change.[21] The American Academy of Pediatrics therefore recommends a spectrum of age-differentiated examinations and assessments for adolescents related to physical, dental, and vision care.[22] This includes developmental screenings (and health care needs) that differ from early, middle, to late adolescence.[23]

Psychological Differences: Impulsivity, Capacity for Change, and Developmental Needs

Recent scientific findings revealing that the human brain goes through dramatic structural growth during teen years have overturned earlier assumptions regarding the completion of brain development at early adolescence.[24] These findings have significant implications for our understanding of teenagers' volition and culpability, their capacity to change and develop, and their psychological needs.

The most dramatic difference between the brains of teens and young adults is the development of the frontal lobe.[25] The frontal lobe is responsible for cognitive processing, such as planning, strategizing, and organizing thoughts and actions. Researchers have determined that one area of the frontal lobe, the dorsolateral prefrontal cortex, is among the last brain regions to mature, not reaching adult dimensions until a person is in his or her twenties.[26] This part of the brain is linked to "the ability to inhibit impulses, weigh

[21] Sedra Spano, Research Facts and Findings, ACT for Youth Upstate Center for Excellence, "Stages of Adolescent Development," 2004, http://www.actforyouth.net/resources/rf/rf_stages_0504.pdf (accessed August 27, 2012); National Institutes of Health, Medline Plus, "Adolescent Development," http://www.nlm.nih.gov/medlineplus/ency/article/002003.htm (accessed August 27, 2012).

[22] American Academy of Pediatrics, "Recommendations for Preventive Pediatric Care," 2000, http://pediatrics.aappublications.org/content/105/3/645.full.pdf+html (accessed August 27, 2012). The Academy also has issued a detailed set of guidelines for addressing physical and mental health in the context of detention in juvenile facilities. American Academy of Pediatrics, Policy Statement, "Healthcare for Youth in the Juvenile Justice System," 2011, http://pediatrics.aappublications.org/content/128/6/1219.full.pdf+html (accessed August 27, 2012).

[23] American Academy of Pediatrics, "Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents," 2008, http://brightfutures.aap.org/pdfs/Guidelines_PDF/1-BF-Introduction.pdf (accessed August 27, 2012).

[24] National Institute of Mental Health, National Institutes of Health, "Teenage Brain: A Work in Progress," 2001, http://wwwapps.nimh.nih.gov/health/publications/teenage-brain-a-work-in-progress.shtml (accessed November 25, 2007).

[25] Steinberg et al., "The Study of Development Psychopathology in Adolescence," p. 710.

[26] Jay N. Giedd, "Structural Magnetic Resonance Imaging of the Adolescent Brain," *Annals of the New York Academy of Science*, vol. 1021 (2004), p. 83.

consequences of decisions, prioritize, and strategize."[27] As a result, teens' decision-making processes are shaped by impulsivity, immaturity, and an under-developed ability to appreciate consequences and resist environmental pressures.

The malleability of an adolescents' brain development implies that teens through their twenties may be particularly amenable to change and rehabilitation as they grow older and attain adult levels of development.[28] This malleability also raises questions about the effects of stress and trauma on adolescent development during this formative period.

As detailed in section II, the particular physical and psychological characteristics of adolescents make solitary confinement particularly detrimental to healthy development and rehabilitation.

Adult Detention Regimes

In the United States, many of those accused or convicted of criminal offenses are held in jails or prisons. Prisons generally hold only those convicted of crimes and sentenced to more than a year of incarceration. Based on the available data, Human Rights Watch and the American Civil Liberties Union estimate that in the last 5 years, more than 93,000 young people under age 18 were held in adult jails and that more than 2,200 young people under age 18 were held in adult prisons every year (see Appendix 1 for detailed information and additional numbers). While some young people turn 18 before they enter prison, others are not sentenced to spend time in prison, making the high numbers of young people held in jail particularly alarming.[29]

State Law and Practice - Jails

Once charged in the adult criminal justice system, adolescents in many states are taken to adult jails.[30] Some states, such as Wisconsin, mandate that all individuals charged in criminal court be detained in adult jail pre-trial.[31] Once detained in adult facilities, some

[27] Ibid.

[28] Steinberg et al., "The Study of Development Psychopathology in Adolescence," p. 710.

[29] Campaign for Youth Justice, "Jailing Juveniles," pp. 20-21.

[30] Ibid.

[31] Wis. Stat. Ann. § 938.18(8) ("When waiver is granted, the juvenile, if held in secure custody, shall be transferred to an appropriate officer or adult facility"); 938.183(1m) (providing for the detention in adult facilities of youth subject to original

states require that young people under 18 be kept separate from adults in pre-trial facilities (often mandating separation by "sight and sound").[32] Other states leave it to individual facilities to sort out how and whether young people need to be protected. Some facilities separate young people of certain ages from adults. In some jails in Michigan (where 17 year olds are considered adults in the criminal justice system), for example, 16 year olds are generally separated from adults while 17 year olds are held with adults.[33]

Federal law—the Juvenile Justice and Delinquency Prevention Act (JJDPA)—creates financial incentives for states to treat young people differently from adults, including by diverting young people subject to the jurisdiction of the juvenile justice system (and certain categories of misdemeanants) from adult facilities.[34] Adolescents who are protected by the federal law must either never be held in adult facilities (in the case of status offenders[35]) or be moved from adult facilities within 6 hours (and must be sight and sound separated from adult inmates while there).[36] However, this law is not currently interpreted to cover adolescents who are charged with felonies in the adult system, leaving youth protected only by state law.[37]

State Law and Practice - Prisons

In most states, young people who are convicted as if adults and sentenced to more than a year of incarceration are then sent to prison.[38] Some state prison systems have special "youthful offender" facilities that serve some proportion of the youth admitted to prison

criminal jurisdiction); 938.209(3). But see Wis. Stat. Ann. § 938.183(1m) ("If the juvenile is under 15 years of age, the juvenile may be held in secure custody only in a juvenile detention facility or in the juvenile section of a county jail.").

[32] Michigan's Code of Criminal Procedure, Mich. Comp. Laws Ann. § 764.27a(3); Ohio's Revised Code, Rev. Code Ann. § 2152.26(f)(1).

[33] Mich. Comp. Laws Ann. § 764.27a(3); Human Rights Watch telephone interview with Ann Russell, Corrections Administrator, Oakland County, Michigan, March 23, 2012; Human Rights Watch telephone interview with Michelle M. Sanborn, Jail Administrator, Macomb County, Michigan, March 9, 2012.

[34] Juvenile Justice and Delinquency Prevention Act, 42 USC 5633(a)(11).

[35] Status offenses are those that are based solely on a person's age at the time of certain conduct, such as a curfew violation.

[36] Human Rights Watch email correspondence with Elissa Rumsey, Compliance Coordinator, US Department of Justice Office of Juvenile Justice and Delinquency Prevention, June 28, 2012; Substantive Requirements, Code of Federal Regulations, 28 CFR 31.303(d)(1)(i).

[37] Human Rights Watch email correspondence with Elissa Rumsey, June 28, 2012; Definitions, US Code, 42 USC 5602 (26) ("the term 'adult inmate' means an individual who (A) has reached the age of full criminal responsibility under applicable State law; and (B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal charge offense").

[38] As noted above, in most states those sentenced to less than one year of incarceration often serve out their sentences in jails.

who are under a certain age (such as under the age of 22 in Pennsylvania).[39] In some states, such as Florida, judges and corrections officials can designate young people as "youthful offenders" for the purposes of admission to these specialized programs; in other states, young people convicted of some serious offenses are sometimes excluded from eligibility.[40] In some states, a portion of young people under age 18 in the prison system are held in the general adult population.

In some states, adult criminal courts have the authority to blend the sentences of young people convicted of crimes such that they begin their sentence in the state system designed to house juveniles, but can be transferred into adult prison in certain circumstances. The federal government, by contrast, makes arrangements to hold all adolescents post-conviction in facilities overseen by the relevant juvenile justice system.[41]

Risks and Harm to Youth in Adult Facilities

Doing time in jails and prisons is hard for anyone. Jails and prisons are often tense and overcrowded facilities in which all prisoners struggle to maintain their self-respect and emotional equilibrium in the face of violence, exploitation, extortion, and lack of privacy; stark limitations on family and community contacts; and few opportunities for meaningful education, work, or other productive activities. But doing time in jail or prison is particularly difficult for young people, who often constitute a very small proportion of the population.

Adult jails and prisons that house adolescents face significant obstacles to keeping adolescents safe and ensuring that they receive developmentally appropriate services—even the limited services that some states mandate by law—when using staff trained and facilities designed to manage adults. Jail and prison recreation yards are designed for adults; doctors and mental health professionals are rarely specialized to treat children. The lack of age-appropriate services and facilities is further compounded by the limited availability of education or rehabilitative programming available in jails and prisons.

[39] Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pine Grove, Pennsylvania, June 21, 2012.

[40] Youthful Offenders, Florida Statute, Title 47, Ch. 958. 03-04, http://www.flsenate.gov/Laws/Statutes/2012/Chapter958/All (accessed August 27, 2012).

[41] Federal Bureau of Prisons, "Statement of Work, Contract Secure Juvenile Facility," amended February 2004, revised July 2011, http://www.bop.gov/locations/cc/SOW_Secure_Juvie.pdf (accessed August 27, 2012).

Young people held in the same facility as adults face a very high risk of physical or sexual abuse.[42] Studies suggest that adolescents who enter adult prison while they are still below the age of 18 are "five times more likely to be sexually assaulted, twice as likely to be beaten by staff and fifty percent more likely to be attacked with a weapon than minors in juvenile facilities."[43] Some have argued that the increased exposure of young people to violence in adult facilities may increase the likelihood that they will exhibit violent behavior upon release.[44] While causation is difficult to establish, some data suggests that recidivism rates are significantly higher when young people are held with adults. A report published by the Centers for Disease Control found that "[a]vailable evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth."[45]

[42] In 2005, for example, youth under the age of 18 made up less than 1 percent of all inmates in US jails, yet comprised 21 percent of all victims of substantiated incidents of sexual abuse involving inmates. National Prison Rape Elimination Commission, "National Prison Rape Elimination Commission Report," June 2009, https://www.ncjrs.gov/pdffiles1/226680.pdf (accessed August 27, 2012), p. 42, citing Howard N. Snyder and Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, *Juvenile offenders and victims: 2006 National report* (Washington, D.C.: US Department of Justice, Office of Justice Programs, 2006) and Allen J. Beck and Paige M. Harrison, Bureau of Justice Statistics, US Department of Justice, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09," August 2010, http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf (accessed August 27, 2012). Youth under 20 experience the highest rates of sexual abuse by staff of any prison age demographic, and the highest rates of sexual abuse by other inmates of any jail age demographic. Beck and Harrison, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-2009"; In contrast, approximately 2.6 percent of youth in juvenile facilities reported a sexual incident involving another youth, while 10.3 percent reported an incident involving facility staff. Allen J. Beck, Paige M. Harrison and Paul Guerino, Bureau of Justice Statistics, US Department of Justice, "Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-2009," January 2010, http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf (accessed August 27, 2012), p. 1 (analyzing statistics gathered by the Bureau of Justice Statistics).

[43] Jeffrey Fagan, Martin Forst, and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile and Family Court*, vol. 40 (1989), p. 9. See also Jason Ziedenberg and Vincent Schiraldi, "The Risks Juveniles Face When They Are Incarcerated with Adults," Justice Policy Institute, July 1997, http://www.justicepolicy.org/images/upload/97-02_REP_RiskJuvenilesFace_JJ.pdf (accessed August 27, 2012).

[44] Fagan, Forst, and Vivona, "Youth in Prisons and Training Schools," *Juvenile and Family Court*, p. 10.

[45] Robert Hahn et al., Centers for Disease Control, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services," vol. 56, no. RR-9, November 30, 2007, http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm (accessed August 27, 2012).

II. How Solitary Confinement Harms Youth

Jails and prisons across the United States commonly respond to prison or inmate management challenges by segregating individuals from the general population, often through prolonged physical and social isolation, for hours, days, weeks, or even years. Isolation for 22 hours per day or more, and for one or more days, fits the generally accepted definition of solitary confinement, and this term is used throughout this report.[46]

Solitary confinement is not a practice that jails and prisons restrict to adults; the solitary confinement of young people is not exceptional or transient. On the contrary, it is a serious and widespread problem.

Jail or prison officials frequently subject young people to solitary confinement to achieve one of three goals: to punish young people (this is often called disciplinary segregation); to manage them, either because their classification is deemed to require isolation (often called administrative segregation) or because they are considered particularly vulnerable to abuse (often called protective custody); or to treat inmates, such as after a threatened or attempted suicide (this is often called seclusion).

The conditions that inmates experience in solitary confinement vary little between different forms of segregation, and from county to county, prison to prison, or state to state.[47] The different forms of solitary confinement are discussed in more detail in section III.

[46] UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement (accessed August 27, 2012). Jail and prison officials do not generally use the term "solitary confinement" to refer to the range of segregation and isolation practices they employ to manage inmates. They are correct in noting that conditions are not exactly like those used in the earliest facilities to employ the practice. But because the conditions and effects of various segregation practices are substantially the same, Human Rights Watch and the American Civil Liberties Union use a single definition based on the degree of deprivation. At the same time, this report's focus on solitary confinement should not be read to endorse segregation and isolation practices that do not fit this definition. Any use of physical and social isolation, including if it is for a shorter duration, can raise serious human rights concerns. The same is true for the practice of holding two inmates in conditions that would otherwise constitute solitary confinement (Human Rights Watch and mental health professionals have raised serious concerns about this practice). Similarly, this report's focus on youth under age 18 should not be read to minimize the developmental differences between, for example, an 18 or a 24 year old and a 40 year old, and the corresponding vulnerability to solitary confinement.

[47] Solitary confinement in general has a long history, and Human Rights Watch has done extensive research on the isolated—and solitary—confinement of adults. See, for example: Written Statement from Human Rights Watch to the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights, "US: Look Critically at Widespread Use of

While outside of the scope of this report, public and press reporting suggests facilities in the juvenile justice system also use a range of segregation and isolation practices to detain and manage adolescents, including solitary confinement.[48] Segregation and isolation practices in juvenile facilities are sometimes divided between short-term, immediate sanctions to interrupt what officials deem to be juveniles' "acting out" behavior and longer-term, administrative or disciplinary isolation. All best practice standards for juvenile facilities propose maximum limits on various forms of isolation that are far below the durations of solitary confinement experienced by young people in adult jails and prisons interviewed by Human Rights Watch and the American Civil Liberties Union.[49]

Yet lengthy solitary confinement still occurs in juvenile facilities. An audit of one California Division of Juvenile Justice facility, completed in 2011, found that of 93 young people placed in restricted housing, 16 were held for a total of 78 days, during which they were only provided an average of 74 out-of-room minutes each day.[50] The segregation and isolation of young people in juvenile facilities, particularly when it constitutes solitary confinement, also raises serious human rights concerns.[51]

Solitary Confinement," June 2012, http://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement. The earliest form of solitary confinement involved complete isolation, including hooding prisoners, so that during their incarceration inmates never saw (and rarely heard) another human being. Stuart Grassian, "Psychiatric Effects of Solitary Confinement," *Journal of Law and Policy*, vol. 22 (2006), p. 340. Such complete isolation fell out of favor as a jail or prison management technique for many decades, but a range of similar practices are now used worldwide. Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, August 5, 2011.

[48] A detailed description of the use of isolation in juvenile facilities can also be found in Sandra Simkins et al., "The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation," *Washington University Journal of Law and Policy*, vol. 38 (2012), http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp (accessed September 26, 2012).

[49] The Juvenile Detention Alternatives Initiative suggests that best practices for juvenile facilities include prohibiting room confinement as a response to current acting out behavior in excess of four hours and prohibiting disciplinary room confinement in excess of 72 hours. "Juvenile Detention Alternatives Initiative (JDAI) Facility Site Assessment Instrument," May 2006, http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf (accessed August 27, 2012). The American Bar Association Task Force on Youth in the Adult Criminal Justice System proposed that room confinement for any purpose should never exceed ten days. American Bar Association (ABA), *Youth in the Criminal Justice System: Guidelines for Policy Makers and Practitioners* (American Bar Association, 2001), http://www.campaignforyouthjustice.org/documents/natlres/ABA%20-%20Youth%20in%20the%20Criminal%20Justice%20System%20Guidelines%20for%20Policymakers.pdf (accessed August 27, 2012). The 1980 American Bar Association Guidelines for Juvenile Facilities suggests that best practices for juvenile facilities should include limiting room confinement for suicide risk or protective custody to eight hours; and limiting disciplinary confinement to five days for minor infractions and ten days for major infractions.

[50] California Department of Corrections and Rehabilitation: Office of Audits and Court Compliance, "Review of Identified Concerns: Ventura Youth Correctional Facility," March 2011, https://s3.amazonaws.com/s3.documentcloud.org/documents/203430/djj-audit.pdf (accessed August 27, 2012), p. 5.

[51] Human Rights Watch and the American Civil Liberties Union, *Custody and Control*, pp. 105 - 113.

Young people repeatedly described their experience in solitary confinement in the most haunting of terms, as in the case of one young woman in Michigan:

> I think [the cell] would ... look like any other cell. You know, a box. There was a bed—the slab. It was concrete.... There was a stainless steel toilet/sink combo.... The door was solid, without a food slot or window.... It looked like a basement because all I could see was brick walls. There was no window at all ... I couldn't see a clock ... the only way I really associated any kind of time—I broke down time: morning, afternoon, evening. I broke it down: breakfast, lunch, and dinner.... [I felt] doomed, like I was being banished ... like you have the plague or that you are the worst thing on earth. Like you are set apart [from] everything else. I guess [I wanted to] feel like I was part of the human race—not like some animal.[52]

Another, in Florida, said,

> The only thing left to do is go crazy—just sit and talk to the walls.... I catch myself [talking to the walls] every now and again. It's starting to become a habit because I have nothing else to do. I can't read a book. I work out and try to make the best of it. But there is no best. Sometimes I go crazy and can't even control my anger anymore.... I can't even get [out of solitary confinement] early if I do better, so it is frustrating and I just lose it. Screaming, throwing stuff around.... I feel like I am alone, like no one cares about me—sometimes I feel like, why am I even living?[53]

Solitary confinement, and many of the deprivations that are typically associated with it, has a distinct and particularly profound impact on young people, often doing serious damage to their development and psychological and physical well-being. Because of the special vulnerability and needs of adolescents, solitary confinement can be a particularly cruel and harmful practice when applied to them.

[52] Human Rights Watch interview with Molly J. (pseudonym), Michigan, March 2012.

[53] Human Rights Watch interview with Henry R. (pseudonym), Florida, April 2012.

While subjected to solitary confinement, young people reported to Human Rights Watch and the American Civil Liberties Union that they were deprived of a significant level of access to: physical and mental health care services; recreation or physical exercise; education, reading, or writing materials; visits, calls, correspondence, or contact with family members and loved ones; and other rehabilitative and developmentally-appropriate programming. Young people reported very similar experiences regardless of the purpose for which solitary confinement was imposed.

Psychological Harm

The use of solitary confinement risks causing or exacerbating mental disabilities or other serious mental health problems in adolescents.[54]

Studies have found that numerous adults who have no history of mental health problems develop psychological symptoms in solitary confinement.[55] While many of those studies are open to questions about the mental health status of individuals before entering solitary confinement, there is agreement that solitary confinement can cause or exacerbate mental health problems.[56]

[54] Mental health problems refers to a broad spectrum of mental, behavioral, or emotional symptoms described by youth, including both youth with and without identified mental disabilities, as well as experiences and symptoms that may be due to psychological immaturity.

[55] Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency*, vol. 49, no.1 (2003), pp. 124-156; Holly A. Miller and Glenn R. Young, "Prison Segregation: Administrative Detention Remedy orMental Health Problem?" *Criminal Behaviour and Mental Health*, vol. 7, no. 1 (1997), p. 85; Hans Toch, *Mosaic of Despair: Human Breakdown in Prison* (Washington DC: American Psychological Association, 1992); Richard Korn, "The Effects of Confinement in the High Security Unit at Lexington," *Social Justice*, vol. 15, no. 1 (1988), p. 8; Stanley L. Brodsky and Forrest R. Scogin, "Inmates in Protective Custody: First Data on Emotional Effects," *Forensic Reports*, vol. 1, no. 4 (1988), p. 267; Stuart Grassian, "Psychopathological Effects of Solitary Confinement," *American Journal of Psychiatry*, vol. 140 (1983), p. 1450.

[56] The results of and debate regarding a one-year longitudinal study in Colorado suggest the complexities inherent in measuring and understanding the psychological effects of solitary confinement. Maureen L. O'Keefe et al., Colorado Department of Corrections, "One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," October 31, 2010, https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf (accessed August 27, 2012); Peter Scharff Smith, National Institute of Corrections, "The effects of solitary confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," June 2011, www.community.nicic.gov/cfs-filesystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax-_2D00_-T-_2500_-Smith.pdf (accessed August 27, 2012). In addition to increased mental health problems generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. In California, for example, although less than 10 percent of the state's prison population was held in isolation units in 2004, those units accounted for 73 percent of all suicides. Expert Report of Professor Craig Haney at 45-46, n. 119, *Coleman v. Schwarzenegger/ Plata v. Schwarzenegger*, Eastern Federal District Court of California/Northern Federal District Court of California, 2008 (Civ S 90-0520 LKK-JFM P, C01-1351 THE (E.D. Cal/N.D. Cal. 2008)).

Human Rights Watch and the American Civil Liberties Union are not aware of any studies that look specifically at the effects of prolonged solitary confinement on adolescents. But many experts on child and adolescent psychology said that prolonged isolation, including in conditions as restrictive as solitary confinement, can cause or exacerbate mental disabilities or other serious mental health problems.[57]

Solitary confinement is stressful.[58] It "engender[s] significant levels of anxiety and discomfort."[59] And young people have fewer psychological resources than adults do to help them manage the stress, anxiety and discomfort they experience in solitary confinement.[60] For many adolescents in prison, developmental immaturity is compounded by mental disabilities and histories of trauma, abuse, and neglect. These factors, though experienced differently by different individuals, can exacerbate the mental health effects of solitary confinement.

Many of the young people interviewed spoke in harrowing detail about struggling with one or more of a range of serious mental health problems during their time in solitary. They talked about thoughts of suicide and self-harm; visual and auditory hallucinations; feelings of depression; acute anxiety; shifting sleep patterns; nightmares and traumatic memories; and uncontrollable anger or rage. Some young people, particularly those who reported having been identified as having a mental disability before entering solitary confinement, struggled more than others. Fifteen young people described cutting or harming themselves or thinking about or attempting suicide one or more times while in solitary confinement.

[57] Human Rights Watch telephone interviews with Louis Kraus, Chief of Child and Adolescent Psychiatry, Rush University Medical Center, and Co-Chair of the American Academy of Child and Adolescent Psychiatry Committee on Juvenile Justice Reform, June 14, 2012; with Richard Barnum, forensic child psychiatrist, May 30, 2012; and with Deborah DePrato, Director, Institute for Public Health and Justice, Louisiana State University Health Sciences Center, and Associate Clinical Professor, School of Public Health, June 6, 2012.

[58] Congressional Quarterly, "Senate Judiciary Subcommittee on Constitution, Civil Rights, and Human Rights Holds Hearing on Reassessing Solitary Confinement," June 19, 2012, http://solitarywatch.files.wordpress.com/2012/06/transcript-of-the-hearing.pdf (accessed August 27, 2012), panel 1, transcript ("We would say that individuals placed in restricted housing, I would say the stress level is obviously higher.").

[59] Human Rights Watch telephone interview with Louis Kraus, June 14, 2012.

[60] Human Rights Watch telephone interview with Deborah DePrato, June 6, 2012.

Not all young people reported experiencing significant mental health problems in solitary confinement. However, these accounts vividly portray the psychological pain and suffering that can be brought on by time in solitary confinement.

Trying to Cope

Many young people described wishing they could mentally escape from solitary confinement, and using a variety of mechanisms to dissociate from their experience. Some developed imaginary friends; some used make-believe or other imaginings to dissociate.

Alyssa E. spent four months in protective solitary confinement when she was sixteen. She said,

> It may sound weird but I had a friend in there that I would talk to. She wasn't there, but it was my mind. And I would talk to her and she would respond.... She [would tell] positive things to me. It was me, my mind, I knew, but it was telling me positive things.... It was a strange experience.[61]

Carter P., who entered prison at 14, described using make-believe and games to help himself through the first of many times he was held in punitive solitary confinement:

> I felt like I was going mad. Nothing but a wall to stare at. This was my tenth wall to stare at in my detention. I started to see pictures in the little bumps in the walls. Eventually, I said the hell with it and started acting insane. [I] made little characters with my hands and acted out [video] games I used to play on the out[side]—Dragon Ball Z, Sonic, Zelda—stuff like that. The [corrections officers] would stare at me—looking at me like I'm crazy.... I started talking to myself and answering myself. Talking gibberish. I even made my own language—[corrections officers] didn't know what I was talking about.[62]

[61] Human Rights Watch Interview with Alyssa E. (pseudonym), Florida, April 2012.

[62] Human Rights Watch interview with Carter P. (pseudonym), Michigan, March 2012.

Another common strategy to escape solitary confinement was sleep. Jordan E., who reported spending nearly a year in protective solitary confinement when he was 15, described his focus on trying to sleep:

> I daydreamed, I slept a bunch. That's how I would handle 20, 18 hours a day. If I wasn't sleeping, I was in bed trying to sleep. Get up, eat, back to bed—lay there and lay there, trying to sleep.[63]

In spite of their best efforts, many felt that in the struggle to cope with solitary confinement, they faced a losing battle with themselves. As Marvin Q., who spent a week in protective solitary confinement when he was 17, described it,

> I wish I had better words—I was really, really lonely.... I [would] try to put covers on my head—make ... like it's not there. Try to dissociate myself ... I don't think they should do that to a juvenile. It's impossible for any person to cope with anything like that. I couldn't help myself.[64]

Anxiety, Rage, and Insomnia

Young people described a variety of mental health problems associated with their solitary confinement. Some said they had their first anxiety attack in solitary confinement; others said they lost themselves to an uncontrollable rage. Several had trouble sleeping. For some, these problems were all experienced simultaneously. Phillip J., who spent approximately 113 days in solitary confinement (including a single period of 60 days) before his eighteenth birthday, said,

> I was stressed. At first I would sleep all day. I would feel myself getting angry or aggressive. I would try to work out or do something, but I was literally going insane in that little spot. The claustrophobia set in and I would feel I was having anxiety attacks and would go over and get water and try and calm down. I would hear the slightest noise and be on guard.[65]

[63] Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.
[64] Human Rights Watch interview with Marvin Q. (pseudonym), Colorado, February 2012.
[65] Human Rights Watch interview with Phillip J. (pseudonym), Florida, April 2012.

Another young person described mood swings while in solitary confinement. Rafael O. said, "I [would] get depressed, if anything, then have extreme anxiety and feel like I [was] hyperactive, and then get depressed again."[66]

Parents explained that their loved ones' struggle was visible during visits (when they were allowed). One woman described visiting her grandchild, whom she identified as having a mental disability, while he was in solitary confinement:

> His mind is going and coming when he is locked up by himself all the time.... He is jumpy. He is startled when you talk to him.... He can't be still—like a nervous person!... He [wa]s always biting on his hands and wrist the whole time I talked to him. Biting his fingers and wrists [and] both hands. He was also grinding his teeth. You can [sic] see his jaw constantly moving. He never did that before.[67]

Some youth experienced anger or rage that they could not control. As one said, "All I would want to do is fight."[68] Another said, "I couldn't sleep. I was having anger. My anger was crazy. I was having outbursts."[69] And a third said, "It makes you worse. It really brings the beast out of you to be in there stressing. You start saying, 'Fuck everything.' ... [It] makes you more wild; makes you feel like a lion in a cage."[70] Kyle B. wrote,

> The loneliness made me depressed and the depression caused me to be angry [sic], leading to a desire to displace the agony by hurting others. I felt an inner pain not of this world.... I allowed the pain that was inflicted upon [me] from [my] isolation placement build up while in isolation. And at the first opportunity of release (whether I was being released from isolation or receiving a cell-mate) I erupted like a volcano, directing violent forces at anyone in my path.[71]

[66] Human Rights Watch interview with Rafael O. (pseudonym), Colorado, February 2012.
[67] Human Rights Watch interview with Effie H. (pseudonym), Florida, April 20, 2012.
[68] Human Rights Watch interview with Isaac P. (pseudonym), Colorado, February 2012.
[69] Interview with Jacob L. (pseudonym), New York, April 2012.
[70] Interview with Alex A. (pseudonym), Florida, April 2012.
[71] Letter from Kyle B. (pseudonym), from California, to Human Rights Watch, May 3, 2012.

Adolescents who had trouble coping or sleeping were sometimes identified by mental health staff and prescribed medication. A number of young people described being prescribed sleeping medication. Mason P., who had spent the four days before he was interviewed in administrative solitary confinement, said,

> I don't sleep. They gave me sleeping pills 'cause I can't sleep. I worry a lot.... I started taking them three days ago. They asked if I felt like killing myself or hurting somebody, I said, "Naw," but they told me if I was worrying they said they were going to give me something.[72]

A Philadelphia County Prison Official observed that many youth held in solitary confinement in the county jail were prescribed sleeping aids and other prescription medications while in isolation: "It was a way [for them] to cope and reduce anxiety."[73]

But some experts question the practice of treating sleep problems directly. Dr. Cheryl Wills, a child psychiatrist who has diagnosed youth in juvenile and adult facilities, argues that poor sleep patterns are often indicative of another underlying problem:

> I am not a proponent of medicating sleep ... the question is, what is it related to—a symptom of depression? Post-traumatic stress? ADHD? So you figure out what is going on and treat sleep as a part of the picture.... There are medications that help youth if they have issues, but you must treat it as a whole package, as part of a treatable diagnosis.... You don't want to medicate a youth unless he or she really needs it.[74]

Treating sleeplessness associated with mental health problems or disabilities is particularly complicated when those problems may themselves be caused or exacerbated by being held in solitary confinement.

Being alone with their thoughts, and especially thoughts of home, made it difficult for them to sleep:

[72] Human Rights Watch interview with Mason P. (pseudonym), Florida, April 2012.

[73] Human Rights Watch interview with a Philadelphia County Prison (jail) Official, Pennsylvania, February 23, 2012.

[74] Human Rights Watch telephone interview with Dr. Cheryl Wills, independent medical evaluator and director of child and adolescent psychiatric services, Case Western Reserve University, Ohio, May 24, 2012.

> I don't even want to sleep here because I can't wait till I get home. Every night before I go to sleep I think about home and can't sleep. I'm up until at least 5 a.m. which causes other outbursts because I'm just thinking.[75]

Inability to sleep can itself cause or exacerbate other mental health problems, and can also indicate an underlying mental disability.

Cutting and Self-Harm

In addition to the psychological pain and suffering that young people reported experiencing while in solitary confinement, some young people reported that they cut or otherwise physically harmed themselves. Among youth in jails and prisons, evidence suggests that this problem affects girls at an even higher rate than boys.[76] We found both young men and young women who reported harming themselves in solitary confinement. Melanie H., who spent three months in protective solitary confinement when she was fifteen years old, described how cutting helped her cope with feelings of loss she experienced when alone with her thoughts:

> I became a cutter [in solitary confinement]. I like to take staples and carve letters and stuff in my arm. Each letter means something to me. It is something I had lost. Like the first one was a [letter], which is the first letter in my mother's name. And every day I would apologize to her. I don't know—I felt like I had a burden I couldn't carry and it made me feel good.[77]

Other young women described using self-harm as a way to call for help or get the attention of officials. Alyssa E. said,

> Me? I cut myself. I started doing it because it is the only release of my pain.

[75] Human Rights Watch interview with Henry R. (pseudonym), Florida, April 2012.

[76] Summer J. Robins, Candice L. Odgers, and Michael A. Russell, "Incarcerated Girls' Physical Health: Can the Juvenile Justice System Help to Reduce Long-Term Health Costs," *Court Review*, vol. 46 (2009), http://aja.ncsc.dni.us/publications/courtrv/cr46-1and2/CR46-1-2Robins.pdf (accessed August 27, 2012), p. 30; Bruce Jacobs, New Mexico State University, "Adolescents and Self-Cutting (Self-Harm): Information for Parents, Guide I-104," June 2005, aces.nmsu.edu/pubs/_i/i-104.pdf (accessed August 27, 2012). Researchers in the United Kingdom found that while women make up approximately 5 percent of the prison population in the UK, they account for 52 percent of reported incidents of self-harm. SP Inquiry, "An independent public inquiry into the treatment of young women in custody," http://www.howardleague.org/self-injury/ (accessed August 27, 2012).

[77] Human Rights Watch interview with Melanie H. (pseudonym), Florida, April 2012.

> I'd see the blood and I'd be happy.... I did it with staples, not razors. When I see the blood and it makes me want to keep going. I showed the officers and they didn't do anything.... I wanted [the staff] to talk to me. I wanted them to understand what was going on with me.[78]

Psychological experts with experience monitoring health care in adult and juvenile facilities described self-harm as a typical reaction to isolation and an effort to force interaction with others. One psychological expert said,

> I think the biggest detriment [in solitary confinement] is lack of interaction. So typically youth become desperate for any interaction. So you see the incidents of self-harm increase. They find ways to hurt themselves or hurt somebody else. Because it is more difficult to withstand longer periods of isolation than an adult ... they are going to find ways to hurt themselves or somebody else or cause problems.[79]

Suicidal Thoughts and Attempts: "The death-oriented side of life"

Twelve young people told Human Rights Watch and the American Civil Liberties Union in detail about times that they thought about or attempted suicide while in solitary confinement. Experts with experience advising jails and prisons on suicide prevention argue that it is uncontroversial that suicide and solitary confinement are correlated:

> [N]o one disagrees that the suicide rate is higher for youth in both juvenile facilities, adult jails, and adult prisons.... I think it is safe to say that youth in an adult jail and prison are at higher risk for suicide and youth in isolation in those facilities would also be at higher risk.[80]

Paul K., who spent 60 days in protective solitary confinement when he was 14, described how he came to want to end his life:

[78] Human Rights Watch interview with Alyssa E. (pseudonym), Florida, April 2012.

[79] Human Rights Watch telephone interview with Deborah DePrato, Louisiana, June 6, 2012.

[80] Human Rights Watch telephone interview with Lindsay Hayes, Project Director, National Center on Institutions and Alternatives, Massachusetts, June 13, 2012.

> The hardest thing about isolation is that you are trapped in such a small room by yourself. There is nothing to do so you start talking to yourself and getting lost in your own little world. It is crushing. You get depressed and wonder if it is even worth living. Your thoughts turn over to the more death-oriented side of life.... I want[ed] to kill myself.[81]

Twelve young people told Human Rights Watch and the American Civil Liberties Union about having either thought about or attempted suicide while in solitary confinement; some had attempted suicide before they were in jail or prison; some described witnessing attempted or successful suicides. Luz M. said suicidal thoughts came immediately after she went into solitary confinement:

> I just felt I wanted to die, like there was no way out—I was stressed out. I hung up [tried to hang myself] the first day. I took a sheet and tied it to my light and they came around.... The officer, when she was doing rounds, found me. She was banging on the window: "Are you alive? Are you alive?" I could hear her, but I felt like I was going to die. I couldn't breathe.[82]

Some young people have committed suicide while in solitary confinement.[83] According to a national expert on suicides in juvenile facilities, jails, and prisons, the evidence suggests

[81] Human Rights Watch interview with Paul K. (pseudonym), Michigan, March 2012.

[82] Human Rights Watch interview with Luz M. (pseudonym), New York, April 2012.

[83] Media reports discuss at least six suicides of youth under 18 in solitary confinement in adult jails or prisons in recent years, including James Stewart (Colorado): Hector Gutierrez, "Family sues city for $5 million in teen's jail death: They say their son fought depression after fatal crash," *Rocky Mountain News*, November 25, 2008, http://m.rockymountainnews.com/news/2008/nov/25/family-sues-city-5-million-troubled-teens-suicide/, Joseph Boven, "Colorado criminally failing youth suspects," *The Colorado Independent*, March 10, 2010, http://coloradoindependent.com/48181/colorado-criminally-falling-youth-suspects; Robert Borrego, Jr. (Colorado): Jeff Tucker, "Kin of teen suicide victim sue Pueblo County sheriff," *The Pueblo Chieftain*, July 10, 2010, http://www.chieftain.com/news/local/article_8eb6efbc-8bf6-11df-b7e2-001cc4c03286.html; Jonathan McLard (Missouri): Orlando Campbell, The W. Haywood Burns Institute for Juvenile Justice Fairness & Equity, "A Son's Suicide Inspires Mother To Fight For Juvenile Justice," April 26, 2010, http://www.burnsinstitute.org/article.php?id=216, Bridget DiCosmo, "Tracy McClard given award by Campaign for Youth Justice and the National Juvenile Justice Network," *Southeast Missourian*, May 5, 2009, http://www.semissourian.com/story/1536332.html; Kirk Gunderson (Wisconsin): Jo Anne Killeen, "Onalaska mother still pushing on juveniles in jail issue," *Onalaska Holmen Currier News*, July 7, 2011, http://lacrossetribune.com/courierlifenews/news/local/article_fbe60666-a8c6-11e0-8824-001cc4c002e0.html; Rodney Hulin (Texas): Testimony of Ms. Linda Bruntmyer, Hearing before the Senate Judiciary Committee on The Prison Rape Reduction Act of 2002, July 31, 2002, http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281fe329f3&wit_id=4f1e0899533f7680e78d03281fe329f3-2-1, Wikipedia, "Suicide of Rodney Hulin," http://en.wikipedia.org/wiki/Suicide_of_Rodney_Hulin; and Jasper Simmons (Arizona): Elizabeth Banicki, "Jail Not Liable for Teen's Suicide, Circuit Says," *Courthouse News Service*,

that most suicides in juvenile (not adult) facilities occur while youth are confined alone to their room.[84]

Struggling with Mental Disabilities and Past Trauma

Many adolescents face the additional challenge of coping with a mental disability while in solitary confinement.[85]

Studies suggest that youth under age 18 enter the adult criminal justice system with high rates of mental disabilities.[86] Approximately 48 percent of adolescents between the ages of 16 and 18 in New York City Department of Corrections custody in FY2012, for example, had a diagnosed mental disability.[87] But some mental disabilities do not manifest until youth reach their teen years.[88]

Some young people in solitary confinement likely struggle to cope simultaneously with the psychological vulnerabilities associated with their developing brains and the onset of mental disabilities, such as schizophrenia or bipolar disorder. As one expert, Dr. Cheryl

June 24, 2010, http://www.courthousenews.com/2010/06/24/28353.htm, *Simmons v. Navajo County, Ariz.*, Fifth Circuit Federal Court of Appeals, 2010 (609 F.3d 1011 (5th Circ. 2010)), http://www.leagle.com/xmlResult.aspx?xmldoc=in%20fco%2020100623177.xml&docbase=cslwar3-2007-curr (all accessed September 27, 2012).

[84] Human Rights Watch telephone interview with Lindsay Hayes, Project Director, National Center on Institutions and Alternatives, Massachusetts, June 13, 2012.

[85] As used in this report, mental disabilities include diagnosable mental, behavioral, or emotional conditions that substantially interfere with or limit one or more major life activities; some refer to mental disabilities as "mental illnesses." Persons with mental disabilities also refer to themselves as having psychosocial disabilities, a term that reflects the interaction between psychological differences and the social/cultural limits for behavior as well as the stigma that society attaches to persons with mental impairments. The Diagnostic and Statistical Manual of Mental Disorders defines a mental disorder as a "clinically significant behavioral or psychological syndrome or pattern that occurs in an individual" which is a "manifestation of a behavioral, psychological, or biological dysfunction in the individual." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR Fourth Edition* (Arlington, Virginia: American Psychiatric Association, 2000), p. xxxi. The current revised edition of the DSM-IV, known as the DSM-IV-TR, organizes psychiatric diagnoses into five levels (axes) that include serious clinical disorders like schizophrenia or bipolar disorder (Axis 1), serious personality disorders such as paranoia (Axis 2), and traumatic brain injuries (Axis 3).

[86] Jason Washburn et al., "Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court," *Psychiatric Services*, vol. 59, no. 9 (2008), http://ps.psychiatryonline.org/data/Journals/PSS/3857/08ps965.pdf, p. 965 (accessed August 27, 2012).

[87] That is, a diagnosis of a mental health condition defined by the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

[88] Human Rights Watch telephone interviews with Deborah DePrato, June 6, 2012; and with Dr. Cheryl Wills, May 24, 2012.

Wills, a child psychiatrist with experience diagnosing youth in juvenile and adult facilities, described,

> Sometimes youth will have psychosis in flashes. It will come out in the stress of being in [isolation] but not with other youth. I have personally seen youth who were not psychotic and you put them in [isolation] and they are psychotic. Was it going to happen? Yes. Did it happen faster in [isolation]? Possibly.[89]

It is not often possible for young people themselves or corrections professionals to identify adolescents with mental disabilities before they are subjected to solitary confinement because some serious mental disabilities do not manifest until late adolescence.[90] Some of the young people interviewed by Human Rights Watch and the American Civil Liberties Union had been identified as having a mental disability at an early age. Others reported experiencing various mental health problems throughout their youth and while in solitary confinement, without having been identified as having a mental disability. Some experienced mental health problems and were identified as having a mental disability for the first time during or after a period of solitary confinement.

Landon A., who struggled with auditory and visual hallucinations before going to jail, described his experience in solitary confinement: "I would hear stuff. When no one was around it was harder to control. When I was by myself, I would hear stuff and see stuff *more*."[91] He said he was usually awake between 10 p.m. and 3 a.m., trying to manage the hallucinations. "I hear the most stuff at night," he said, "so it's the hardest time to sleep."

Young people with mental disabilities interviewed by Human Rights Watch and the American Civil Liberties Union repeatedly described the pain and suffering associated with attempting—and failing—to cope with the mental health problems they experienced in

[89] Human Rights Watch telephone interview with Dr. Cheryl Wills, May 24, 2012.

[90] For example, one study found that the mean age for the onset of the mental health problems associated with a diagnosis of schizophrenia was 19 years old. Nitin Gogtay et al., "Age of Onset of Schizophrenia: Perspectives from Neuroimaging Studies," *Schizophrenia Bulletin*, vol. 37 (2011), http://schizophreniabulletin.oxfordjournals.org/content/37/3/504.short (accessed September 26, 2012), p. 504.

[91] Human Rights Watch interview with Landon A. (pseudonym), Florida, April 2012.

solitary confinement. Asked about struggling into the night with his hallucinations, Landon A. said solitary confinement is "not a place that you want to go. It's like mind torture."[92]

Some also reported that solitary confinement triggered memories of past trauma, making it yet more difficult to cope with the experience. Youth in the criminal justice system have histories of trauma and abuse at much higher rates than the general population.[93] And there is significant evidence to suggest that girls enter the criminal justice system having suffered physical or sexual abuse at much higher rates than boys, and therefore struggle disproportionately with past trauma.[94] Melanie H., for example, was held in protective solitary confinement for three months when she was 15 years old. She said, "When I was eleven, I was raped. And it happened [again] in 2008 and 2009."[95] When she was isolated, the memories came back: "I was so upset ... and a lot was surfacing from my past.... I don't like ...feeling alone. That's a feeling I try to stay away from. I hate that feeling."[96]

As one defense attorney opined,

> If you isolate a kid [for whom] isolation was a form of child abuse, the jail doesn't know how to deal [with that]. I have represented clients who have locked [their] kids in a closet and go[ne] out all night long—closets are cheap baby sitters. [I] don't think anyone explores those issues with those kids—there is no difference in protocols, no accommodation [of past trauma].[97]

Thirty-five interviewees spent more than one period in solitary confinement before they turned 18. This repeated isolation, according to experts, "leaves [youth] with a potential for

[92] Ibid.

[93] Washburn et al., "Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court."

[94] Meda Chesney-Lind, *The Female Offender: Girls, Women and Crime* (Thousand Oaks, California: SAGE Publications, 1997), pp. 25-26; Cathy S. Wisdom and Michael G. Maxfield, National Institute of Justice, US Department of Justice, "An Update on the 'Cycle of Violence,'" 2001, https://www.ncjrs.gov/pdffiles1/nij/184894.pdf (accessed August 27, 2012); National Mental Health Association, "Mental Health and Adolescent Girls in the Justice System," 1999; National Council on Crime and Delinquency, Center for Girls and Young Women, "Getting the Facts Straight about Girls in the Juvenile Justice System," February 2009, http://www.nccdglobal.org/sites/default/files/publication_pdf/fact-sheet-girls-in-juvenile-justice.pdf (accessed August 27, 2012); Robins, Odgers, and Russell, "Incarcerated Girls' Physical Health," *Court Review*, p. 30.

[95] Human Rights Watch interview with Melanie H. (pseudonym), Florida, April 2012.

[96] Ibid. Melanie H. also reported more than one experience of double-celled isolation.

[97] Human Rights Watch interview with Shauna Geiger, Defense Attorney, Colorado, February 5, 2012.

a post-traumatic reaction."[98] Phillip J., for example, who was first held in solitary confinement for 36 days when he was 16, described how isolation itself became a trigger for traumatic memories of solitary confinement:

> Once you are confined the way I was, then any other confinement just triggers that experience—loss of sleep, all these different flashbacks of different bad events. You try to harness it, but you don't know how or what's going on or what's happening.[99]

Barriers to Accessing Care

Young people in solitary confinement do not get the help they need to cope or adequate access to treatment for mental health problems, whether preexisting or newly developed. Because of this lack of adequate care or access, their suffering can be worse than it may otherwise have been.

Human Rights Watch has elsewhere documented the widespread failures of state prison systems to provide access to care for adults experiencing mental health problems, including those with mental disabilities.[100] On the contrary, prison systems sometimes react to prisoners experiencing a crisis by punishing them. Isaiah O., who entered jail at 17, told us,

> Sometimes, when I cut, having a razor or using it against myself, they would give me a [disciplinary violation] for making the room unsanitary or, two, for having a weapon.... It felt like I was going against myself and they was [sic] going against me. That's when I started going crazy. I mean, I felt with the depression and them going against me, that's when I started catching assaults. I guess I was fighting two wars—myself and then the officers.[101]

[98] Human Rights Watch interview with Louis Kraus, Illinois, June 14, 2012.

[99] Human Rights Watch interview with Phillip J. (pseudonym), Florida, April 2012.

[100] Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, October 22, 2003, http://www.hrw.org/sites/default/files/reports/usa1003.pdf.

[101] Human Rights Watch interview with Isaiah O. (pseudonym), Florida, April 2012.

While some young people, like Isaiah O., described being punished for conduct related to mental health problems, others reported being diverted from one form of solitary confinement to another to protect them from self-harm.[102]

In some facilities, young people felt that the only way to get mental health care was through self-harm:

> Sometimes you have to [cut yourself] to go to [medical solitary confinement for suicide watch]... get psychological attention ... because if you have a psychological emergency or you need to talk to somebody they won't let you. [So I] cut myself on my arm ... [when] I be thinking in my head I need to talk to somebody before I do something I don't want to do.[103]

A few young people described corrections staff telling them that they did not believe their cries for help or their requests for mental health care. An extremely complicated and toxic atmosphere can develop when corrections staff feel they need to be gatekeepers to mental healthcare. It is too easy for overworked and under-resourced medical and corrections staff to dismiss as malingering a cry for help. Indeed, some may exaggerate their symptoms precisely *because* the solitary confinement is unbearable.

But, as one expert psychiatrist who evaluates mental healthcare in detention, Dr. Cheryl Wills, said, mental health crises must be taken seriously:

> [Youth] need to be taken seriously whether or not they are malingering. I have heard youth and adults say that [staff told them] that if they were going to do it [kill themselves], don't do it on that staff member's shift. The security staff is not expert in suicide risk assessment and some malingerers also are mentally ill. The psychiatric interview includes an assessment of suicide risk that is used to formulate a treatment plan. All threats of suicide should be assessed, especially in incarcerated individuals who lack the flexibility to leave the facility and to seek mental health services at a local emergency room.[104]

[102] See Section III for a fuller discussion of medical solitary confinement.

[103] Human Rights Watch interview with Graciela N. (pseudonym), Florida, April 2012.

Physical Harm

Solitary confinement, and practices associated with it, can cause serious physical harm to youth.

Young people held in adult jails and prisons are frequently far from full-grown. Many of the young people we interviewed entered jail or prison inches and pounds away from adulthood. One young man described being unable to fit in his orange jumpsuit: "I believe I was 5'4" or 5'5" ... I weighed maybe 140 ... in [solitary confinement] they gave you the [orange uniform]. It was too big for me. It kept falling off my waist and everything."[105]

Jails and prisons are rarely equipped to appropriately manage or provide for those who are physically immature. Our research showed that solitary confinement in adult facilities resulted in a deprivation of exercise and adequate nutrition.

Lack of Adequate Exercise

One of the defining experiences for youth held in solitary confinement in many facilities is the hour out: one hour, each day, during which adolescents are permitted, whether in a hallway, dayroom, or metal cage, to walk around or exercise. Some facilities allow a few minutes more or less than an hour, but an hour out is standard practice. However, Human Rights Watch and the American Civil Liberties Union found that few facilities actually provide for or encourage physical exercise for youth in solitary confinement. Of the 77 young people we interviewed on their experience in solitary confinement, 15 reported spending at least one period in solitary confinement during which they were allowed no recreation at all. Young people in Florida prisons, for example, reported being denied recreation for the first *thirty days* spent in disciplinary solitary confinement, pursuant to Department of Corrections (DOC) policy.[106]

[104] Human Rights Watch email correspondence with Dr. Cheryl Wills, independent medical evaluator and director of child and adolescent psychiatric services, Case Western Reserve University, Ohio, August 13, 2012.

[105] Human Rights Watch interview with Carter P. (pseudonym), Michigan, March 15, 2012.

[106] See Appendix 2 for a discussion of Florida.

cells to cope with their time in confinement. Jason L. described pacing his cell until he was exhausted:

> I kind of talked myself through it. Pace[d] the room. I learned that walking and talking takes you outside. So I would walk and talk for about the first four days until I was dead tired, then sleep for about three and do it over.[110]

Physical Changes and Stunted Growth

Youth who are physically growing and changing need age-appropriate attention and care. Human Rights Watch and the American Civil Liberties Union found that young people in solitary confinement are sometimes denied access to this care in facilities that provide it, and are denied it altogether in those that do not. A number of young people reported going to sleep hungry night after night. Some told Human Rights Watch and the American Civil Liberties Union that they experienced (or witnessed in other adolescents) other physical changes as a result of the stress of solitary confinement, such as hair or weight loss.

Several facilities reported that there are no differences between the physical health and dental services available for youth and adults.[111] As one facility reported, "[A youth is] treated as an adult for medical, dental, mental health issues."[112]

Inadequate Nutrition

One of the most common complaints of young people held in solitary confinement was that the food and meal schedule were nutritionally inadequate, and that they were denied the opportunity to supplement their nutrition by purchasing food items from the facility's commissary or canteen. Some young people described losing weight as a result.

Caroline I., who spent approximately 41 days in punitive solitary confinement while she was under 18, said, "They only give you a little food, so that's hard. You lose weight.... I

[110] Human Rights Watch interview with Jason L. (pseudonym), Florida April 2012.

[111] For example, in Michigan and Wisconsin. Letter from Scott Lamiman, Jail Population Coordinator, Muskegon County, Michigan, to Human Rights Watch, January 24, 2012; and letter from Brian Puent, Trempealeau County Sheriff's Department, Wisconsin, to Human Rights Watch, January 10, 2012.

[112] Letter from Kathy Beauer, Deputy Sheriff, Iron County Sheriff's Department, Wisconsin, to Human Rights Watch, January 10, 2012.

went in 150 and came out 132. That's more than 15 pounds!"[113] A grandmother who visited her grandson in solitary confinement observed that he "definitely lost weight—he's so little [now]." She estimated that he lost 15-20 pounds after he entered solitary confinement.[114]

Some young people said that, during their time in punitive solitary confinement, their diet was changed to a baked nutritional loaf as a form of additional punishment. Others described being fed a diet that consisted mostly of beans and processed foods.

The US Department of Agriculture and the National Institutes of Health both recommend a balanced diet of nutrient-dense foods, including vegetables, fruits, and whole grains.[115] While the overall nutritional needs of youth and adults are similar in regards to caloric intake, youth physical development, including bone development, requires additional amounts of some nutrients to ensure healthy growth.[116]

Other Physical Effects

Young people interviewed by Human Rights Watch and the American Civil Liberties Union described experiencing other physical changes in solitary confinement. One young person reported, "I saw a guy who lost his hair in [solitary confinement]. He wasn't like that before he got locked up."[117]

One female interviewee described that, during the months she was in solitary confinement, she stopped menstruating. She recalled that she didn't start again until after she was transferred out of solitary confinement and to a juvenile facility:

> You know it is funny to say. I know I was having periods at that time of my life. But I don't have any memories of having one at the jail. I remember I went through a long period of time at the juvenile facility where I didn't have them. That was right when I came back [from jail]. I knew it was a

[113] Human Rights Watch interview with Caroline I. (pseudonym), New York, April 2012.

[114] Human Rights Watch interview with Effie H., Florida, April 20, 2012.

[115] Center for Nutrition Policy and Promotion, United States Department of Agriculture, "Dietary Guidelines for Americans," 2012, http://www.cnpp.usda.gov/dietaryguidelines.htm (accessed August 27, 2012).

[116] Ibid.; Aglaee Jacob, Demand Media, "Adult Vs. Teen Nutrition," *SFGate*, http://healthyeating.sfgate.com/adult-vs-teen-nutrition-1083.html (accessed August 27, 2012).

[117] Human Rights Watch interview with Ernesto D. (pseudonym), Pennsylvania, January 2012.

> number of months because for a long time I was wondering why I wasn't having them. I remember because most women complain about them but when I got mine again I was glad. It made me feel human—or at least functioning the way things were supposed to be.[118]

Studies have linked changes in menstruation to stress and trauma.[119]

Social and Developmental Harm

Young people in solitary confinement are frequently deprived of contact with their families and their own children, access to education, and to programming or services necessary for their growth, development, and rehabilitation.

Denial of Family Contact

Limitations on family visits are a common feature of all forms of solitary confinement. Many facilities deny adolescents contact with their families while they are in solitary confinement. For some, this means no visits, no phone calls, and no letters. Facilities often view these things as privileges that young people in solitary confinement can be denied as a result of their classification, or to punish them.

Twenty-one teenagers told us they were denied the ability to visit with loved ones during a period of solitary confinement. Nineteen spent at least one period in solitary confinement during which they were only allowed to visit with loved ones while in a cage, behind glass, or by video-conference. Eleven spent at least one period in solitary confinement during which they were not allowed to write letters to loved ones, having been denied access to pen or pencil and paper.

For some young people, family is the only thing that gives them hope:

> I catch myself in the moment, attempting [suicide]. But then I think about my family and everyone on the outs[ide] and I think, if I chose to do that, I

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[118] Human Rights Watch interview with Molly J. (pseudonym), Michigan, March 2012.

[119] Some researchers have identified a link between a range of factors and interruptions of hormonal homeostasis in various contexts. Katarzyna Bisaga et al., "Menstrual Functioning and Psychopathology in a Country-Wide Population of High School Girls," *Journal of the Academy of Child and Adolescent Psychiatry*, vol. 41, no. 10 (October 2002).

> can never come home. I think if it weren't for my family, I would have chosen to commit suicide.[120]

Jeffrey J., whom Human Rights Watch and the American Civil Liberties Union interviewed in administrative solitary confinement while he was awaiting a disciplinary hearing, feared losing contact if placed in punitive solitary confinement:

> I hope they don't take my visits or call away. Today is going to make the third day I haven't got a call.... My mom really, really cares about me so she wants to know what is going on.... As long as I can talk to my family, I'll be okay. I could be in a room all day if I could talk to my family.[121]

In some facilities, young people were allowed visits when in solitary confinement, but denied physical contact with their family members, forced to talk through glass or a metal screen. For some, this was as painful as solitary itself: "The hardest part is being behind glass when your family visits and you can't hold your family."[122] Young people cited the denial of hugs and kisses as a source of pain and suffering. Another teenager said, "It was very depressing not to be able to give them a hug. I would cry about that."[123] Again and again, young people stressed the importance of physical touch. One young woman said, "[Visits] behind glass ... [were] torture—I couldn't touch my family."[124] A few young parents reported that they were also prevented from receiving visits from their own children while in solitary confinement.

Denial of Adequate Education

Young people in solitary confinement, including adolescents with intellectual disabilities, commonly reported being denied access to adequate education. Youth in some facilities were regularly provided with a packet of educational materials for in-cell self-study, but often their completed work went ungraded and their questions unanswered.

[120] Human Rights Watch interview with Henry R. (pseudonym), Florida, April 2012.
[121] Human Rights Watch interview with Jeffrey J. (pseudonym), Florida, April 2012.
[122] Human Rights Watch interview with Craig G. (pseudonym), Pennsylvania, March 2012.
[123] Human Rights Watch interview with Sean F. (pseudonym), Michigan, March 2012.
[124] Human Rights Watch interview with Lauren C. (pseudonym), Florida, April 2012.

For some jails and prisons, access to education ends the moment the solitary confinement cell door slams shut, regardless of the age of the inmate inside.[125] As Darrell E., who spent approximately 20 days in protective solitary confinement in jail when he was 15, stated bluntly, "No, there was no school for inmates in isolation and there were no exceptions for me."[126]

Only 31 young people reported receiving educational programming of any type during a period of solitary confinement. Fourteen young people reported spending a period of time in solitary confinement during which they were provided only with a packet of materials to complete in their cell. Twenty-five young people reported spending a period of time in solitary confinement during which they were not provided any educational programming at all; sixteen described spending periods of time in solitary confinement without even a book or magazine to read.

In a few states, education in jails is provided in consultation (or even directly by) state or local departments of education (or school boards). In some of these jurisdictions, the law only provides for limited education, such as four hours per week in Colorado, and allows security exceptions that are applied to youth in solitary confinement.[127] In other jurisdictions, youth in solitary confinement are taught through "cell study," packets of materials dropped off at their cells.[128] Some young people reported eagerly—and quickly—completing any work packets provided by jails or prisons. Others said they refused to study in their cells. Jeremiah I. said,

> If you are enrolled in school, they slide a packet under your door. I don't do it. I don't feel like doing work in my cell. If they would take me to school I would do it, but ... they just keep giving you work.[129]

[125] Human Rights Watch telephone interview with Daryl Tyus, Operations Lieutenant, Jackson County Correctional Facility, Florida, April 3, 2012 ("They do not attend [school]—they lose that"). For youth in some facilities, this is true whether or not youth are in solitary confinement.
[126] Letter from Darrell E. (pseudonym), from Wisconsin, to Human Rights Watch, May 14, 2012.
[127] Colorado State Division of Criminal Justice, "SB 10-054 Annual Report—2nd Revision," January 23, 2012.
[128] Human Rights Watch telephone interviews with Jeff Dunmire, School Principal, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012; and with Dora B. Schriro, Commissioner, New York City Department of Corrections, July 6, 2012.
[129] Human Rights Watch interview with Jeremiah I. (pseudonym), New York, April 2012.

Some facilities take no further steps after an adolescent, like Jeremiah, refuses education. Sometimes, those who received cell-study materials were able to consult with a teacher. However, usually this was either through the cell door or by phone. One young woman described how "the officer who does cell-study asks if you have anything and want to talk to your teacher and then you talk on the phone."[130] Some young people reported interrupted or infrequent contacts with educators.

As discussed above, a number of young people reported experiencing serious mental health problems in solitary confinement. Some of those young people described diminished reasoning and learning abilities as a result of solitary confinement. Jordan E. described feeling mentally slower after solitary confinement:

> [Solitary confinement] absolutely slowed down my thinking skills. I would come out of [solitary] and be demonstrably slower. Following conversations, doing math work, my brain slowed down quite a bit. I was far more depressed. There were no real mental health services [in the jail].[131]

Struggling with Intellectual Disabilities

While adult facilities, especially jails, struggle to provide *any* educational programming for youth, specialized programming for youth with intellectual disabilities is even rarer.[132]

Human Rights Watch and the American Civil Liberties Union interviewed 11 young people who reported that before entering jail or prison they had either been taught in special classes, having been identified as having a learning disability, or had an individual education plan.[133] Some facilities are unable to identify adolescents with intellectual disabilities, relying on records provided by parents or schools in the community. One prison official reported,

[130] Human Rights Watch interview with Laura F. (pseudonym), New York, April 2012.

[131] Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.

[132] Intellectual disabilities, as used in the report, are permanent developmental limitations. The American Association on Intellectual and Development Disabilities defines intellectual disabilities as "characterized by significant limitations both in intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18." Intellectual functioning refers to the ability to learn, reason, and problem-solve. American Association on Intellectual and Development Disabilities, "FAQ on Intellectual Disability," http://www.aaidd.org/content_100.cfm?navID=21 (accessed August 27, 2012).

[133] An individual education plan is a tailored plan for meeting educational goals and requirements, developed by educators with input from individuals and their families.

> We are not allowed to identify [learning disabilities]. As a department, we don't identify those types of issues. If we get an individual and we think they might be [in need of] special education—if a parent has paperwork—we can do that process. But as far as someone coming in off the street? If we don't have paperwork, we can't do that.[134]

The provision of educational programming to young people with intellectual disabilities can also be complicated by the checkered educational history of many adolescents, even though they may never have been identified as having an intellectual disability.

The Individuals with Disabilities Education Act (IDEA) is a federal law that governs the provision of appropriate special education and related services for youth with disabilities. IDEA was signed into law in 1990 and was significantly amended in 2004. All states receive IDEA funds and are therefore subject to its provisions.[135] IDEA requires the provision of a free and appropriate public education to youth with disabilities, in the least restrictive environment, according to their individual needs through age 21.[136] In defining the "least restrictive environment," IDEA states,

> To the maximum extent possible, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or *other removal of children with disabilities from the regular educational environment* [emphasis added] occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[137]

With regard to detention facilities, IDEA states that governors or other appropriate state officials may assign to any public agency in their state the responsibility of ensuring that

[134] Human Rights Watch telephone interview with Jeff Dunmire, School Principal, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

[135] Office for Civil Rights, US Department of Education, "Free Appropriate Public Education for Students With Disabilities: Requirements Under Section 503 of the Rehabilitation Act of 1973." August 2010, http://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html (accessed August 27, 2012).

[136] US Code, State Eligibility, 20 U.S.C. § 1412(a).

[137] US Code, State Eligibility, 20 U.S.C. § 1412(a)(5)(A) (emphasis added).

particular requirements are met with respect to youth with disabilities who are convicted as adults and are incarcerated in adult prisons.[138]

But state law exemptions for adult facilities leave many adolescents with disabilities without the basic educational guarantees set forth in IDEA. Florida, for example, allows for young people with disabilities who are convicted as adults and incarcerated in adult prisons to be exempted from certain IDEA provisions regarding assessment and transition planning.[139] In addition, for young people with disabilities in Florida's adult prisons, the team devoted to a student's Individualized Education Program (IEP) may modify that youth's program or placement based on certain security or penal interests beyond the restrictions set forth in IDEA.[140] Youth with disabilities in solitary confinement are often prevented from receiving proper educational services, such as basic out-of-cell instruction.

Failure to Provide for Rehabilitation or Social Development

Some of the deprivations that young people confront in solitary confinement differ little from the normal conditions of incarceration. Jails and prisons spend few resources on programming or services, with jails spending even fewer resources than prisons. Human Rights Watch and the American Civil Liberties Union found that it was exceedingly rare that facilities provided programming or services aimed at rehabilitation or social development to young people under age 18 in solitary confinement. While this is a problem for adolescents in adult facilities generally, the problem is acute for those in solitary confinement. Youth enter jails and prisons—and solitary confinement—in the midst of a transition to adulthood.

As one expert with experience in juvenile and adult facilities told Human Rights Watch and the American Civil Liberties Union,

> We are raising these kids. We need to teach them.... What we are doing is putting young men [and women] who are forming their identity in a situation where they are learning to do things—not in a good way.... So if we

[138] US Code, State Eligibility, 20 USC. § 1412(a)(11)(C).
[139] Provision of Free Appropriate Public Education (FAPE) and Development of Individual Educational Plans for Students with Disabilities, Fla. Admin. Code r. 6A-6.03028(3)(l).
[140] Ibid.

> are going to send young men [and women] to prison, we need truly specialized units where they can learn and grow. Because I think we all want them to be better off when they come out. The other thing they need is skills that will help them on the outside.[141]

Young people who have not had the same life experience as adults need programming to facilitate their development. Those who have been convicted of a crime *also* require rehabilitative programming. All youth deprived of their liberty need programming aimed at reentry into society. The longer young people are held in solitary confinement, the more egregious the deprivation becomes.

Almost all adolescents charged or convicted in the adult criminal justice system are eventually released into the community. Young people, as well as corrections and psychological experts, expressed concerns about the long-term implications for youth, and public safety, of failing to adequately provide for youth development and rehabilitation. Todd D., who entered jail when he was 17, said this about his own experience,

> I can't speak for everybody but I know if I was given that opportunity I would be different right now. The good changes in my life, I had to learn by myself. But that road, it scars you in ways—it's bad.[142]

[141] Human Rights Watch telephone interview with Deborah DePrato, Louisiana, June 6, 2012.
[142] Human Rights Watch interview with Todd D. (pseudonym), Colorado, February 2012.

III. Youth in Solitary Confinement in Adult Facilities: Corrections Practices, Numbers, and Duration

Jails and prisons generally use solitary confinement for one of three reasons: to punish inmates; to manage them (either to protect others from them, or them from others); or to treat them. Yet the conditions that young people in solitary confinement experience are essentially the same, regardless of the purpose for which it is being used. Young people held in adult facilities across the United States are subjected to all forms of solitary confinement, without accommodation for their age or developmental needs, and often for weeks and months.

Solitary Confinement to Punish Inmates

Jails and prisons often maintain internal order through a system of discipline, with solitary confinement among the most serious in a range of sanctions for violating facility rules. Facilities across the United States—whether they hold youth with adults, with other adolescents, or in isolation—frequently subject young people under age 18 to the same disciplinary rules as adult inmates.[143] Human Rights Watch and the American Civil Liberties Union have found that jails and prisons impose terms of solitary confinement of 15, 30, 60, 90 days, or longer for *each infraction* committed within a facility, and frequently punish a range of inmate behaviors within isolation with additional terms of solitary confinement.[144]

Corrections officials in many county jails reported that youth who violate facility rules can be placed in separation, or segregation, or special management cells.[145] Human Rights

[143] See Appendix 2; Colorado Department of Corrections, Code of Penal Discipline, IV(B) http://www.doc.state.co.us/sites/default/files/ar/0150_01_09012011.pdf (accessed August 27, 2012) ("All offenders in the custody of the executive director of the DOC should be subject to this code. All violations of this code should be punishable as disciplinary violations.").

[144] For example, one official stated, "[Isolation] [c]ould be up to 30 days. Depends on what they did. If they have many disciplinary reports in that 30 day span, then it could be extended." Human Rights Watch telephone interview with Daryl Tyus, Operations Lieutenant, Jackson County Correctional Facility, Florida, April 3, 2012.

[145] We used a range of terminology in corresponding with jail and prison officials to ensure that we obtained information about all practices involving significant levels of isolation. Of the 80 jail officials who responded to Human Rights Watch correspondence on detaining and managing youth, 34 responded to a question about whether youth can be held in separation, segregation, or special management cells; 30 of them indicated that youth could be held in such cells (four said they could not). Officials in this limited sample reported holding 44 youth in separation, segregation, or special management cells in the past year. Human Rights Watch cannot confirm the precise conditions of confinement for these youth, or whether the youth were held in solitary confinement. Letter from Liz O'Neal, Special Management Coordinator, El Paso County

Watch and the American Civil Liberties Union interviewed young people who had been subjected to several— often prolonged—periods of punitive solitary confinement. Of the individuals interviewed by Human Rights Watch and the American Civil Liberties Union, 41 had spent time in at least 1 period of punitive solitary confinement while under age 18; 22 of those young people had spent a total of 2 months or longer in punitive solitary confinement before they turned 18.

One young man who was held in punitive solitary confinement in New York said,

> The cell was hell. Hell.... Can't talk to nobody.... I counted the bricks. There was a bed, a desk, a toilet, a sink, and a window. It was small because all the stuff was in there ... [you can] see outside—busses, birds, fields, people in the yard. You could see freedom, but you can't get out. It makes your time hell.... [The] first thing I thought was, damn, I'm going to be here for 60 days.... I felt like shit. Damn! No contact with anyone for 60 days?[146]

Following an alleged infraction, placement in punitive solitary confinement frequently begins with a notice describing the charges and a hearing.[147] At this hearing, individuals are generally entitled to call witnesses. However, it was almost unthinkable, among the young people interviewed by Human Rights Watch and the American Civil Liberties Union, to actually call a witness, even when young people asserted their innocence in the

Criminal Justice Center, Colorado, to Human Rights Watch, January 5, 2012 (reporting that one youth was punished in this way in 2011); Letter from Sherry Stanford, Lieutenant, Lewis County Jail, New York, to Human Rights Watch, January 7, 2012 (reporting that the discipline and management policies are the same for youth and adults and that two youth were punished in this way in 2011); Letter from David Hetman, Program/Support Lieutenant, Correction Bureau, Rensselaer County Office of the Sheriff, New York, to Human Rights Watch, April 19, 2012 (reporting that the discipline and management policies are the same for youth and adults and that 12 youth were punished in this way in 2011); Letter from Ken Kochevar, Director of Corrections, Cuyahoga County, Ohio, to Human Rights Watch, January 4, 2012 (reporting that the discipline and management policies are the same for youth and adults and that 28 youth were punished in this way in 2011); and Letter from Louise Hackel, Sergeant, Clark County Jail, Wisconsin, to Human Rights Watch, February 6, 2012 (reporting that the discipline and management policies are the same for youth and adults and that one youth was punished in this way in 2011).

[146] Human Rights Watch interview with Jacob L. (pseudonym), New York, April 2012.

[147] Some youth, however, did not recall having been given any legal or administrative process before being disciplined. On the other hand, disciplinary solitary confinement is often preceded by a period of short-term administrative solitary confinement. In some facilities, Human Rights Watch and the American Civil Liberties Union found that such confinement is automatic, but others require a consideration of risk to other inmates before an individual can be placed in administrative solitary confinement pending a hearing for a disciplinary infraction. In some facilities, time spent in short-term administrative solitary confinement is "credited" when assessing a disciplinary sanction; in other facilities, youth do not receive credit for time spent in administrative confinement. One youth told Human Rights Watch and the American Civil Liberties Union, "They gave me 10 days... [but] there is no credit for time served [and] you have to wait 5 days for your hearing." Human Rights Watch interview with Mason P. (pseudonym), Florida, April 2012.

matter.[148] One of the rare young men who said he would have liked to call witnesses, told Human Rights Watch and the American Civil Liberties Union, "I could have had witnesses, but you have to know their first and last names and [inmate] numbers."[149] More commonly, young people reported that it was unsafe to speak out against others to facility staff, so they had no choice but to appear alone. Some young men and women told Human Rights Watch and the American Civil Liberties Union that they had admitted the charges against them during their hearing.[150]

Hearings almost always result in a finding of guilt based on the testimony of officials alone, and some interviewees described being punished on the basis of minimal evidence.[151] For example, a young man in one facility in Florida described officials punishing a group of inmates for banging on their cell doors because officials could not determine which inmates were responsible:

> People were kicking the[ir] door[s] and yelling. Then [the officials] said, "We are going to put you on lockdown! We are going to put you on lockdown!"... I [later] asked the [corrections officer] why we [were] on lockdown if we didn't kick the door. He said, "Man, you know how it is. There is [sic] a thousand of you in here—I can't tell who is kicking the door."[152]

Once a prisoner is found guilty of a disciplinary offense, jail or prison officials usually punish him or her with a term of days based on a structured disciplinary code. Because most facilities subject youth and adults to the same rules and regulations as adults, both young people and adults are usually punished with the same amount of punitive solitary confinement when found to have violated facility rules. As one official told Human Rights Watch and the American Civil Liberties Union, "There is no differentiation. There are the rules. If you violate the rules you'll go through the process and your hearing and any

[148] Human Rights Watch interview with Corey H. (pseudonym), Florida, April 2012.

[149] Human Rights Watch interview with Jacob L. (pseudonym), New York, April 2012.

[150] Alex A. said he had admitted fighting with another inmate. Human Rights Watch interview with Alex A. (pseudonym), Florida, April 2012.

[151] The standard for determining guilt in administrative disciplinary processes is low, often only requiring a preponderance of the evidence.

[152] Human Rights Watch interview with Jeffrey J. (pseudonym), Florida, April 2012. There were not actually one thousand youths in the unit.

potential discipline is the same regardless of age."[153] Because jurisdictions often subject individuals to multiple, serial—rather than concurrent—periods of solitary confinement for more than one rule violation stemming from a single incident, periods of solitary confinement can be long.[154]

Youth rarely reported that their age was discussed during their disciplinary hearings. A few young people reported that officials noted their age only in passing—"[the officer] just said I was young and very angry"—rather than to suggest mitigating the punishment.[155] One adolescent told Human Rights Watch and the American Civil Liberties Union that a mental health worker at the facility raised his youth at his disciplinary hearing, but that the hearing officer said, "That doesn't matter. He's in prison now and needs to learn how to act. It's his fault."[156]

While a formal appeal process often exists, very few young people reported appealing the decisions sentencing them to solitary confinement.[157] As experts have suggested, it is even more difficult for children to successfully navigate a prison grievance system than for adult prisoners. One expert said, "On average, juveniles are more impulsive, less capable of planning a course of action and taking steps, particularly when there are timelines for taking those steps.... So they're just less capable, on average, than an adult of doing that."[158]

More than adults, incarcerated teens often act out to protect themselves or to fit into a culture of violence, including by fighting or committing other disciplinary infractions. The New York City Department of Corrections reported that the most common disciplinary infraction for adolescents is fighting.[159] An analysis of data made available to independent researchers by the Florida Department of Corrections suggests that rates of misconduct of

[153] Human Rights Watch telephone interview with Michael Grover, Police Chief, Cottage Grove, Oregon, April 20, 2012.

[154] See discussion of duration in Section III below.

[155] Human Rights Watch interview with Elizabeth K. (pseudonym), New York, April 2012.

[156] Human Rights Watch interview with Rafael O. (pseudonym), Colorado, February 2012.

[157] Only a few of the 77 youth interviewed by Human Rights Watch and the American Civil Liberties Union described attempting (unsuccessfully) to appeal their disciplinary sentence, with one saying, "[The process] is crazy—there's no relief!" Human Rights Watch interview with Jacob L. (pseudonym), New York, April 2012.

[158] Human Rights Watch, *No Equal Justice: The Prison Litigation Reform Act in the United States*, June 2009, http://www.hrw.org/sites/default/files/reports/uso609web.pdf, citing Human Rights Watch telephone interview with Terry Kupers, M.D., California, November 14, 2008.

[159] Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, July 6, 2012.

adolescents under age 18 were significantly greater than adults between the ages of 18 and 20, and many times greater than older adults.[160]

Several young people told Human Rights Watch and the American Civil Liberties Union that other adolescents or adults tested them when they arrived at a jail or prison, and that they felt they had to defend themselves to avoid future abuse. Many young people reported that their first period of solitary confinement was soon after they arrived at the facility. Ernesto D. told Human Rights Watch and the American Civil Liberties Union,

> [I]f someone puts their hands on you, you must defend yourself. They want to know that you will defend yourself. I seen [sic] people get hit and now everyone hits them. You have to deal with it. Once you set the record straight you can stay out of trouble.[161]

The rules and regulations governing punitive solitary confinement are often structured such that officials have significant discretion about the length of time youth spend in solitary confinement. When charging, officials can generally choose whether particular conduct corresponds to a more or less serious infraction and choose from a range of penalties. Jordan E., who entered jail when he was 15 years old, told us that officials responded to seemingly any infraction with punitive solitary confinement:

> 15 days for not making the bed; 15 days for not keeping the cell door open; 20 or 25 days for being in someone else's cell. In the write-up book, they could have suspended privileges or anything. All they did is disciplinary seg[regation]. I would put my ear wax in the toilet in my cell and flush it to watch it spin. I did [solitary confinement] time for that. It was crazy.[162]

Some rules and regulations also give officials discretion to reduce the length of time youth spend in solitary confinement, either at the sentencing phase or before release. But that's

[160] Attapol Kuanliang et al., "Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence," *Criminal Justice and Behavior*, vol. 35 (2008), http://www.sagepub.com/stohrstudy/articles/11/Kuanliang.pdf (accessed August 27, 2012). The analysis found that rates of all violations per 1,000 inmates were 2,558 for youth under 18; 1,895 for youth between age 18 and 20; and 937 for other adult inmates; rates of all assaultive rule violations were 109 per 1,000 for youth under 18; 61 for youth between age 18 and 20; and 26 for other adult inmates.

[161] Human Rights Watch interview with Ernesto D. (pseudonym), Pennsylvania, January 2012.

[162] Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.

not true for all prison rules, despite the fact that some officials say that, if they had discretion, they would generally be inclined to reduce isolation terms. The rules governing solitary confinement in Pennsylvania, for example, allow officials to reduce periods of solitary confinement imposed, but only for some infractions, not all. Officials in Pennsylvania reported that they feel their hands are tied. "Unfortunately, those are the policies that guide us," one said. "We try to get them out when we can, but we can't always get them out."[163]

Young people in punitive solitary confinement are often entitled to an hour outside of their cell each day, during which they can walk around, alone, in an indoor area, make phone calls, or take a shower. In some facilities they are taken to an outdoor exercise yard, often a small cage.[164] Facilities often severely restrict what can be inside a punitive solitary confinement cell, including for young people. For example, 12 young people across various states and counties told Human Rights Watch and the American Civil Liberties Union that they were unable to have a book in their cells (some facilities made an exception for the Christian bible). As one young man said, "There were no phones, no visits, no books, no newspapers—just the bible."[165] It was rare for a facility to permit access to any out-of-cell programming to those in punitive solitary confinement.

Solitary Confinement to Manage Inmates

Jail and prison officials most commonly use two forms of administrative solitary confinement to manage inmates, including adolescents, who are at risk of victimization or who are too difficult to manage in the general population.

Protective Solitary Confinement

International law and the laws of a number of US states require that young people be separated from adults when detained.[166] And many facilities also require such separation as

[163] Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, June 21, 2012.

[164] Human Rights Watch interviewed more than a dozen youth held in various facilities that did not permit outdoor recreation.

[165] Human Rights Watch interview with Jordan E. (pseudonym), Colorado, February 2012.

[166] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 9.

a matter of policy.[167] Yet, Human Rights Watch and the American Civil Liberties Union found that to achieve this purpose, some facilities resort to holding youth in permanent solitary confinement. In other facilities, where youth and adults are intermingled or where many young people are held together, corrections officials sometimes use solitary confinement to protect particular adolescents. Some facilities use this practice for weeks or months.

A number of corrections officials confirmed that they used solitary confinement to separate adolescents from adults.[168] In states with a lower age of criminal majority, such as Michigan or Wisconsin, where all young people age 17 are charged as adults, some facilities hold all those age 17 and older together with adults, but separate those who are younger.[169] Human Rights Watch and the American Civil Liberties Union interviewed 27 young people across the United States who had been placed in solitary confinement to protect them or to segregate them from adults or other inmates. A recent University of Texas survey of Texas jails found that 25 out of 41 jails that responded to a survey held youth in protective solitary confinement by default.[170]

[167] Standard 4-4307, "Youthful Offenders," in American Correctional Association, *Standards for Adults Correctional Institutions, 4th. Ed.* (ACA: January 2003); Standard 4-ALDF-2A-38, "Youthful Offenders," in American Correctional Association, *Performance-Based Standards for Adult Local Detention Facilities, 4th Ed.* (ACA: June 2004); Standard 1-CORE-2A-20, "Plan for Youthful Offenders," in American Correctional Association, *Core Jail Standards* (ACA: 2010).

[168] Letter from Susan Anderson, Corporal, Pasco County Detention Center, Florida, to Human Rights Watch, January 27, 2012 (reporting that on January 27, 2012, the facility held 12 youth charged as adults in single, separation, segregation, or special management cells; that youth spend less than one hour per day out of their cells; and that youth generally spend three to six months in the facility); Letter from Kent Rachel, Crawford County Justice Center, Ohio, to Human Rights Watch, January 5, 2012 (reporting that the facility rarely holds youth, but that when it does they are held in separation, segregation, or special management cells; that youth spend one to two hours per day out of their cells; and that youth generally spend one week or less in the facility); and Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012 (reporting that the facility generally holds youth charged as adults in single cells near adults; that youth spend between one and two hours per day out of their cells; and that youth spend one to two weeks in the facility).

[169] Human Rights Watch telephone interview with Michelle M. Sanborn, Jail Administrator, Macomb County, Michigan, March 9, 2012.

[170] Michele Deitch, Anna Lipton Galbraith, and Jordan Pollock, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, "Conditions for Juveniles in Texas County Jails," May 2012, http://www.utexas.edu/lbj/sites/default/files/file/news/Conditions%20for%20Certified%20Juveniles%20in%20Texas%20County%20Jails-FINAL4.pdf (accessed August 27, 2012) (reporting the use of single-cell confinement for 23 hours per day).

In some circumstances, facilities place young people in protective solitary confinement after they request protection. Several young people described preferring protective solitary confinement to the violence they feared or faced in the general population.

Sean F., for example, told Human Rights Watch and the American Civil Liberties Union that after he had difficulty in protective solitary confinement, the facility moved him:

> They moved me to a pod with adults. These guys were much older. They were nowhere near 17. [I was there] about three weeks. Then I couldn't take it. Just the thought, every day, asking, "What's going to happen?"... Maybe they are coming for me next. I got paranoid ... [they transferred me back to isolation]. It was better. You weren't as scared because [I] knew no one was going to wake up in the middle of the night and harm me.[174]

The Prison Rape Elimination Act (PREA) regulations require jails and prisons to keep youth under age 18 separate from adults age 18 and older in all common spaces.[171] Although they acknowledge the difficulties that corrections officials face in trying to keep youth segregated from adults, PREA regulations do not prohibit isolation or solitary confinement. Rather, they state that facilities "shall make best efforts to avoid placing youthful inmates in isolation."[172] A separate regulation requires that inmates at high risk of sexual victimization "shall not ordinarily" be placed in involuntary protective custody for more than 30 days.[173] But it is unclear how the two sets of regulations interact.

In acknowledging that there should be a limit on involuntary protective custody, and that facilities should not use isolation to protect youth, the Department of Justice has recognized that long-term solitary confinement is not an acceptable solution to the challenges of housing and managing vulnerable inmates. Yet, Human Rights Watch and the American Civil Liberties Union found 21 cases in which young people held in protective isolation reported spending months in solitary confinement.

Corrections officials acknowledge that adolescents seeking protection sometimes commit disciplinary infractions so they will be taken out of the general population. Until recently,

[171] Youthful Inmates, Prison Rape Elimination Act National Standards, 28 CFR § 115.14(a) ("A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through the use of a shared dayroom or other common space, shower area, or sleeping quarters.").

[172] 28 CFR § 115.14(c).

[173] 28 CFR § 115.43(c).

[174] Human Rights Watch interview with Sean F. (pseudonym), Michigan, March 2012.

Colorado did not have any formal mechanism to accommodate inmates in protective custody. Officials reported that administrative solitary confinement was used as a substitute by some: "Sometimes people hang out in Ad[ministrative] Seg[regation] because they are afraid. We have certainly seen that used to manage younger offenders who cannot live in general population without living in fear."[175]

Marcus S., who entered jail when he was 14 and was housed in a cell in a juvenile pod with two older adolescent cell-mates, said he was placed in protective solitary confinement after experiencing sexual abuse:

> [My 17 year old cell mate] kept on telling me stuff—like types of stuff you would say to females. And it escalated and when he approached me—I couldn't defend myself against two of them in the room—and he sexually abused me. I went and told the officer and he said I had to do something to be taken out of the dorm.... [At my disciplinary hearing, when I explained what had happened] the corporal said she didn't want to give me [a disciplinary violation]. She put me in protective custody.... She told me she was going to give me some help and let me stay in the isolation cell for a while.[176]

Marcus S. said he spent six months in protective solitary confinement following the incident. In some facilities, as with Marcus S., young people sometimes feel or are told that they have few options in order to keep themselves safe. Young people are forced into a position where they are choosing between solitary confinement and physical assault.

Some facilities place lesbian, gay, bisexual, transgender, or intersex (LGBTI) inmates, and inmates who are perceived as LGBTI, in protective segregation and isolation, including solitary confinement, to protect them from the increased risk of sexual abuse that these inmates face.[177]

[175] Human Rights Watch telephone interview with Tom Clements, Executive Director, Colorado Department of Corrections, Colorado, June 18, 2012.

[176] Human Rights Watch interview with Marcus S. (pseudonym), Florida, May 2012.

[177] Opening Statement of Senator Dick Durbin, "Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences," Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012, http://www.judiciary.senate.gov/pdf/12-6-19DurbinStatement.pdf (accessed August 27, 2012). Prisons and jails generally attempt to strictly enforce a gender binary system and categorize inmates as

Like young people in punitive solitary confinement, those in protective solitary confinement were often permitted out of their cell for one or two hours each day, frequently alone in an indoor dayroom. Some, but not all, facilities allowed outdoor recreation. Generally, young people were allowed to make phone calls and take a short shower during their time out of their cells. Two interviewees reported being the only adolescent in a particular unit, and that, for at least part of their detention, they were therefore permitted to spend much of their day in an empty common area, although they were still alone.[178] Facilities regulate what can be inside a protective solitary confinement cell, including for youth. Some facilities permit more privileges for those in protective solitary confinement than for those in punitive solitary confinement.

Administrative Solitary Confinement

Jail and prison officials frequently use solitary confinement to segregate individual inmates who they cannot otherwise manage from the general population. In most facilities, some form of administrative segregation can follow one or more terms of punitive solitary confinement and extend for months, or even indefinitely. It is generally the result of an inmate's "classification" and an evaluation of an inmate's perceived dangerousness or likely future conduct.

Human Rights Watch and the American Civil Liberties Union interviewed 28 young people who had spent a period of time in administrative solitary confinement while under age 18 in adult jails and prisons. Of those young people, six had spent six months or more in administrative solitary confinement. In addition, a number of the young people interviewed by Human Rights Watch and the American Civil Liberties Union entered administrative solitary confinement while under 18, but remained there for many years; at least 2 had spent a total of more than 10 years in administrative solitary confinement after they turned 18.

either male or female. Regina Kunzel, *Criminal Intimacy: Prison and the Uneven History of Modern American Sexuality* (Chicago: University of Chicago Press, 2008). Yet research has consistently demonstrated the increased vulnerability of LGBTI inmates. National Prison Rape Elimination Commission, "National Prison Rape Elimination Commission Report," June 2009, https://www.ncjrs.gov/pdffiles1/226680.pdf (accessed August 27, 2012), p. 7. A recent study of California correctional facilities found that approximately 67 percent of non-heterosexual inmates reported being victims of sexual assault, compared with approximately 2 percent of heterosexual inmates. Valerie Jenness et al., Center for Evidence-Based Corrections, "Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault," May 16, 2007, http://www.ushrnetwork.org/sites/default/files/VJReport2007.pdf (accessed August 27, 2012), p. 55.

[178] Human Rights Watch interviews with Ethan B. (pseudonym), Colorado, February 2012; and with Sean F. (pseudonym), Michigan, March 2012.

As one young man described in a letter,

> Imagine that you're locked in a small room like a bathroom 23 hours a day. You're handcuffed when you're moved outside of it. Your food is thrown under the door and you have five books per week. It's noisy outside with some [inmate] or another yelling, screaming, banging on his door at ALL HOURS; it smells worse than the monkey house at the older zoos no matter how hard you clean your own cell.... In seg[regation] you either implode or explode; you lose touch with reality, hear voices, hallucinate, and think for hours about killing yourself, others, or both. The anger and hurt gets so intense that you suspect everyone and trust no one and when someone does something nice for you, you don't understand it.[179]

Long-term administrative solitary confinement is generally imposed on a prisoner as a classification or housing decision. Such decisions to "administratively" isolate prisoners generally consider factors such as the individual's criminal conviction and history, severity of any disciplinary infractions, and other individual characteristics.[180] However, the criteria used in this "classification" of prisoners rarely include the age of an inmate.[181] Because some young people who spend time in state prison systems are convicted of serious offenses, they can be classified in a manner that leads to their direct placement in administrative solitary confinement.[182] Prolonged administrative solitary confinement is less common in pre-trial facilities, but does occur, particularly in larger jails.[183]

[179] Letter from Douglas C. (pseudonym), from Colorado, to Human Rights Watch, April 17, 2012.

[180] National Institute of Corrections, US Department of Justice, "Internal Prison Classification Systems: Case Studies and Their Development and Implementation," January 2002, http://static.nicic.gov/Library/017381.pdf (accessed August 27, 2012).

[181] For example, Tom Clements, the Executive Director of the Colorado Department of Corrections, told Human Rights Watch that although the Department of Corrections is in the process of validating a new classification instrument, the final version will not take age into account as a factor in determining classification. Human Rights Watch telephone interview with Tom Clements, June 18, 2012. ("Our classification system really doesn't factor in age. If there is a person who is 17, 18, 19 years old we apply the same classification system to them. We have been doing some work for the last nine months or so on our classification system. We are piloting a new classification instrument.... Assuming we implement that fully, we will rely less on how much time a person has left to serve and focus more on other attributes and characteristics. But it still will not factor in age as a driving factor.").

[182] Human Rights Watch interview with Ryan G. (pseudonym), Colorado, February 2012; Human Rights Watch, *The Rest of Their Lives*; Human Rights Watch, *Against All Odds*.

[183] Human Rights Watch interview with Philadelphia County Prison Official, February 23, 2012.

Another major factor in administrative solitary confinement determinations is conduct within a facility. As noted above, adolescents often misbehave or commit disciplinary infractions to protect themselves or fit into a culture of violence in jail and prison. Repeated disciplinary infractions can lead to administrative segregation, as it did with a number of young people interviewed by Human Rights Watch and the American Civil Liberties Union.

Prison and jail officials sometimes say it is necessary to separate an inmate, or groups of inmates, from others to ensure the security of staff and inmates in the general population. When this happens, some state prison officials said that they have to use solitary confinement, as they are not equipped to manage individual or small groups of prisoners in any other way. But several prison officials often told Human Rights Watch that they would like to have the ability to manage youth differently. As Tom Clements, the executive director of the Colorado Department of Corrections stated, "If I had a wish list, it would be to have the flexibility to have more intensive case management, mental health, and other programming to keep [youth] engaged in something that can build positive self-esteem."[184] Officials in the Pennsylvania Department of Corrections said that, although they try to divert youth from solitary confinement when possible, generally "4-5 percent of youth [in segregation] are those [who officials] can't incorporate back into the population."[185]

In recent years, legislators and corrections officials in a number of states have begun to reexamine the use of prolonged solitary confinement to manage inmates. The state of Mississippi recently reduced the population of inmates in long-term administrative solitary confinement by 75.6 percent, and closed the state's super-maximum security prison.[186] The Mississippi Department of Corrections found that prison violence decreased significantly as a result, and millions of dollars were saved in the process.[187] The Commissioner of

[184] Human Rights Watch telephone interview with Tom Clements, June 18, 2012.

[185] Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012. Note that the Pennsylvania Department of Corrections houses youth as young as 12 and as old as 22 in the same facility.

[186] Written Testimony of Commissioner Chris Epps, Mississippi Department of Corrections, "Reassessing Solitary Confinement the Human Rights, Fiscal, and Public Safety Consequences," Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, June 19, 2012, http://www.judiciary.senate.gov/pdf/12-6-19EppsTestimony.pdf (accessed August 27, 2012), p. 2.

[187] Erica Goode, "Prisons Rethink Isolation, Saving Money, Lives, and Sanity," *New York Times*, March 10, 2012, http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=1&_r=1 (accessed August 27, 2012); See also Margaret Winter, National Prison Project, American Civil Liberties Union "Rethinking Solitary Confinement in

Corrections, Chris Epps, recently testified before the US Senate that solitary confinement "created a situation where the norm was to be disruptive as there were no incentives to change behavior."[188] Colorado, Illinois, and Maine have also begun taking steps to reduce the number of inmates confined in long-term isolation.[189] The US Senate Judiciary Committee recently held hearings on the issue for the first time in its history.[190] These reforms may reflect a growing consensus that reliance on solitary confinement to manage inmates is costly, cruel, and unnecessary.

As with the experience of the young people in punitive and protective solitary confinement, those in administrative solitary confinement are often permitted out of their cell for one hour each day. Some, but not all, facilities allow outdoor recreation.[191] Facilities often strictly limit what can be inside an administrative solitary confinement cell, including for young people. Some facilities permit more privileges to those in long-term administrative solitary confinement—such as a radio or television, if the prisoner is able to afford to purchase such items from the facility—than they permit to those in punitive solitary confinement. But telephone and visitation privileges are sometimes more restrictive, particularly in prisons.

Solitary Confinement to Treat Inmates

Some adult jails and prisons use a stark form of solitary confinement to manage perceived and actual psychological emergencies.[192] Some years ago, it was considered medically appropriate, in a range of circumstances, to use lengthy isolation, usually called seclusion, as a therapeutic intervention for adults and, sometimes, adolescents. The current medical consensus disfavors the use of stark and prolonged isolation, preferring an approach much more tailored to the mental health needs of individual patients. For example, one

Mississippi and Beyond," March 12, 2012, http://www.aclu.org/blog/prisoners-rights/rethinking-solitary-confinement-mississippi-and-beyond (accessed August 27, 2012).

[188] Written Testimony of Commissioner Chris Epps, pp. 1-2.

[189] Goode, "Prisons Rethink Isolation, Saving Money, Lives, and Sanity," *New York Times*.

[190] Congressional Quarterly, "Senate Judiciary Subcommittee on Constitution, Civil Rights, and Human Rights Holds Hearing on Reassessing Solitary Confinement," June 19, 2012, http://solitarywatch.files.wordpress.com/2012/06/transcript-of-the-hearing.pdf (accessed August 27, 2012), Panel 1, transcript.

[191] Human Rights Watch interviewed more than a dozen youth held in various facilities that did not permit outdoor recreation.

[192] Others have noted that the practice still occurs in many jails and prisons. Jeffrey L. Metzner, "Introduction to: Resource Document on the Use of Restraint and Seclusion in Correctional Mental Health Care," *Journal of the American Academy of Psychiatry and the Law*, vol. 35 (December 2007), http://www.jaapl.org/content/35/4/415.full (accessed August 27, 2012), p. 415.

forensic child psychiatrist told Human Rights Watch and the American Civil Liberties Union, regarding seclusion for suicidal adolescents, "When you are feeling suicidal, [isolation] may well make you feel worse."[193]

However, several young people, including young people with mental disabilities, told Human Rights Watch and the American Civil Liberties Union that they were subjected to medical solitary confinement for days at a time; in a few cases, young people reported being held in medical solitary confinement for weeks. Some young people also reported being placed in medical solitary confinement after experiencing acute difficulty and having threatened or attempted to commit suicide in other forms of solitary confinement.

Four young people described, in detail, time spent in inpatient mental health facilities within state prison systems. These young people all reported spending long periods in isolation in these facilities, including periods of medical solitary confinement.

Unlike the experience of the young people in other forms of solitary confinement, those in medical solitary confinement were often not permitted out of their cell at all. Facilities often permit almost nothing to be inside a medical solitary confinement cell. Frequently, young people were naked except for a thin paper gown—called a "turtle suit" by some because of its appearance—and were allowed only a single, thick, tear-resistant blanket.

Christopher M. described his experience in medical solitary confinement in a letter:

> [I] was put in a pa[dd]ed room for 24 hours with a smock and hard blanket. [I] was served food in a paper tray[. I] was to eat with hands[. A]fter the meal [I] was not aloud [sic] to wash my hands[. I] was to shit and piss in the floor and not able to wipe my but[t] and not able to flush the hole in the ground[I] was to talk to a person about my sueisideaul [sic] thoughts ... [I] learned nothing from this person ... was out in 24 hours and put in isolation for 15 days which usually got extended [due] to behavior issues ... that was only

[193] Human Rights Watch interview with Dr. Peter Ash, Chief, Child and Adolescent Psychiatry, Director, Psychiatry and Law Service, and Associate Professor, Emory University, Georgia, January 9, 2012.

> one of some 50 times [I] was put in observation for attempted sueiside [sic] or saying [I] was going to kill myself.[194]

Quarantine

Some facilities use solitary confinement to quarantine adolescents, often when they first enter a facility. Quarantine practices vary significantly across facilities. Young people in some jails described being held separately at the beginning of their detention, pending the results of a tuberculosis test. In other facilities, young people were not segregated, but held with other incoming inmates. In some facilities, young people reported not spending any time in quarantine upon entry. Inmates who reported being subjected to medical solitary confinement for this purpose generally described being held for one, two, or three days.[195] As Human Rights Watch and the American Civil Liberties Union have argued elsewhere, whether an inmate is placed in a temporary medical quarantine should be based on whether it is medically necessary.[196] There are serious questions about whether medical solitary confinement is overused for quarantine and not actually justified as necessary for public health reasons.

Seclusion and SAMHSA

The Substance Abuse and Mental Health Services Administration (SAMHSA)—an agency of the US Department of Health and Human Services—is devoted to addressing the social and fiscal impacts of mental disabilities and substance abuse. SAMHSA has dedicated significant resources to reducing the use of seclusion and restraint in various forms of mental health treatment. SAMHSA shapes policy through contracts and grants, using various national information and data. SAMHSA has found that the use of seclusion for individuals with mental health issues has resulted in death, psychological trauma, and serious physical injury, including of young people.[197] SAMHSA has further noted that children are at a

[194] Letter from Christopher M. (pseudonym), from Wisconsin, to Human Rights Watch, January 17, 2012.

[195] Human Rights Watch interviews with Lloyd U. (pseudonym), Pennsylvania, January 2012; and with Craig G. (pseudonym), Pennsylvania, January 2012.

[196] Human Rights Watch and the American Civil Liberties Union, *Sentenced to Stigma: Segregation of HIV-Positive Prisoners in Alabama and South Carolina*, April 14, 2010, http://www.hrw.org/sites/default/files/reports/health0410webwcover.pdf.

[197] SAMHSA defines seclusion as "the involuntary confinement of a patient alone in an area in which the patient is prevented from leaving." Interagency Autism Coordinating Committee (IACC) Services and Safety Committee, Administrator's Office of Policy Planning and Innovation (OPPI) and Substance Abuse and Mental Health Service Administration, "Alternatives to Seclusion and Restraint in Behavioral Health Care," May 19, 2011, http://iacc.hhs.gov/events/2011/slides_larke_huang_051911.pdf (accessed August 27, 2012). Referencing CMS Hospital Conditions of Participation; SAMHSA National Action Plan on Seclusion and Restraint, Substance Abuse and Mental Health

particularly high risk of death and serious injury, as a result of the use of seclusion and restraint.[198] Through grant programs in a number of states, SAMHSA has worked to eliminate the use of seclusion and restraint in treatment and rehabilitation, except as a safety intervention of last resort, and has formally recognized the detrimental effects of holding individuals in isolation, particularly children and individuals with mental disabilities.[199]

Rates of Solitary Confinement

Neither states nor the federal government publish systematic data that show the number of youth held in adult jails and prisons who are subjected to solitary confinement.[200] And it is impossible to determine the precise number of people under age 18 subjected to solitary confinement. But the available data suggest that the practice is prevalent in particular jurisdictions and occurs nationwide.

Human Rights Watch and the American Civil Liberties Union identified facilities that hold 100 percent of youth in solitary confinement; large jail and prison systems that hold more than 10 percent of youth in solitary confinement at any given time; and facilities that avoid or rarely use the practice.

Jail officials in three states reported that all young people under age 18 in their facilities were held in protective solitary confinement.[201] Human Rights Watch and the American Civil Liberties Union interviewed six young people in other facilities who reported spending the entire period of their pre-trial detention in solitary confinement. Media and other reporting suggest that this practice is widespread in some states.[202]

Service Administration, "Seclusion and Restraint: Statement of the Problem and SAMHSA's Response," May 2003, http://www.samhsa.gov/seclusion/sr_handout.aspx (accessed August 27, 2012).

[198] SAMHSA National Action Plan on Seclusion and Restraint, "Seclusion and Restraint: Statement of the Problem and SAMHSA's Response."

[199] IACC Services and Safety Committee, "Alternatives to Seclusion and Restraint in Behavioral Health Care"; SAMHSA National Action Plan on Seclusion and Restraint, "Seclusion and Restraint: Statement of the Problem and SAMHSA's Response."

[200] Indeed, there are also no systematic national data on how many adults in jails and prisons or youth in juvenile facilities are subjected to solitary confinement.

[201] See discussion of protective solitary confinement above. Letter from Susan Anderson, Corporal, Pasco County Detention Center, Florida, to Human Rights Watch, January 27, 2012; Letter from Kent Rachel, Crawford County Justice Center, Ohio, to Human Rights Watch, January 5, 2012; and Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012.

[202] Deitch, Galbraith and Pollock, "Conditions for Juveniles in Texas County Jails"; Chris Vogel, "For Their Own Good," *Texas Observer*, June 9, 2010, http://www.texasobserver.org/mollyaward/columns/for-their-own-good (accessed August 27, 2012).

Information gathered from one large prison system and one large county jail system suggests that, in those facilities, more than 10 percent of youth held there are subjected to disciplinary solitary confinement.[203] Disciplinary data reported by the New York City Department of Corrections suggests that 14.4 percent of adolescents between the ages of 16 and 18 spend part of their pre-trial detention in solitary confinement.[204] This is significant because the department is one of the largest jail systems in the country. The most common disciplinary infraction for adolescents between the ages of 16 and 18 in the New York City Department of Corrections is for fighting.[205]

Population data reported by the Pennsylvania Department of Corrections, which holds adolescents and young adults in a single facility through age 21, suggest that approximately 10.9 percent of inmates there are held in solitary confinement.[206] Like New York City's facility, the department mixes young people under age 18 with young adults, but officials confirmed that approximately 10 percent of adolescents are consistently held in a form of solitary confinement.[207] Pennsylvania is among the 15 states that hold the largest number of young people under age 18 in adult prisons.[208]

Many officials reported that they subject youth and adults to the same disciplinary rules and that they subject youth to solitary confinement as a punitive sanction.[209] Human

[203] Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012. Note that the Pennsylvania Department of Corrections houses youth as young as 12 and as old as 22 in the same facility. See Pennsylvania Department of Corrections monthly prison data (reporting 10.9 percent of all youth under age 22 at Pine Grove Secure Correctional Institution in administrative or disciplinary solitary confinement as of April 2012),http://www.cor.state.pa.us/portal/server.pt/community/research___statistics/10669/monthly_population_reports/1069959 (accessed September 26, 2012); Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, June 21, 2012.

[204] New York state law distinguishes between adolescents ages 16 to 18 and adults for purposes of pre-trial and post-conviction detention; data was therefore reported for all adolescents. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

[205] Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

[206] Pennsylvania Department of Corrections, "Monthly Population Report," http://www.portal.state.pa.us/portal/server.pt/document/ (accessed August 27, 2012).

[207] Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

[208] Heather West, Bureau of Justice Statistics, US Department of Justice, "Prison Inmates at Mid-year 2009 – Statistical Tables," June 2010, http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf (accessed August 27, 2012).

[209] Prison officials in Colorado, Michigan, New York, and Pennsylvania all told Human Rights Watch that youth and adults are bound by the same disciplinary rules and that youth are held in punitive segregation. Jail officials in 26 counties in Colorado,

Rights Watch and the American Civil Liberties Union interviewed 36 young people who spent several periods in solitary confinement in jail or prison before they turned 18.

As previously noted, some research suggests that youth in adult prisons may commit disciplinary infractions at a rate that is higher than younger adult prisoners and much higher than older adults.[210] Disciplinary data made available to independent researchers by the Florida Department of Corrections suggest that approximately one in every ten adolescents in Florida prisons is found guilty of an assaultive rule violation.[211] Florida houses more young people under age 18 in its prisons than any other state. In Florida prisons, as in most other adult facilities, assaultive rule violations can result in a sanction that includes solitary confinement.[212]

While some large facilities reported high levels of solitary confinement, one facility in Erie County, New York, reported using disciplinary segregation only rarely and as a last resort.[213]

On the basis of our research and these partial, but suggestive, statistics, Human Rights Watch and the American Civil Liberties Union believe that solitary confinement of young people under age 18 is a serious and widespread problem.

Length of Time Spent in Solitary Confinement

There are also no comprehensive national data on the duration of the solitary confinement of young people under age 18. The limited evidence available suggests that adolescents in a significant number of jails and prisons spend prolonged periods—weeks and months, rather than just hours and days—in solitary confinement.

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with young people who reported spending lengthy periods in solitary confinement. While

Florida, Michigan, New York, Ohio, Oregon, Pennsylvania, and Wisconsin told Human Rights Watch that youth and adults are bound by the same disciplinary rules.

[210] Kuanliang et al., "Juvenile Inmates in an Adult Prison System: Rates of Disciplinary Misconduct and Violence." The analysis suggests that—per year—youth under age 18 are found guilty of "potentially violent rule violations" at a rate of 353.17 per 1,000 and of "assaultive rule violations" at a rate of 109.38 per 1,000.

[211] Ibid. Human Rights Watch and the American Civil Liberties Union have found that youth subjected to disciplinary confinement in Florida are sometimes held two per cell but at other times are held in solitary confinement.

[212] See discussion of Florida prisons in Appendix 2.

[213] Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

not a representative sample, 49 of the 127 young people asked said that they spent between 1 and 6 months in solitary confinement before they turned 18. Twenty-nine reported spending longer than six months in solitary confinement.

Officials in some jurisdictions have reported that youth in the adult criminal justice system are less likely to be released on bail than adults and therefore spend longer periods in pre-trial detention.[214] Human Rights Watch interviewed or corresponded with some young people who had spent more than one year in detention awaiting trial before turning eighteen. In some cases, this may mean that young people are more likely to be subjected to solitary confinement in jurisdictions where the practice is common.

Table 1: Total time spent in solitary confinement reported by young people

Total Length of Time in Solitary Confinement	1-7 days	8-30 days	31-180 days	181-365 days	365+days	Exact Duration Unknown
Number of Youth	11	11	49	21	8	27

Human Rights Watch and the American Civil Liberties Union interviewed young men and women who had been sentenced to a range of time in punitive solitary confinement. Young people in a few facilities reported being sentenced to less than a week in solitary confinement for fighting; others, to weeks or months.[215] Human Rights Watch and the American Civil Liberties Union did not independently verify accounts of the precise nature of the disposition, but young people described different penalties for similar infractions in different facilities, such as fights that did not result in bleeding or injury. Many young people spoke about being punished for defending themselves from an assault from another inmate.

Not all interviewees recalled the precise number of days they had spent in punitive solitary confinement in jail or prison as adolescents. Some also said that they spent time in administrative solitary confinement pending their disciplinary hearing. While not a representative sample, for those young people who did report the specific time periods,

[214] Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

[215] Human Rights Watch interviews with James M. (pseudonym), Florida, April 2012 and April 7, 2012; and with Justin C. (pseudonym), Florida, April 2012.

the most common disciplinary sanctions to which they had been subjected were between 15 and 29 days.

Table 2: Length of punitive solitary confinement sentences young people reported receiving

Length of Each Punitive Solitary Confinement Period	1-6 days	7-14 days	15-29 days	30-59 days	Greater than 60 days
Each Period of Punitive Solitary Confinement	8	26	27	21	20

While most facilities reported subjecting young people to the same lengths of punitive solitary confinement as adults, a representative of one facility in Erie County, New York, said that young people there were sentenced to shorter periods of disciplinary segregation than adults.[216]

Disciplinary rules, and the corresponding durations of solitary confinement, vary from state to state and jail to jail. Sanctions are commonly graduated, with the maximum period of solitary confinement for individual sanctions often increasing with severity, for example, from 7 to 15 to 30 to 60 days, depending on the infraction. Jail and prison officials in many jurisdictions reported that youth are generally subjected to the same length of time in punitive solitary confinement as adults.[217] Some jurisdictions subject individuals to multiple, consecutive—rather than concurrent—periods of solitary confinement for multiple, one rule violations, stemming from a single incident.[218] This can significantly increase the duration of solitary confinement when it is imposed as a disciplinary penalty.

The New York City Department of Corrections reported that a typical period of punitive solitary confinement for fighting for adolescents between the ages of 16 and 18 is 20 days.[219] The median period of punitive solitary confinement for adolescents, overall, is 29

[216] Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

[217] No state prison system reported a difference in the formal regulations governing disciplinary solitary confinement for youth and adults. A few jail officials also explicitly stated that youth and adults are subjected to the same periods of solitary confinement. Letter from Bernie Zook, Administrator/Warden, Mifflin County Correctional Facility, Pennsylvania, to Human Rights Watch, January 3, 2012; and Letter from Paul Falduto, Captain of Detentions, Kenosha County Sheriff's Department, Wisconsin, to Human Rights Watch, January 17, 2012.

[218] Human Rights Watch telephone interview with with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

[219] Ibid.

days; the average period of punitive solitary confinement is 43.1 days.[220] This suggests that some young people spend very long periods in solitary confinement.[221] Furthermore, young people generally spend more time in solitary confinement than adults.[222]

As with punitive solitary confinement, not all young people recalled the precise number of days, weeks, or months they had spent in protective solitary confinement in jail or prison while they were under age 18. While not a representative sample, for those young people who did report the specific time periods, the most common duration was longer than six months. Four of them reported spending longer than one year in protective solitary confinement.

Table 3: Length of protective solitary confinement reported by young people

Length of Each Protective Solitary Confinement Period	1-6 days	7-14 days	15-29 days	30-59 days	60-89 days	90 to 179 days	180 days or longer
Each Period of Protective Solitary Confinement	4	3	3	4	5	11	18

There is rarely any absolute temporal limit on administrative solitary confinement (solitary confinement as an administrative, management, or housing measure). Human Rights Watch and the American Civil Liberties Union interviewed a number of young people who began multi-year periods of administrative solitary confinement in state prison systems while they were under 18.[223]

The use of medical solitary confinement as a therapeutic intervention also varies across facilities. Human Rights Watch and the American Civil Liberties Union interviewed young

[220] This data is from FY 2012. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

[221] Officials at the New York City Department of Corrections indicated that they hope to reform the management structure at the facility to allow them to impose shorter periods of punishment. Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

[222] Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

[223] Human Rights Watch interviews with Bradley T. (pseudonym), Colorado, February 2012; and with George T. (pseudonym), Florida, April 2012.

people who described spending a few days in isolation when in the midst of, or immediately following, a mental health crisis. Four young people described spending more than a week in medical solitary confinement. A number of young people who described having great difficulty coping while in different forms of solitary confinement reported spending several periods in medical solitary confinement. Others reported being transferred from medical solitary confinement to another form of solitary confinement.

IV. Violations of Fundamental Rights

International human rights law requires the US government to protect all prisoners from mistreatment and to provide vulnerable inmates, especially children and persons with mental disabilities, with heightened measures of protection. This body of law, as well as international standards developed to guide its implementation, establishes that people under age 18 have a right to be treated in a manner appropriate to their age and development.

While the solitary confinement of adolescents is not yet prohibited under US domestic law, the US Supreme Court has repeatedly suggested that young people in the criminal justice system are entitled to special constitutional protections in the context of crime and punishment because they are developmentally different from adults.

International Law and Standards

In November 1959, the United Nations General Assembly adopted the Declaration on the Rights of the Child, which recognized that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."[224] The United States was one of the 78 members of the UN General Assembly that voted unanimously to adopt the declaration. While the declaration is not binding law, since that time, the world's governments, including the United States, have further elaborated, in treaties and other declarations, the rights of children accused of crimes.

The International Covenant on Civil and Political Rights (ICCPR), to which the United States became a party in 1992, specifically acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their

[224] United Nations Declaration on the Rights of the Child, adopted November 20, 1959, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959). Similarly, *The American Convention* on Human Rights ("Pact of San José, Costa Rica"), Article 19, states, "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." The Pact was adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

rehabilitation.[225] Article 10 requires the separation of child offenders from adults and the provision of treatment appropriate to their age and legal status. Article 14(4), which was co-sponsored by the United States, requires that criminal procedures for children charged with crimes "take account of the age and the desirability of promoting their rehabilitation."[226] The ICCPR emphasizes age-differentiated, positive measures for child offenders and education, rehabilitation, and reintegration over punishment.[227]

Both the ICCPR and the Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibit "cruel, inhuman or degrading treatment or punishment."[228] In addition, article 10 of the ICCPR stipulates, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[229] For treatment to be humane, it must be appropriate to age and legal status.[230] The vulnerability and immaturity of juvenile offenders renders a wider range of treatment potentially cruel, inhuman, or degrading, and such treatment, in turn, can have a much more profound effect on the body and mind of a developing child than on an adult.

It is precisely because imprisonment is such an inherently severe sanction that governmental decisions to impose it are subject to human rights constraints. The ICCPR

[225] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992. The Human Rights Committee has interpreted the ICCPR's provisions on child offenders to apply to all persons under the age of 18. UN Human Rights Committee, General Comment 1 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 155 (1994), http://www1.umn.edu/humanrts/gencomm/hrcoim20.htm (accessed August 27, 2012), para. 13.

[226] The United States co-sponsored this provision together with Great Britain and India, and it was adopted unanimously. See Marc Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (The Netherlands: Martinus Nijhoff Publishers, 1987), p. 307. The ICCPR contains three additional provisions related to juvenile justice. Article 6(5) prohibits imposing the death penalty on persons who committed crimes while under the age of 18. Article 10(2), subparagraph b, mandates the separation of accused children from adults and the swift adjudication of their cases. Article 14(1) provides an exception for cases involving children to the general requirement that judgments be made public.

[227] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: N.P. Engel, 1993), p. 266.

[228] ICCPR, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 16.

[229] In article 37 of the CRC, the prohibition of both capital punishment and life imprisonment without possibility of release are included in the sub-section banning cruel, inhuman, or degrading punishments. Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. The United States signed the CRC in 1995 but has not ratified.

[230] See UN Human Rights Committee, General Comment 9, Article 10 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994).

recognizes that all persons (including young people) deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.[231]

When the United States ratified the ICCPR, it attached a limiting reservation providing that

> The policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.[232]

The drafting history of this reservation indicates that it should be interpreted narrowly. The reservation was intended to permit—on an "exceptional" basis—the trial of children as adults and the incarceration of children and adults in the same prison facilities.

The United States, as a co-sponsor of Article 14, was keenly aware of the breadth and scope of its language. There is nothing in its reservation to suggest that the United States sought to reserve the right to treat children as harshly as adults on a regular or frequent basis, or to disregard the special needs and vulnerabilities of children. To the extent the reservation is interpreted broadly, it risks creating a loophole for violations of children's basic rights. To be fully consistent with what it has agreed to elsewhere regarding children's rights, the United States should withdraw the reservation, and refuse to use it to justify actions that otherwise would violate the ICCPR.

The Convention on the Rights of the Child (CRC), which the United States has signed but not yet ratified, explicitly addresses the particular rights and needs of children.[233] Underpinning several of the treaty's provisions is the fundamental recognition of the child's potential for rehabilitation. The CRC requires that a state's decision to incarcerate a

[231] ICCPR, art. 10(1).

[232] ICCPR, United States of America: Reservations, para. 5 (emphasis added). The United States also included a reservation to the general obligation of rehabilitation.

[233] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. The United States signed the CRC in 1995 but has not ratified.

child "shall be used only as a measure of last resort and for the shortest appropriate period of time."[234] A child who has committed a crime is to be treated in a manner that takes into account "the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."[235] States are to use a variety of measures to address the situation of children in conflict with the law, including "care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care."[236] The treaty also anticipates the need for regular and accessible procedures in which a child can "challenge the legality of the deprivation of his or her liberty."[237]

International human rights law also affirms the right of family unity.[238] The International Covenant on Economic, Social and Cultural Rights (which the US has signed, but not yet ratified) guarantees all persons a right to education and to the highest attainable standard of physical and mental health.[239]

The Convention of the Rights of Persons with Disabilities (CRPD), which the Senate was actively considering for ratification as this report was published, also states that young people with disabilities, including mental disabilities (long-term mental health problems) or intellectual disabilities (sometimes called developmental disabilities), retain the right to full enjoyment "of all human rights and fundamental freedoms, on an equal basis with other [youth]," including when deprived of their liberty.[240]

Various international standards provide additional detail regarding precisely how governments should ensure that this range of rights be safeguarded in practice.[241]

[234] CRC, art. 37(b).

[235] CRC, art. 40(1).

[236] CRC, art. 40(4).

[237] CRC, art. 37(d).

[238] ICCPR art. 23; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 10. The United States signed the ICESCR in 1977 but has not ratified.

[239] Universal Declaration of Human Rights (UDHR), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); ICESCR, art. 13.

[240] Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N.GAOR, 61st Sess., Supp. (No. 49) at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, arts. 7(1), 14. The United States signed the CRPD in 2009 but has not ratified.

[241] See for example, a recent report considering the particular vulnerability of persons with disabilities to cruel, inhuman, or degrading treatment, including in the context of detention. UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008.

With regard to solitary confinement, the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) describe punitive solitary confinement of young people under age 18 as cruel, inhuman, or degrading treatment.[242] The Committee on the Rights of the Child, which interprets the CRC, has also suggested that the punitive solitary confinement of young people under age 18 is cruel, inhuman, or degrading treatment.[243] The United Nations Rules for the Protection of Juveniles Deprived of their Liberty reiterates this conclusion.[244] A number of treaty and regional bodies have suggested that the prolonged solitary confinement of both adults and children can constitute cruel, inhuman, or degrading treatment.[245]

Most recently, the special rapporteur on torture, in his report to the General Assembly, called for an absolute ban on solitary confinement for young people under age 18:

> The Special Rapporteur holds the view that the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading

[242] United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

[243] UN Committee on the Rights of the Child, General Comment 10, Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

[244] UN Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, annex, 45 U.N. GAPR Supp. (no. 49A) at 205, U.N. Doc. A/45/49. (1990).

[245] See, for example, UN Human Rights Committee, General Comment 20, Article 7, Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 (1994); UN Committee Against Torture, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/63/175, July 28, 2008, para. 80; UN Committee Against Torture, "Consideration of reports submitted by States parties under Article 19 of the Convention: Concluding Observations of the Committee Against Torture," U.N. Doc. CAT/C/MAC/CO/4, November 21, 2008, para. 8. The Committee on the Rights of the Child has repeatedly recommended the practice be banned. UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child," U.N. Doc. CRC/C/15/Add.151, October 7, 2001, para. 41; UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under Article 44 of the Convention: Concluding observations, Singapore," U.N. Doc. CRC/C/15/Add.220, October 27, 2003, para. 45(d); and UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under Article 44 of the Convention: Concluding Observations, El Salvador," U.N. Doc. CRC/C/15/Add.232, June 30, 2004, para. 36(a). See also the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT), "The CPT Standards: 'Substantive' sections of the CPT's General Reports," CPT/Inf/E(2002) 1- Rev. 2006, Strasbourg, France, http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf (accessed August 27, 2012), para. 56. Human Rights Watch has condemned prolonged solitary confinement of adults as a function of individual characteristics and the particular conditions of confinement. See, for example, Human Rights Watch, *Out of Sight: Super-Maximum Security Confinement in the US*, February 1, 2000, http://www.hrw.org/reports/2000/02/01/out-sight-super-maximum-security-confinement-us.

> treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.[246]

This proposed absolute ban reflects an agreement that solitary confinement is an affront to the humanity and vulnerability of any child. The special rapporteur also called for an absolute ban on solitary confinement of those with mental disabilities because the adverse effects are especially significant for persons with serious mental health problems.[247] Young people under age 18 with mental disabilities are therefore doubly vulnerable, given both their age and developmental needs and their disability.

With regard to the other deprivations experienced by young people in solitary confinement, international standards similarly provide additional detail. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), among other international standards, provide that while in custody, adolescents "shall receive care, protection and all necessary individual assistance," which must extend to psychological, medical, and physical care and be differentiated by age and gender-specific needs.[248] These standards emphasize education, family contact, and access to developmentally-appropriate programming aimed at supporting growth and at reintegrating young people into society.

Domestic professional standards suggest that adult facilities should not house young people under age 18.[249] These standards also echo international standards with regard to access to physical and mental health care, with the American Correctional Association (ACA) recommending that in jails, "[all] inmates have unimpeded access to a continuum of health care services," including preventative care, and that inmates should "have access

[246] UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement (accessed August 27, 2012), para. 77.

[247] Ibid., paras. 67-68, 78.

[248] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted November 29, 1985, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

[249] Standard 4-ALDF-2A-38, "Youthful Offenders," in American Correctional Association, *Performance-Based Standards for Adult Local Detention Facilities, 4th Ed.* (ACA: June 2004); National Commission on Correctional Health Care, "Position Statement, Health Services to Adolescents in Adult Correctional Facilities," May 17, 1998, http://www.ncchc.org/resources/statements/adolsecents.html (accessed August 27. 2012); American Bar Association (ABA), *Youth in the Criminal Justice System: Guidelines for Policy Makers and Practitioners*, 2001, http://www.campaignforyouthjustice.org/documents/natlres/ABA%20-%20Youth%20in%20the%20Criminal%20Justice%20System%20Guidelines%20for%20Policymakers.pdf (accessed August 27, 2012).

to twenty-four hour emergency medical, dental, and mental health services."[250] The ACA also recommends that adult facility classification systems *and programming* should "meet the physical, social, and emotional needs" of young people and explicitly highlights the importance of training and specialization in the areas of "educational programming," "adolescent development," "crisis prevention and intervention," "cognitive-behavioral interventions," and "social-skills training."[251]

Human Rights Violations

Our research establishes both that young people under age 18 are subjected to solitary confinement, often for prolonged periods, and that the conditions that accompany solitary confinement frequently fail to meet the psychological, physical, social, and developmental needs of adolescents. These failures constitute violations of fundamental rights in a number of circumstances.

Any prolonged physical and social isolation of young people raises serious human rights concerns. Whether and when a particular case violates international human rights law is based on an individual analysis of the characteristics and needs of a particular young person and the conditions and duration of confinement. The UN Special Rapporteur on Torture and other UN bodies have stated that the solitary confinement (physical and social isolation of 22-24 hours per day for 1 day or more) of young people under age 18, for any duration, constitutes cruel, inhuman, or degrading treatment.

Human Rights Watch and the American Civil Liberties Union recognize that in any particular case, an analysis of the individual circumstances and conditions of confinement may be impractical. Given the nature of incarceration, as well as the needs, characteristics, and vulnerability of young people, we endorse the view that there is no reason—administrative, protective, punitive, or medical—to hold a young person for 22-24 hours per day for 1 day or more in social and physical isolation, even when it is necessary to separate a young person from the general population.

[250] American Correctional Association, *Core Jail Standards* (ACA: 2010).

[251] American Correctional Association, *Standards for Adult Correctional Institutions, 4th Ed* (Virginia: American Correctional Association, 2003). ACA Policy prohibits the confinement of youthful offenders in an adult facility. Comment to Standard 4-4307 in American Correctional Association, *Standards for Adult Correctional Institutions, 4th Ed.*

Such treatment violates the obligation to treat young people deprived of their liberty with humanity and respect for their inherent human dignity and status as children under the ICCPR and the CRC, and can amount to torture or cruel, inhuman, or degrading treatment under the ICCPR, CAT, and the CRC.

Even if the solitary confinement of young people were not considered an inherent violation of the rights of young people under age 18, and even in cases where it may not amount to cruel, inhuman, or degrading treatment, the conditions and deprivations that often accompany it entail violations of other fundamental rights.

Young people told us graphically how they felt solitary confinement aggravated or precipitated anguish and mental health problems. Officials often fail to provide mental health services and care to young people in solitary confinement, whether they are experiencing stress, mental disability, or even acute or repeated crises. They also often fail to intervene in these circumstances to end solitary confinement. These failures constitute violations of the rights of young people to be treated with humanity and respect for the inherent dignity of the human person, the rights of adolescents to the highest attainable standard of physical and mental health, and the rights of young people to be free from torture or cruel, inhuman, or degrading treatment. Failures of officials to maintain adequate preventative, age-differentiated health services, or to intervene to prevent a foreseeable successful suicide, would additionally constitute a violation of the right to life.[252]

Young people in solitary confinement are frequently only allowed out of their cell for one hour each day. In some facilities, they are only allowed to "exercise" indoors in a hallway or common area. In other facilities, they have access to a small fenced exercise area outdoors. In a few facilities, young people reported they were unable to access any physical exercise. Young people also reported difficulty accessing adequately nutritious food to support physical development. Young people also reported experiencing a range of physical changes while held in solitary confinement. Failure to foster conditions of confinement that promote healthy growth and physical development, or conditions of confinement which cause deterioration of physical health, can also violate the right of young people deprived of their liberty to be treated with humanity and respect for their

[252] The right to life is protected in all major human rights instruments, including the UDHR, the ICCPR, and the Convention against Torture.

inherent dignity, as well as the right to be free from torture or cruel, inhuman, or degrading treatment or punishment.

Young people in many facilities cannot contact their families regularly while in solitary, either literally by touch, or in other ways. Youth are often denied adequate or appropriate education, or sometimes any educational programming at all. Programming to promote social development is also sometimes entirely absent. These deprivations pertain also to young people in solitary who have mental disabilities. These failures on the part of officials can amount to a denial of the rights to be treated with humanity and respect for one's human dignity, the right to family unity, the right to education, and the right to rehabilitation.

US Law

US constitutional law does not currently prohibit solitary confinement, including for young people. Nearly every court to consider the solitary confinement of adults with serious mental disabilities has found the practice to be unconstitutional.[253] The US Department of Justice, when it has investigated the isolation and segregation of adolescents in adult facilities, has suggested that there are constitutional limits related to the physical and social isolation of youth with regard to conditions, duration, and process.[254] But there is no jurisprudence that specifically analyzes and finds unconstitutional the solitary

[253] For example, *Ruiz v. Johnson*, Southern Federal District Court of Texas, 1999 (37 F. Supp. 2d. 855, 915 (S.D. Tex. 1999)), rev'd on other grounds, *Ruiz v. Johnson*, Fifth Circuit Federal Court of Appeals, 2001 (243 F.3d 941 (5th Cir. 2001)), adhered to on remand, *Ruiz v. Johnson*, Southern Federal District Court of Texas, 2001 (154 F. Supp. 2d 975 (S.D. Tex. 2001)) ("Conditions in TDCJ-ID's administrative segregation units clearly violate constitutional standards when imposed on the subgroup of the plaintiff's class made up of mentally-ill prisoners); *Coleman v. Wilson*, Eastern Federal District Court of California, 1995 (912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995)); *Madrid v. Gomez*, Northern Federal District Court of California, 1995 (889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995)); *Casey v. Lewis*, Federal District Court of Arizona, 1993 (834 F. Supp. 1477, 1549-50 (D. Ariz. 1993)); *Langley v. Coughlin*, Southern Federal District Court of New York, 1988 (715 F. Supp. 522, 540 (S.D.N.Y. 1988)) (holding that evidence of prison officials' failure to screen out from SHU 'those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there' states an Eighth amendment claim).

[254] Letter from Thomas E. Perez, Assistant Attorney General, to Andrew J. Spano, Westchester County Executive, November 19, 2009, http://www.justice.gov/crt/about/spl/documents/Westchester_findlet_11-19-09.pdf (accessed August 27, 2012), para. 27-30 (noting that the average disciplinary sanction imposed on young people in an adult jail was in excess of 365 days in isolation, with the longest period being 510 days, and noting how the isolation has contributed to the deteriorating mental health of juvenile inmates); Letter from Wan J. Kim, Assistant Attorney General, to Jim Doyle, Governor of Wisconsin, May 1, 2006, http://www.justice.gov/crt/about/spl/documents/taycheedah_findlet_5-1-06.pdf (accessed August 27, 2012), para. 10-13 (finding that the adult facility used administrative segregation and observation status for inmates with severe mental illness in violation of the Constitution); Letter from Ralph F. Boyd, Jr., Assistant Attorney General, to Parris N. Glendening, Governor of Maryland, Aug. 13, 2002, http://www.justice.gov/crt/about/spl/documents/baltimore_findings_let.php (accessed August 27, 2012) (finding that juveniles in an adult jail were put in isolation cells under "supermax" conditions, sometimes for as long as several months).

confinement of young people in adult jails and prisons.[255] However, in almost all jurisdictions, there are a variety of legal doctrines that distinguish between young people under age 18 and adults. As the Supreme Court has explained,

> The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Like this Court's own generalizations, the legal disqualifications placed on children as a class— *e.g.*, limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.[256]

In the past decade, the United States Supreme Court has repeatedly acknowledged that in the criminal justice context, youth are entitled to greater constitutional protections than adults. In four recent decisions regarding the death penalty, interrogations, and life without parole, the court has affirmed that people under age 18 are still developing and are inherently less culpable than adults.[257] This reasoning applies with equal force in the context of solitary confinement.

[255] The few courts to consider isolation of young people have generally done so in the context of a range of claims related to mistreatment in juvenile facilities. For example, *R.G. v. Koller*, Federal District Court of Hawaii, 2006 (415 F.Supp. 1129 (D. Hawaii 2006)); *Santana v. Collazo*, First Circuit Federal Court of Appeals, 1984 (793 F.2d 41 (1st Cir. 1984)) (holding that juvenile detention facilities in Puerto Rico failed to meet burden of showing legitimate interest in confining juveniles in isolation for as long as 20 days on grounds of protecting juveniles from harm, discouraging offender behavior, and preventing escapes); *D.B. v. Tewksbury*, Federal District Court of Oregon, 1982 (545 F. Supp. 896 (D. Or. 1982)) (detaining child pretrial detainees in jail under circumstances, in which there was failure to provide work, exercise, education, recreation or recreational materials or for privacy when showering, using toilets or maintaining feminine hygiene, in which certain children were placed in isolation cells and in which there was failure to provide adequate supervision to prevent harm, to allow contact between children and their families, to provide adequate diet, to train staff to meet children's psychological needs, to provide written rules and grievance procedure and to provide adequate medical care, constituted "punishment," and, thus, violated due process clause); *Gary H. v. Leo Hegstrom*, Ninth Circuit Federal Court of Appeals, 1987 (831 F.2d at 1433 (9th Cir. 1987)) ("To the extent that the court ordered due process hearings prior to confinement in excess of 24 hours, . . . the decree was clearly within the power of a federal court to assure minimum constitutional standards taught by Youngberg.").

[256] *J.D.B. v. North Carolina*, United States Supreme Court, 2011 (564 US __at 10 (2011)) (internal citations omitted).

[257] *Roper v. Simmons*, United States Supreme Court, 2005 (543 US __, at 19 (2005)) ("The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."); *Graham v. Florida*, United States Supreme Court, 2010 (560 US __, at 23 (2010)) ("The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."); *Miller v. Alabama*, United States Supreme Court, 2012 (No. 10 - 9646, slip op. at 8 (2012))(" ...[C]hildren are constitutionally different from adults.... [J]uveniles have diminished culpability and greater prospects for reform ... [and] are less deserving of the most severe punishments.... [C]hildren have a lack of maturity and an

Federal courts have already recognized that for certain vulnerable populations, such as those with severe mental health problems, solitary confinement constitutes a violation of the Eighth Amendment as a cruel and unusual punishment. There is also a growing body of law stating that young people are such a vulnerable population because of the unique challenges they face when subjected to solitary confinement. And the Supreme Court has already recognized that the punishment of children must take into account their age and special developmental needs and capacity for change. Taking all this into account, solitary confinement should not be inflicted on youth in the same way that it is applied to adults. Failure to take age into account, and subjecting young people to solitary confinement, should therefore be found to violate the constitutional prohibition on cruel and unusual punishment.

underdeveloped sense of responsibility[;] ... [c]hildren are more vulnerable ... to negative influences and outside pressures[;] ... [a]nd ... a child's character is not as well formed as an adult's; his traits are less fixed.").

V. Alternatives to the Solitary Confinement of Youth

Young people in conflict with the law can be among the most complex and demanding group of individuals to house, manage, protect, and care for. The challenge is all the more daunting for officials with limited budgets and in facilities designed, and with staff trained, to house and manage adults. Some officials respond in the same way to every form of misconduct: through punishment. Solitary confinement can sometimes appear to be a simple solution to keeping everyone safe in overcrowded, short-staffed facilities that have little programming to offer inmates. But the imposition of solitary confinement is never necessary in the management of people under age 18 and can have dire consequences.

Human Rights Watch and the American Civil Liberties Union have found accord between the views of some corrections and mental health experts that facilities can, and should, manage and detain adolescents without subjecting them to any form of solitary confinement.

Getting Kids Out of Adult Facilities

A significant number of adult facilities across the United States rely on solitary confinement when detaining and managing young people. An initial important step to reducing the numbers of adolescents harmed by the practice would be to move people under age 18 out of adult facilities and into juvenile facilities.

Although there is evidence to suggest that some facilities in the juvenile justice system still use various forms of prolonged isolation, including solitary confinement, when detaining and managing young people, there are other systems that rarely use prolonged isolation. For example, a recent study of the Missouri juvenile system found that it used isolation hundreds of time less often than juvenile facilities in Ohio.[258] Additionally, every

[258] The study also found that, when compared with 97 facilities nationwide that confidentially report data to the Council of Juvenile Correctional Administrators Performance-based Standards (PbS) project, the ratio of isolation incidents nationally to those in Missouri was 228:1. Richard Mendel, The Annie E. Casey Foundation, "The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders," 2010, http://www.aecf.org/MajorInitiatives/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf (accessed August 3, 2012), pp. 9-10. A detailed description of the use of isolation in juvenile facilities can also be found in Sandra Simkins et al., "The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation," *Washington University Journal of Law and Policy*, vol. 38 (2012), http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1019&context=wujlp (accessed September 26, 2012).

set of best practice standards for juvenile facilities proposes maximum limits on various forms of isolation that are far below the durations of solitary confinement experienced by the young people interviewed for this report and by young people in adult facilities across the nation.[259]

The vast majority of facilities in the juvenile justice system are staffed and resourced to provide for adolescent needs in a much more comprehensive way because they are designed to house and manage young people.

Reviewing and Reforming

Managing youth in the juvenile justice system will always be the best option. But in some jurisdictions, where reform of state law is necessary before all young people can be returned to the juvenile justice system, adult facilities can take significant measures to reduce the prevalence, duration, and harmful consequences of solitary confinement without embarking on sweeping reforms.

Jails and prisons can review existing policies and practices, including disciplinary procedures, and modify them to reflect differences in how they apply to youth and adults. Officials can instruct and train staff to view and treat youth differently from adults, including in designing and implementing services and programming, as well as in assessment, diagnosis, and classification.

Training and Staffing

Officials repeatedly described to us the importance of mentorship and adequate supervision to maintain order and protect all inmates. Facilities must have appropriate

[259] The Juvenile Detention Alternatives Initiative suggests that best practices for juvenile facilities include prohibiting room confinement in excess of four hours as a response to current misbehavior and prohibiting disciplinary room confinement in excess of 72 hours. "Juvenile Detention Alternatives Initiative (JDAI) Facility Site Assessment Instrument," May 2006, http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf (accessed August 27, 2012). The American Bar Association Task Force on Youth in the Adult Criminal Justice System proposed that room confinement for any purpose should never exceed 10 days. American Bar Association (ABA), *Youth in the Criminal Justice System: Guidelines for Policy Makers and Practitioners*, http://www.campaignforyouthjustice.org/documents/natlres/ABA%20-%20Youth%20in%20the%20Criminal%20Justice%20System%20Guidelines%20for%20Policymakers.pdf. The 1980 American Bar Association Guidelines for Juvenile Facilities suggests that best practices for juvenile facilities should include limiting protective custody to eight hours and prohibiting room confinement for suicide risk, as well as limiting disciplinary confinement to 5 days for minor infractions and 10 days for major infractions.

numbers of properly trained and adequately supervised staff.[260] To provide for the full range of the needs and vulnerabilities of young people, staffing must include specialized service providers, like social workers and mental health professionals.

As one corrections official, who manages a prison for youthful offenders in the adult system, described,

> If we do what we do and do it well here, we are able to provide some of the mentorship they wouldn't be able to get at another facility because we are staffed heavier. In a typical adult jail, they would have about half of the staff that we do here on a unit. We have enough staff to interact with them as much as possible—to provide that type of mentoring and leadership.... We have twice the complement of case managers. We have treatment specialists; two to three times the amount of corrections officers. One of the things we do well is just the amount [of staff]."[261]

Another stated,

> [Youth] are high maintenance. Half the battle [is] you have to know about them; about their family, what kind of history they have. When they understand that, it is half the battle.... Just the fact that you know their name and know something about them, there is no substitute for the rapport building.[262]

Programming and Activities

Whether housed in small or large groups, one way to effectively manage young people is by providing significant levels of programming and activities in which they can invest their energy and attention. For example, although officials at the Pine Grove youthful offender

[260] For a discussion of staffing ratios in juvenile facilities, see Center for Children's Law and Policy et al., "Protecting Youth in the PREA national standards," April 4, 2011, http://www.cclp.org/documents/PREA/PREA%20Youth%20Comments.pdf (accessed August 27, 2012).

[261] Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

[262] Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

facility in Pennsylvania described using solitary confinement to manage some youth, they described high levels of activities as one of the important elements of managing other youth in their facility. As one official stated, "If you don't create something for them to do, their minds race at 90 miles an hour; they are harder to manage if you don't keep them busy."[263]

The New York City Department of Corrections has recently announced plans to reform the programming it provides to adolescents held in general population on Rikers Island.[264] The Department's current goal is,

> ... [T]o create a wrap-around environment. The question is, after the school day, how do we sustain the focus on problem-solving? This is a cognitive skills program ... we have trained members of the school staff. We have also trained our correctional staff and our adolescents so that everyone has the same language and expectations for problem-solving. There are group sessions that happen in the evenings in the housing units so things don't fester—to develop more pro-social problem-solving skills. The program also features a component on using leisure time wisely. So ... [youth are] learning to make good choices throughout the whole of the day.[265]

It remains to be seen whether additional reforms at Rikers will address the developmental needs of youth held in solitary confinement there. Young people who had experienced solitary confinement across the United States, and who had spent months or years in adult facilities while under age 18, frequently identified idleness as the primary source of conflict, and hence rule violations, in jails and prisons.

Assessment, Diagnosis, and Planning

Experts stress the importance of assessing youth coming into and staying in adult facilities (and of being able to recognize mental and intellectual disabilities) to provide

[263] Human Rights Watch telephone interview with Eric Bush, June 21, 2012.

[264] "New Privately-Funded Program to Reduce Reincarceration—ABLE—is part of City's comprehensive Young Men's Initiative," News from the Blue Room, NYC.gov press release, August 2, 2012, http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2012b%2Fpr285-12.html&cc=unused1978&rc=1194&ndi=1 (accessed August 27, 2012).

[265] Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

appropriately for individual young people and ensure rehabilitation. As one psychiatric expert with experience in adult and juvenile facilities described, this can take the form of repeated re-classification:

> "[The] risk and needs [of teenagers] change over time. With teenagers, they need to have a good risk and needs assessment and they need that every six months to a year. Then a behavior plan that matches their risk and needs. What you want to do is target their highest criminal recidivism risk and then target their highest needs. Maybe this kid has an emerging mental illness; maybe they have a low I.Q.; maybe they malinger a lot. If we could do that, then we could really help this person grow and progress."[266]

Disciplinary Measures

Solitary confinement is also not necessary as a disciplinary measure, and experts have pointed to alternatives, including through the establishment of a system of graduated sanctions. Such a system would require changes though. As the former Commissioner of Corrections of New York City and the state of Pennsylvania stated,

> There aren't a whole lot of tools to deal with adolescents as things stand. So there aren't a whole lot of things to control. If there were activities, then something coveted to participate in, you could take that away.... Restricting a kid from going to the movie tonight may have as powerful an impact on controlling their behavior ... there aren't a sufficient number of activities that are viewed as desirable that could be used as an intermediate sanction where sanctions are necessary.[267]

To be effective, experts also point out that disciplinary measures must be immediate and proportional to the behavior, and connected to programming. Even officials who described using solitary confinement in some contexts, described being able to avoid it in other contexts. As one state prison official described,

[266] Human Rights Watch telephone interview with Deborah DePrato, Director, Institute for Public Health and Justice, Louisiana State University Health Sciences Center, and Associate Clinical Professor, School of Public Health, Louisiana, June 6, 2012.

[267] Human Rights Watch telephone interview with Martin Horn, Distinguished Lecturer in Criminal Justice, John Jay College of Criminal Justice, New York, May 24, 2012.

> We have trained our staff to go to immediate sanctions, logical sanctions, immediate and programmatic sanctions. What we have found is that if you address the issue immediately and if the consequence is immediate, we can change behavior. We have focused a lot on that with our younger offenders.[268]

Even some officials who reported frequently using solitary confinement as a disciplinary response identified very different alternatives:

> If you can get in quick enough, it would be the equivalent of "go to your room." A lot of these [conflicts] start small. If you have one youth who is monopolizing the channel-changer [for the housing area television], the option now ... if he does not respond is to infract him [which results in punitive segregation]. What I prefer is "go to your room young man" and then to create a mechanism for review—so every two hours you double back and it wouldn't go any longer than six hours (so that it doesn't go beyond a *de facto* punitive segregation in your housing unit). So when you are ready to come out, all is forgiven.[269]

Borrowing from Juvenile Facilities

The most progressive and innovative alternatives to solitary confinement that respond better to adolescent needs and development come from the juvenile justice system. As one expert describes, "[Corrections officials in adult facilities] haven't thought about different ways to deal with these acting out behaviors, to realize they are normal behaviors and are teachable moments to teach [youth] to react in a different way to stimuli."[270] Officials feel that some of the best practices from juvenile facilities could work for youth in adult facilities.

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[268] Human Rights Watch telephone interview with Steve Hager, Director, Youthful Offender System (YOS), Colorado Department of Corrections, Colorado, June 18, 2012.

[269] Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

[270] Human Rights Watch telephone interview with Martin Horn, New York, May 24, 2012.

Rewarding Positive Behavior

One fundamental shift that would help is to move from managing youth solely through punitive disciplinary measures to focus on teaching and reinforcing positive behaviors. As one official at a juvenile facility described,

> What we have found in all our programs is that the best way to influence behavior is positive reinforcement. You encourage good behavior by incentivizing. What we have found as part of our philosophy [of] behavior management is that the most important thing is to get kids to accept responsibility for their actions and think about it and change. If you put a kid in isolation of any kind, what you are essentially doing is letting the kid off the hook. He can spend all of his time blaming you.... If you want to get kids to do something that you want them to do, reinforce good behavior.... We don't have any punishments in our program. If you do something bad you are held accountable. That might mean you pay back the community in some way or it might mean that you continue in program longer than you expected because you are not getting it. So the behavior is the report card.... The last thing you want to do to kids who are struggling with some very hard issues is make them be alone. That's just stupid. I don't know any other way to put it. Putting them in a place by themselves is just stupid. And it's harmful.[271]

Another official at an adult jail stated,

> If you deal with these teenagers at all, you know that the more you lock them up and the less they have to do, the most trouble they get in. Locking them up becomes counterproductive. So we try to use other, creative ways to exercise discipline, as opposed to locking them up and letting them sit idle.[272]

[271] Human Rights Watch telephone interview with Peter Plant, Senior Vice President for Education and Policy Development, G4S Youth Services, LLC., Florida, November 1, 2011.

[272] Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

Small Group Living

One technique that experts often identify as important to reinforce positive behaviors in young people, is to create a small community in which youth can raise concerns and have them addressed. In Missouri, for example, this process is structured around a discussion circle:

> [A]t any time, youth are free to call a circle—in which all team members [residents] sit or stand facing one another—to raise concerns or voice complaints about the behavior of other group members (or to share good news). Thus, at any moment, the focus can shift from the activity at hand—education, exercise, clean up, a bathroom break—to a lengthy discussion of behaviors and attitudes. Staff members also call circles frequently to communicate and enforce expectations regarding safety, courtesy, and respect, and also to recognize positive behaviors.[273]

Limited Appropriate Uses of Segregation and Isolation

There is no question that corrections officials have a duty to protect the safety and wellbeing—and to safeguard the human rights—of staff and the entire inmate population. In some cases, certain forms of short-term segregation and isolation may be a valid tool for corrections officials to use in pursuing this particular goal. Yet, any use of segregation and isolation of young people must be tightly regulated, monitored, used for the shortest duration possible, and only to the extent strictly necessary to maintain the immediate safety of the young person or others.[274]

At all times, the goal of any form of protective isolation should be to return an individual to general population. Steps should be taken to limit social and physical isolation. Facilities must ensure that young people are not denied access to developmentally appropriate treatment, services, or programming. Under no circumstances should practices be extreme enough to constitute solitary confinement.

[273] Richard Mendel, "The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders," http://www.aecf.org/MajorInitiatives/~/media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf (accessed September 26, 2012), p. 29.

[274] For an interesting discussion of why penal isolation should be regulated in the same way as use of force, see Fred Cohen, "Isolation in Penal Settings: The Isolation-Restraint Paradigm," *Journal of Law and Policy*, vol. 22 (2006), p. 295; and Frank Cohen, "Penal Isolation: Beyond the Seriously Mentally Ill," *Journal of Criminal Justice and Behavior*, vol. 35 (2008), p. 1017.

If officials find they are using segregation and isolation frequently for particular adolescents, they should work with them to identify and address the underlying causes and find alternative solutions.

Interrupting Disciplinary Crises

Limited segregation and isolation can also be an appropriate intervention to prevent harm to an individual young person, to other adolescents, or to staff. But experts stress that whenever youth are isolated, there must be a therapeutic goal and intervention. As Dr. Cheryl Wills described,

> Once the crisis has been de-escalated, you start the rehabilitation again. So just because [the youth] had a crisis does not justify depriving them of treatment and rehabilitation. The containment serves a purpose of containing the behavior, but then you start again. So the key is the rehabilitation. Whether or not a person has a mental illness, they need rehabilitation. If you just do the restraint and retribution, but not the rehabilitation, they are not going to change their behavior.[275]

Short-term Protective Segregation and Isolation

Even in specialized facilities designed to hold young people under age 18, some form of short-term segregation and isolation may be necessary to protect individual adolescents from others. But, as Human Rights Watch and the American Civil Liberties Union have stated elsewhere, such isolation must be for as brief a period as possible and not subject to extensions, lasting only until an alternative placement can be arranged.[276]

Diverting Youth to Specialized Facilities

Psychological experts stressed the importance of identifying the underlying causes of behaviors that lead to misconduct or a need to segregate or isolate. Some experts also

[275] Human Rights Watch telephone interview with Dr. Cheryl Wills, independent medical evaluator and director of child and adolescent psychiatric services at Case Western Reserve University, Ohio, May 24, 2012.

[276] Human Rights Watch, "Comments on the National Standards to Prevent, Detect, and Respond to Prison Rape proposed by the Department of Justice on Feb. 3, 2011," April 4, 2011, http://www.hrw.org/sites/default/files/related_material/Human%20Rights%20Watch%20Comments%20on%20Prison%20Rape%20Standards.pdf, p. 34.

emphasized that when those causes involve mental health problems or a mental disability, and when facilities cannot manage adolescent behavior, transferring young people to a specialized mental health facility may be appropriate. The American Academy of Child and Adolescent Psychiatrists recently issued a policy statement urging a ban on solitary confinement and promoting the intervention of a qualified mental health professional after 24 hours.[277] As one of its drafters told us,

> There really should be no reason that a child should be in any type of solitary confinement for any duration. In my opinion, if they are in solitary for more than a day [24 hours] you need to find another facility for them or [implement] some kind of mental health intervention.[278]

[277] Juvenile Justice Reform Committee, American Academy of Child and Adolescent Psychiatry, "Policy Statements: Solitary Confinement of Juvenile Offenders," April 2012, http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders (accessed August 27, 2012).

[278] Human Rights Watch telephone interview with Louis Kraus, Chief of Child and Adolescent Psychiatry, Rush University Medical Center, and Co-Chair of the American Academy of Child and Adolescent Psychiatry Committee on Juvenile Justice Reform, Illinois, June 14, 2012.

Recommendations

The federal government and state governments should end the practice of subjecting young people to solitary confinement. Legislative action is crucial; but even in the absence of legislation, a range of actors, including jail and prison officials, can and should take significant steps towards this goal.

Ending the solitary confinement of young people requires broad reforms in five areas. First, the solitary confinement of people under age 18 should be prohibited in law and policy. Second, young people should not be held in adult jails and prisons or managed with policies and practices designed for adult inmates. Third, all forms of segregation and isolation of young people, even those not long enough to constitute solitary confinement, should be strictly limited and regulated, regardless of where they are held. Fourth, all facilities that detain young people should publicly report on the use of segregation and isolation. Finally, the US government should ratify human rights treaties protecting young people without reservations.

The following detailed recommendations address each of these policy areas:

At the State Level

State Legislatures

- Prohibit the solitary confinement of young people under age 18 in adult and juvenile facilities for any purpose.
- End the practice of trying, sentencing, and incarcerating youth under 18 in the adult criminal justice system; where this is not immediately feasible, mandate that all people under age 18 be held in the juvenile justice system—before trial and after conviction or adjudication—no matter how they are charged; and appropriate funds, as necessary, to provide for changes in population in juvenile facilities.
- Strictly limit segregation and isolation of young people under age 18, even if for periods not long enough to constitute solitary confinement.
- Require that people under age 18 held in any form of segregation and isolation, including solitary confinement, and particularly young people with mental or intellectual disabilities, be treated in a manner consistent with their medical, psychological, developmental, educational, social, and rehabilitative needs; appropriate funds, as necessary, to provide for changes in services and programming.
- Require periodic monitoring and review of solitary confinement, segregation, and isolation policies, practices, and procedures at every correctional facility by an independent and qualified reviewer; ensure that the reports generated from these reviews are available to the public.
- Require adult and juvenile facilities to monitor and publicly report:
    - The rates and durations of any form of segregation and isolation, including solitary confinement.
    - The reasons why youth are subjected to any form of segregation and isolation, including solitary confinement.
    - Information about the quality and availability of age-differentiated programming and services for young people under age 18, including young people with mental or intellectual disabilities, held in any form of segregation and isolation, including solitary confinement.

State Prison Systems and County Jails

- Prohibit the solitary confinement of young people under age 18 for any purpose.
- Establish specialized facilities or sections of facilities to house young people under age 18, including young people at high risk of victimization, so that they are not held in prolonged segregation and isolation, including solitary confinement.
- Conclude memoranda of understanding or contracts with state juvenile facilities to house young people under age 18; and with state juvenile or other medical or mental health facilities to house young people under age 18 who require specialized medical or psychological care.
- Develop specialized disciplinary rules for young people under age 18 that avoid prolonged segregation and isolation, that expressly take age and needs into account, and that provide a range of behavioral management techniques, including positive behavioral management and differentiated and proportional sanctions.
- Strictly limit the segregation and isolation of young people under age 18, even if for periods not long enough to constitute solitary confinement.

- Ensure that all young people under age 18, and particularly young people with mental or intellectual disabilities, in any form of confinement, including segregation and isolation, have access to:
    - Adequate and age-differentiated medical and mental health services.
    - Adequate physical exercise, including outdoor exercise and aerobic, muscle-strengthening, and bone-strengthening exercise.
    - Meals with adequate and developmentally-appropriate nutritional value.
    - Means of contact with their family, including contact visits, telephone, and written communication.
    - Adequate and age-differentiated educational programming and services.
    - Adequate and age-differentiated social, developmental, and rehabilitative programming and services.
    - Developmentally-appropriate levels of social interaction with other young people and adults.
- Ensure adequate staffing levels to manage young people under age 18.
- Provide specialized training to all staff on managing adolescents, and particularly on the use of verbal de-escalation techniques, and on identifying and assisting young people with mental or intellectual disabilities and histories of trauma and abuse.
- Provide additional training to staff who manage young people in segregation and isolation on identifying and assisting young people with mental or intellectual disabilities and histories of trauma and abuse.
- Provide specialized training to medical and mental health staff who care for young people under age 18.
- Make data on rates and durations, and justifications for the use of segregation and isolation, including solitary confinement, publicly available.
- Publish all disciplinary rules, policies, and procedures related to young people under age 18 in a publicly available forum.
- Conclude memoranda of understanding with state juvenile, medical, and mental health facilities, education systems, and between county and state facilities, to ensure transfer of data regarding physical and mental health histories, identified mental or intellectual disabilities, and histories of trauma and abuse.
- Notify and consult with family members, as well as counsel for represented youth, when young people under age 18 are placed in any form of segregation and isolation, including solitary confinement, or have a significant medical or mental health event.

State Departments of Education

- Issue clear guidance mandating the provision of adequate and age-differentiated educational programming and services to all young people under age 18 in segregation and isolation in adult jails or prisons, including those with mental or intellectual disabilities.

State Departments of Health

- Issue clear guidance mandating the provision of adequate and age-differentiated physical and mental health care, as well as social, developmental, and rehabilitative programming and services to all young people under age 18, particularly those with mental or intellectual disabilities, in segregation and isolation in adult jails or prisons.

State Juvenile and Adult Criminal Court Judges

- Hold a hearing on conditions and use of segregation and isolation, including solitary confinement, in the place of detention when considering transfer of jurisdiction to the adult criminal justice system and before sentencing.
- Decline to transfer young people to the jurisdiction of the adult criminal justice system.
- Affirmatively order that young people be held in the juvenile justice system pre-trial or post-adjudication or conviction.
- Require prosecutors to submit data on the use and duration of segregation and isolation, including solitary confinement, before sentencing.
- Before sentencing, require a medical and mental health evaluation of the effects of any periods of segregation and isolation, including solitary confinement, experienced by young people.

State Prosecutors

- Decline to exercise authority to charge young people as if adults or to request or order detention of young people under age 18 in adult jails or prisons.
- Affirmatively request that young people be held in the juvenile justice system pre-trial or post-adjudication or conviction.

- Seek data from the pre-trial detention facility on the use and duration of segregation and isolation, including solitary confinement, and disclose this information to the court and defense counsel.
- Seek a medical and mental health evaluation of the effects of any periods of segregation and isolation, including solitary confinement, and disclose this information to the court and defense counsel.

Defense Attorneys

- At trial, raise the use of segregation and isolation, including solitary confinement, in the place of pre-trial and post-conviction or post-adjudication detention.
- Challenge the solitary confinement of young people, including through administrative appeals of the imposition of solitary confinement, and conditions litigation.
- File a motion that young people be detained pre-trial and post-conviction or adjudication in the juvenile justice system.
- Request to be notified when young people are placed in any form of segregation and isolation, including solitary confinement.

At the Federal Level

US Congress

- Prohibit the solitary confinement of young people under age 18 for any purpose in federal custody.
- Hold hearings on the solitary confinement of young people.
- Use the appropriations process to encourage standard-setting and capacity-building around the treatment of young people, and to press for prohibitions of solitary confinement of young people under age 18 nationwide.
- Appropriate funds and direct the Department of Justice's Civil Rights Division to investigate the solitary confinement of young people under age 18 in adult jails and prisons as a violation of US domestic law and US human rights treaty obligations.
- Amend the Juvenile Justice and Delinquency Prevention Act to close the loopholes that leave young people under age 18 charged as if adults without federal protections; define "juvenile" to include any young person under age 18.

- Amend the Juvenile Justice and Delinquency Prevention Act to prohibit the use of solitary confinement for young people under age 18.
- Appropriate funds and direct the Department of Justice's Office of Justice Programs to monitor the conditions of confinement of young people under age 18 held in any form of segregation and isolation in adult facilities; and to ensure that young people under age 18 are not held in solitary confinement in an effort to comply with the Prison Rape Elimination Act or the Juvenile Justice and Delinquency Prevention Act.
- Appropriate funds, such as through amendments to the Individuals with Disabilities Education Act, and direct the Department of Education to monitor the provision of educational programming to all young people under age 18, and in particular, to young people with mental and intellectual disabilities, held in segregation and isolation in adult jails or prisons.
- Appropriate funds, such as through amendments to the Children's Health Act, and direct the Department of Health and Human Services to monitor the provision of mental and physical health services to all young people under age 18, and in particular, to young people with mental disabilities, held in segregation and isolation in adult jails or prisons.

US Department of Justice

Bureau of Prisons

- Modify existing contracts with secure juvenile facilities to prohibit the solitary confinement of young people under age 18.

Office of Justice Programs

- Publish a policy document supporting a prohibition of the solitary confinement of young people under age 18 and promoting best practices for the detention and management of young people without use of prolonged segregation and isolation.
- Develop grant-making and capacity-building tools, and particularly those aimed at implementation of the Prison Rape Elimination Act, to assist facilities implementing protections for youth while also limiting segregation and isolation and prohibiting solitary confinement of young people under age 18.
- Expand the scope of information-gathering for state compliance monitoring under the Juvenile Justice and Delinquency Prevention Act to include data about the imposition of segregation or isolation, including solitary confinement, on young people under age 18.

Civil Rights Division

- Declare the solitary confinement of young people under age 18 in adult prisons and jails, as practiced, as unconstitutional and a violation of international human rights law and urge prohibition of the solitary confinement of young people for any purpose.

Bureau of Justice Statistics

- Amend current and future Bureau of Justice Statistics data collections to include questions about when and whether young people are placed in segregation and isolation, including solitary confinement, in adult jails and prisons.

Department of Education

- Issue guidance or rules clarifying the application of the Individuals with Disabilities Act to young people with mental and intellectual disabilities held in segregation and isolation, including solitary confinement.
- Develop grant-making and capacity-building tools to promote facilities providing age-appropriate and out-of-cell educational programming to young people under age 18 held in segregation and isolation, including solitary confinement.

Department of Health and Human Services and the Centers for Disease Control

- Issue guidance clarifying the physical and mental health consequences of segregation and isolation, including solitary confinement, on young people.
- Develop grant-making and capacity-building tools to promote facilities providing age-appropriate and out-of-cell physical and mental health services to young people under age 18 held in segregation and isolation, including solitary confinement.

US Senate and Executive Branch

- The President should submit to the Senate and the Senate should give advice and consent to:
    - The ratification of the Convention on the Rights of Persons with Disabilities without reservation.
    - The ratification of the Convention on the Rights of the Child without reservation

    - A formal notification of the withdrawal of reservations to the International Covenant on Civil and Political Rights, including ICCPR Article 10, and to the Convention against Torture.

State and National Medical, Mental Health, Corrections, and Jail Associations and Standard-Setting Bodies

- Issue policy statements supporting a prohibition of the solitary confinement of young people under age 18.
- Amend standards for juvenile and adult facilities to prohibit the solitary confinement of young people under age 18.
- Promote best practices and resources for facilities that detain and manage young people under age 18 focused on the development of specialized policies and procedures that:
    - Avoid prolonged segregation and isolation, that expressly take age and needs into account, and that provide a range of behavioral management techniques.
    - Mandate that young people under age 18 held in any form of segregation and isolation, including solitary confinement, and particularly young people with mental or intellectual disabilities, be treated in a manner consistent with their medical, psychological, developmental, educational, social, and rehabilitative needs; appropriate funds, as necessary, to provide for changes in services and programming.
    - Require monitoring and reporting of the rates and durations of any form of segregation and isolation, including solitary confinement, and the quality and availability of age-differentiated programming and services for young people.

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Nicholas M., that, "If my story can stop another kid from coming [to solitary confinement], then there's a small piece of it. Hopefully my pain serve[s] some purpose."[279]

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Human Rights Watch would also like to thank those state and local jail and prison officials, corrections experts, and psychological and psychiatric experts and officials who spoke candidly about the challenges they face when managing and detaining young people in adult facilities, and their perspectives on the prevalence and effects of solitary confinement.

[279] Letter from Nicholas M. (pseudonym), from Wisconsin, to Human Rights Watch, March 22, 2012.

Appendix 1: Mapping Youth in Adult Jails and Prisons

Neither most states nor the federal government track or report comprehensive data on youth held in adult jails and prisons. In the United States, there are three main criminal detention systems: the local (state) jail system, the state prison system, and the federal prison system. Data from each of these systems is gathered and disseminated separately by the US Bureau of Justice Statistics (BJS).

State Jails

The BJS produces nation-wide estimates of young people under age 18 incarcerated in state and local jails in the Jail Inmates at Midyear report.[280] The report provides an estimate of the number of young people under age 18 held in the system on June 30.[281] In any given year, young people under age 18 make up approximately 1 percent of the inmate population of local jails, according to BJS estimates. The majority of young people held in local jails are being held as if adults, and are subject to charge and trial in the criminal justice system. Typically, only 14 to 25 percent of the young people in local jails are being held as juveniles, pending a delinquency adjudication or transfer to a juvenile facility (see below). While, as discussed below, Human Rights Watch and the American Civil Liberties Union have found that young people under age 18 held as adults typically spend long periods in detention, it is likely that those held as juveniles may spend only very short periods in adult facilities: a few hours or a day.[282] 2011 saw the fewest number of young people under age 18 in jails in recent years, with 5,900 young people under age 18 held at midyear.

[280] Todd Minton, Bureau of Justice Statistics, US Department of Justice, "Jail Inmates at Midyear 2011—Statistical Tables," April 26, 2012, http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=4235 (accessed June 6, 2012).

[281] The count does not represent the number of people admitted into jail on that day, or any other day. Rather, it is the number of people in jail on the day that sampled jails submitted survey responses. It also provides no information on the length of detention of inmates counted. Inmates may have been admitted the day before the survey or may have been detained for months.

[282] As discussed in Section I above, all youth held as juveniles are protected by federal law mandating sight and sound separation for those under age 18.

Table 1: Young people in jail at mid-year

Jail Inmates at Midyear[283]								
	2000	2005	2006	2007	2008	2009	2010	2011[284]
Youth under age 18[285]	7,615	6,759	6,102	6,833	7,703	7,218	7,560	5,900
Held as adults[286]	6,126	5,750	4,835	5,649	6,410	5,846	5,647	4,600
Held as juveniles	1,489	1,009	1,268	1,184	1,294	1,373	1,912	1,400

The BJS produces no comprehensive data on the number of young people under age 18 that are admitted to local jail facilities over the course of a year. But based on the best available data, Human Rights Watch has produced estimates of the total number of young people under age 18 that are annually admitted to local jails in the US. We estimate that 93,947 adolescents were admitted into local adult detention facilities in 2011 (See Table 2, Figure 1).[287]

Table 2: Estimated annual number of young people in jails[288]

Table : Estimates of Annual Number of Youth under age 18 in Local Jails				
	Number of Youth under age 18 Admitted to Local Jails (Annual)	95% Confidence Interval	Held as adults	Held as Juveniles
2006	93,254	88,783 - 97,608	72,575	20,680
2007	116,322	116,270 - 121,809	94,747	21,541
2008	133,050	127,974 - 138,836	108,488	27,122
2009	120,330	114,841 - 126,733	97,444	22,886
2010	137,445	129,152 - 146,311	96,251	41,211
2011	93,947	88,997 - 99,402	72,230	21,717

[283] Midyear count is the number of inmates held on the last weekday in June.

[284] All characteristic data for 2011 adjusted for non-response and rounded to the nearest 100.

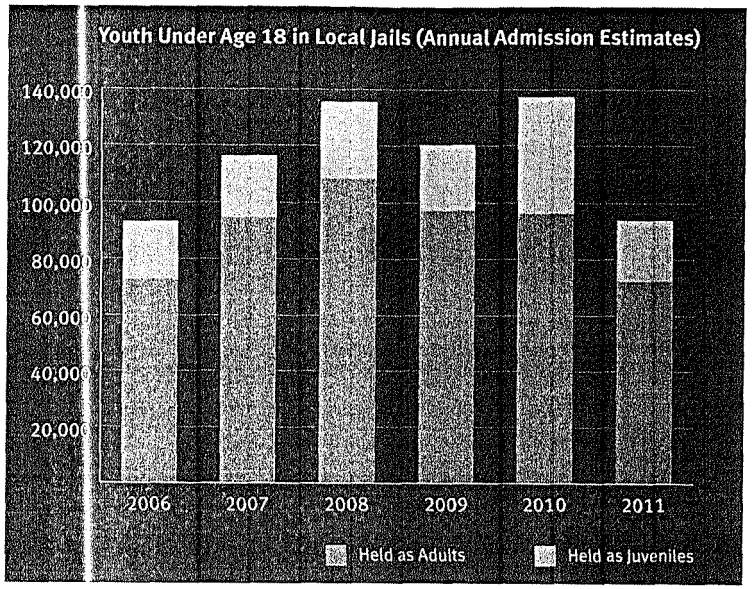
[285] Young people are under age 18 as of the data reporting at mid-year.

[286] Includes youth under age 18 who were tried or awaiting trial as adults.

[287] Others have suggested that, based on the numbers of youth prosecuted as if adults each year, as many as 200,000 young people are at risk of being detained in adult facilities. Campaign for Youth Justice, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," November 2007, http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf (accessed August 27, 2012); Campaign for Youth Justice, "The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform," March 2007, http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf (accessed August 27, 2012).

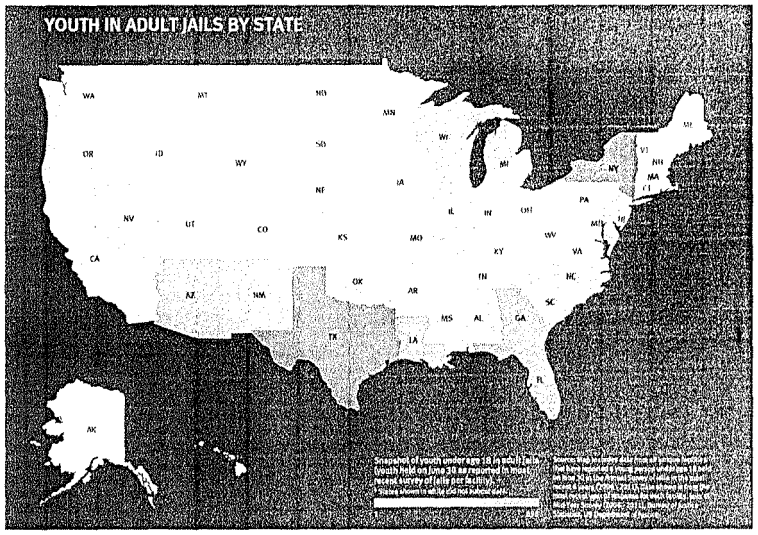
[288] Data extracted from annual Jails at Midyear reports. See methodology section for description of calculation methods.

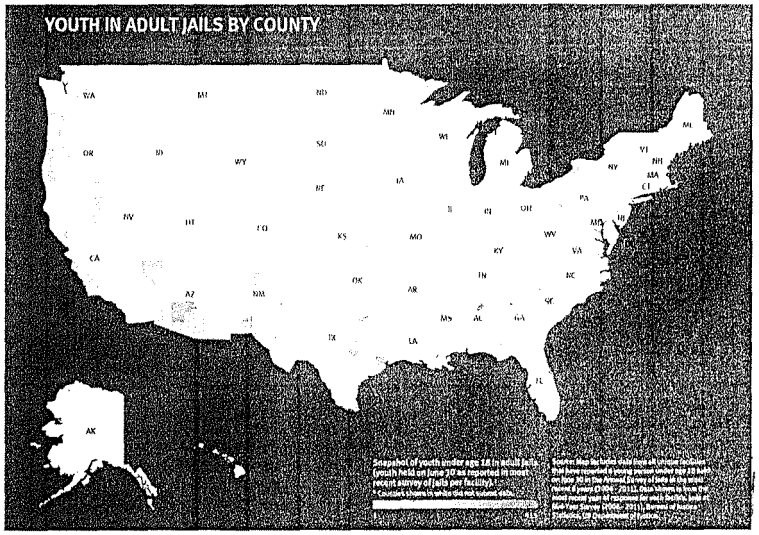
Figure 1: Young people held in adult jails



Maps 1, 2: Youth in adult jails

These maps show the relative distribution of young people under age 18 in adult jails across the United States by state and by county.





The top 15 number of inmates under age 18 held in state prisons, by state, June 30, 2008 -2010			
	2008	2009	2010
Total	2,717	2,778	2,295
Florida	301	393	355
New York	206	190	221
Connecticut[b]	375	332	217
North Carolina[a]	186	215	184
Texas	157	156	150
Arizona	156	157	131
Michigan	140	132	109
South Carolina	96	89	106
Georgia[a]	118	99	96
Ohio	75	86	78
Illinois	77	106	73
Pennsylvania	55	61	58
Maryland	61	58	57
Indiana	63	54	49
Colorado	37	79	38
[a] = Counts include those held in privately-operated facilities.			
[b] = Prisons and jails form one integrated system.			

Table 3: States that hold the most young people in prison[289]

Inmates in state prisons serve median sentences of approximately two years and release rates and expected time served are very "stable," according to the BJS.[290] Therefore, the June 30 inmate counts may be used as baseline estimates for the total number of juveniles entering state prisons within the year. Combining these estimates with the annual estimates of juveniles in local jails produces an overall estimate of 139,495 juveniles admitted to adult correctional facilities in 2010.[291]

State Prison Systems

The BJS also produces data on young people under age 18 held in the federal and state prison systems at mid-year (June 30) and disaggregates this data by state and gender.[292] In the most recent year for which data is available (2010), 2,295 young people under age 18 were being held in adult facilities in state prison systems on June 30. Florida and New York held the highest number of young people under age 18, with over 200 juvenile inmates imprisoned in each state (though Florida's numbers were significantly higher) (Connecticut also held over 200 young people under age 18 in a combined prison-jail system).

[289] Guerino, Harrison, and Sabol, "Prisoners in 2010"; West, "Prison Inmates at Mid-year 2009 – Statistical Tables"; Heather West and William Sabol, Bureau of Justice Statistics, US Department of Justice, "Prisoner Inmates at Midyear 2008," March 2009, http://www.bjs.gov/index.cfm?ty=pbdetail&iid=839 (accessed August 27, 2012).

[290] Guerino, Harrison, and Sabol, "Prisoners in 2010"; West, "Prison Inmates at Mid-year 2009 – Statistical Tables"; West and Sabol, "Prisoner Inmates at Midyear 2008."

[291] To prevent double-counting, this estimate does not include states that have integrated prison-jail systems. It also does not include the 142 juveniles held in the federal prison system in 2010. Additionally, the combined estimates of juveniles entering adult facilities do not include any juveniles detained by Immigration and Customs Enforcement (ICE). Though these detainees are held in administrative or civil detention, they are often housed in criminal detention facilities.

[292] The federal Bureau of Prisons does not generally house inmates under the age of 18 in its custody; therefore, additional juveniles incarcerated in adult prisons are held only in state prison systems. However, in 2010, 142 juveniles in the federal system were held in contract facilities. Paul Guerino, Paige M. Harrison, and William Sabol, Bureau of Justice Statistics, US Department of Justice, "Prisoners in 2010," December 2011, http://bjs.gov/content/pub/pdf/p10.pdf (accessed August 27, 2012); Heather West, Bureau of Justice Statistics, US Department of Justice, "Prison Inmates at Mid-year 2009 – Statistical Tables," June 2010, http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf (accessed August 27, 2012).

Map 3: Youth in adult prisons

This map shows the relative distribution of youth in adult prisons across the United States.

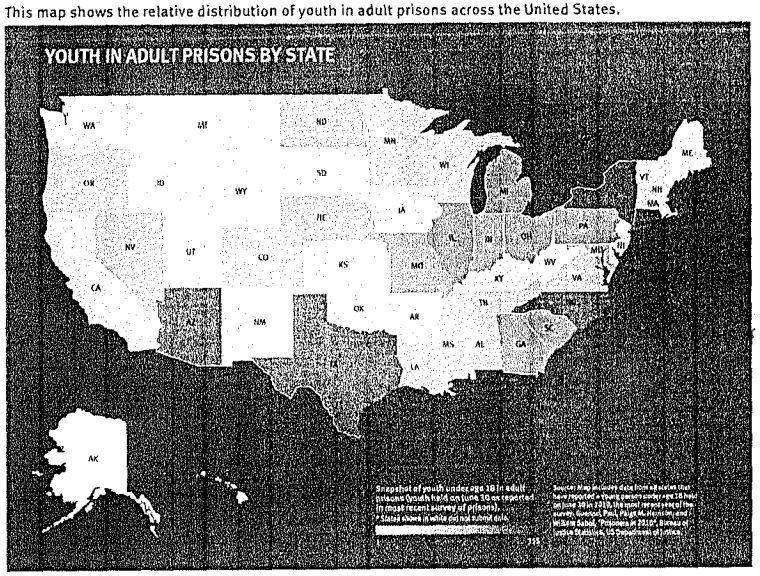


Table 4: Estimated annual number of young people in adult jails and prisons

Table Youth under age 18 Entering Adult Facilities (Estimate)			
	Prison	Jail	Total
2008	2,289	133,050	135,339
2009	2,404	120,330	122,734
2010	2,050	137,445	139,495

The Legal Landscape

As detailed in the report, whether young people are held in solitary confinement depends in part on the legal landscape, and how and at what age youth are charged or held as if adults.

States charge young people under age 18 as if adults through a variety of legal mechanisms. Youth charged as if adults—and held at adult facilities—are sometimes subjected to solitary confinement for a range of reasons discussed throughout the report. Youth detained in states that mandate protection for some young people held in adult facilities (such as sight and sound separation requirements) are sometimes subjected to protective solitary confinement to achieve this goal.

Table 5: State Charging and Detention Regimes

This table shows the states which permit or mandate charging youth as if adults in certain circumstances; and states that mandate or permit detention of youth in adult facilities, including those which have some legal requirements protecting some youth held there.

STATES CHARGING YOUTH AS ADULTS

State Law: Yes No N/A

State	Youngest age at which youth can be charged as if adults in some circumstances	Age at which all youth are charged as if adults	Permits housing youth under age 18 charged as if adults in adult jails in some circumstances	Mandates housing youth under age 18 charged as if adults in adult jails in some circumstances	Mandates a form of separation between youth and adults in adult jails in some circumstances
Alabama	14	18			N
Alaska	no minimum age	18		N	N
Arizona	no minimum age	18		N	
Arkansas	no minimum age	18		N	N
California	14	18		N	
Colorado	no minimum age	18		N	
Connecticut	no minimum age	18			N
Delaware	no minimum age	18			N
District of Columbia	no minimum age	18		N	N
Florida	no minimum age	18			
Georgia	no minimum age	17			
Hawaii	no minimum age	18			N
Idaho	no minimum age	18			
Illinois	13	17			
Indiana	10	18		N	N
Iowa	14	18		N	
Kansas	10	18		N	N
Kentucky	14	18		N	
Louisiana	14	17			N
Maine	no minimum age	18		N	N
Maryland	no minimum age	18			
Massachusetts	14	17			
Michigan	no minimum age	17			
Minnesota	14	18		N	N
Mississippi	13	18		N	N
Missouri	12	17			N
Montana	no minimum age	18		N	
Nebraska	no minimum age	18		N	
Nevada	no minimum age	18		N	N
New Hampshire	13	17			N
New Jersey	14	18		N	N
New Mexico	14	18			
New York	13	16			
North Carolina	13	16		N	
North Dakota	14	18		N	N
Ohio	10	18		N	
Oklahoma	no minimum age	18			
Oregon	no minimum age	18		N	N
Pennsylvania	no minimum age	18		N	N
Rhode Island	no minimum age	18		N	
South Carolina	no minimum age	17		N	N
South Dakota	no minimum age	18		N	
Tennessee	no minimum age	18			
Texas	no minimum age	17		N	
Utah	14	18		N	
Vermont	10	18		N	N
Virginia	14	18		N	
Washington	no minimum age	18		N	
West Virginia	no minimum age	18	N	N	N/A
Wisconsin	10	17			
Wyoming	[illegible]	[illegible]			

Statistical Methodology

Human Rights Watch analyzed six years (2006—2011) of the BJS's Annual Survey of Jails data to develop quantitative estimates regarding young people in local jail facilities. The Survey of Jails asks facilities to answer three questions regarding young people held on June 30th of each year: number of male inmates under age 18; number of female inmates under age 18; and total number of young people under age 18 held as adults. The BJS then computes a new variable to estimate "Juveniles Held as Juveniles" in this way: "JUVM" + "JUVF" – "ADLTJUV." The methodology should ensure that every person counted in the "ADLTJUV" variable should also be counted in the "JUVM" or "JUVF" variables, and the sum of those two variables should always be greater than the "ADLTJUV" variable.

However, facilities sometimes incorrectly fill out BJS surveys and do not include young people under age 18 held as adults in their total counts for all inmates under the age of 18. Therefore, in these states, the "Juveniles Held as Juveniles" variable ("JUVM" + "JUVF" - "ADULTJUV") results in a *negative* number. For these facilities, Human Rights Watch used the larger count of juveniles held as adults ("ADLTJUV") as the total count. We counted these inmates as males under the age of 18 because we could not determine gender and males account for roughly 94 percent of juvenile jail inmates annually.[293]

We also generated annual estimates of young people under age 18 admitted to local jails by using data on the number of young people under age 18 held in jails on June 30th of a given year, as well as admissions data for the last week of June. We multiplied the

[293] Specifically, we adjusted the numbers for the following facilities:
2006: Ville Platte Jail, LA – 9 juveniles held as adults counted as males under age 18.
White County/City Jail, IL – 5 juveniles held as adults counted as males under age 18.
Fairfax County Adult Detention, VA – 2 juveniles held as adults counted as males under age 18.
2007: Union County Jail, PA – 18 juveniles held as adults counted as males under age 18.
2008: Allen County Jail, ID – 4 juveniles held as adults counted as males under age 18.
2009: None
2010: Sherman Walker Correctional Facility, LA – 179 juveniles held as adults counted as males under age 18.
Ascension Parish Jail, LA – 50 juveniles held as adults counted as males under age 18.
Madison County Jail, NE – 30 juveniles held as adults counted as males under age 18.
Washington County Jail, MN – 23 juveniles held as adults counted as males under age 18.
Scotland County Jail, MO – 2 juveniles held as adults counted as males under age 18.
Data for Oakland County, MI was flagged as a likely error and was removed from analysis. In five other years of surveys, the facility reported between 10 and 25 juveniles. However, in 2010, the facility reported 1302 juvenile male (and only 13 adult male) inmates.
2011: None

percentage of all inmates on June 30th that were young people under age 18 by the number of weekly inmate admissions to estimate the number of young people under age 18 admitted during the week. These estimates allowed for additional upper and lower percentages of all inmates that were under age 18. This figure was then multiplied by the number of weeks in the year to estimate the number of annual admissions, as follows:

Percentage of all inmates that are young people under age 18 (on last day of June) times the number of admissions during last week of June equals the estimated number of young people admissions during last week times 365 (days) divided by 7 (days) equals the estimate of the number of young people under age 18 admitted during the year. We produced confidence intervals by using the annual standard error for young people under age 18 to produce upper and lower bounds for the number of young people in jail on June 30th (z-score = 1.96, confidence interval = young people under age 18 count +/- standard error * 1.96).

We are making two major assumptions with this estimate. First, we assume that the percentage of inmates that are young people under age 18 on June 30th of every year are representative of the percentage of inmates that are admitted during the last week of June that are under age 18. There is evidence that the percentage of inmates that are under age 18 does not fluctuate greatly. In the most recent seven years that the BJS has collected this data (from 2005 to 2011) the percentage of inmates under age 18 in the facilities sampled has not fluctuated more than 2/10ths of a percent. Year in and year out, young people under age 18 make up 0.8 to 1.0 percent of inmates on June 30th. Our second assumption is that the data on weekly admissions, which comes from the last week of June, is representative of a typical week and can be used to estimate annual admissions. The BJS used the 2004 Survey of Large Jails to track monthly movements over the course of the year and has determined that June admission data is a reliable source to calculate a nationwide annual admission estimate.[294]

We also analyzed the Survey of Jails data to gain a greater understanding of the distribution of youth inmates across the United States. We generated the estimates by examining six years (from 2006 to 2011) of Survey of Jails data to identify unique facilities that housed young people under age 18. The Survey of Jails is a nationally-representative

[294] Minton, "Jail Inmates at Midyear 2011—Statistical Tables," p. 12.

survey of all local jails, whether they have held youth or not, and is not a sample of only those facilities that have held young people under age 18. Therefore it is possible that in any given year, a jail facility with inmates under age 18 may not have been selected in the sample. Examining only a single year of the survey would therefore skew the distribution of young people under age 18 towards larger facilities, as 268 facilities are included in the sample with certainty (annually) due to the size of their daily population.

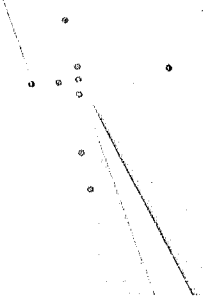
Therefore, we examined six years of surveys and extracted counts of young people under age 18 held for the most recent year that each facility was surveyed. We extracted data for 577 unique facilities (312 from 2011, 85 from 2010, 71 from 2009, 43 from2008, 40 from 2007, and 26 from 2006). It is important to note that *this distribution analysis is not an estimate of the overall distribution of young people under age 18 in jail systems, but a distribution of unique facilities that reported housing inmates under age 18 during the last six years of the Annual Survey of Jails.* The distribution analysis did not utilize the BJS facility-level weighting variable to weight the count of young people under age 18. It examined the distribution of inmates under age 18 reported in surveys by facility, county, and state.

Appendix 2: State Case Studies

STATE CASE STUDIES: COLORADO

Youth in Adult Jails and Youth in Solitary Confinement

Clear Creek County Jail: *"It affected me—mentally, psychologically—shaped how I interact with people today. There's got to be a better way.... It took me a long time to regain a sense of humanity and I don't even know if I'm still alright or normal."*
- *Interview with Ethan B. (pseudonym), February 2012, held in jail at age 15*



Denver County Jail: *"You are a human being. You want to socialize—talk to somebody. Plus I was just a kid. I felt dead back there...I felt like I was going crazy.... A couple of times I felt like acting out in violent ways just to get communication—you start tripping out."*
- *Interview with Todd D. (pseudonym), February 2012, held in jail at age 17*

- Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice

Human Rights Watch and the American Civil Liberties Union have found that some Colorado jails and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union corresponded with or interviewed 20 individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails in Adams, Arapahoe, Clear Creek, Denver, El Paso, Jefferson and Park Counties; and in a number of state prisons.[295] Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Larimer, Pueblo, Washington, and Weld Counties have reported detaining young people under age 18 in the last six years.[296] Human Right Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

Colorado law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.[297]

Colorado Jails

By statute, young people under age 18 charged as if adults by prosecutorial "direct file" *can* be held in jails, though under legal changes that took effect after Human Rights Watch and the American Civil Liberties Union visited the state, the default place of detention is in juvenile facilities.[298] Young people under age 18 can be detained in adult jails only if a state district court finds that an adult jail is the appropriate place of confinement after weighing a number of factors, including whether the youth would be deprived of contact with others in order to separate him or her from adults.[299] The state requires that youth

[295] Two of the individuals interviewed by Human Rights Watch were age 21 or younger when interviewed.

[296] Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

[297] Throughout the report, "solitary confinement" is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. See UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about this practice as well.

[298] This is the result of legislative reforms enacted in 2012. Colorado Revised Statutes, Colorado Rev. Stat. Code 19-2-508(3)(c)(II).

[299] Colorado Rev. Stat. 19-2-508(3)(c)(III).

held in adult jails be physically segregated from adults.[300] But there is no prohibition in state law against holding young people in solitary confinement in adult jails.[301]

Between July 2010 and June 2011, Colorado jails reported holding 42 young people under age 18 in 7 jails for an average period of 116 days.[302] Jail officials in Denver, El Paso, and Adams counties reported that youth are subject to the same disciplinary rules as adults when confined in their facilities.[303] Officials in El Paso and Denver Counties told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for one hour each day.[304] Such conditions constitute solitary confinement.

Colorado Prisons

The Colorado Department of Corrections (CO DOC) holds young people who are convicted of criminal offenses and sentenced while under age 18. Youth and adults under age 21 who have been sentenced as "youthful offenders" are detained in the Youthful Offender System (YOS); some youth—including many of those sentenced for particularly serious offenses—are held in mainline prisons.[305] There is no prohibition in state law against holding youth in solitary confinement in Colorado prisons. While the CO DOC code of penal discipline does provide for consideration of "mitigating factors" in findings of guilt for purposes of disciplinary segregation, it does not require consideration of age, mental disability, or other special needs, in evaluating guilt or in assessing sanctions.[306]

CO DOC officials reported that, while they sometimes try to avoid placing young people in

[300] Colorado Rev. Stat. § 19-2-508(4)(a)

[301] The various forms of solitary confinement are discussed in Section III of the report.

[302] Colorado State Division of Criminal Justice, SB 10-054 Annual Report—2nd Revision, January 23, 2012.

[303] Human Rights Watch interview with Chief Elias Diggins, Denver Sheriff Department, Colorado, February 9, 2012; Human Rights Watch telephone interview with Liz O'Neil, Special Management Coordinator El Paso County Sheriff's Office, Colorado, April 9, 2012; Human Rights Watch telephone interview with Kurt Ester, Captain, Adams County Detention Facility, Colorado, March 29, 2012.

[304] Human Rights Watch interview with Chief Elias Diggins, February 9, 2012; Human Rights Watch telephone interview with Liz O'Neil, Special Management Coordinator El Paso County Sheriff's Office, Colorado, April 9, 2012.

[305] Human Rights Watch telephone interview with Tom Clements, Executive Director, Colorado Department of Corrections, June 18, 2012. The limits of the youthful offender system are provided by statute at Colorado Rev. Stat. 18-1.3-407.

[306] Colorado Department of Corrections, Regulation Code of Penal Discipline, AR# 150-01 at (IV)(E)(o), effective September 1, 2011, http://www.doc.state.co.us/sites/default/files/ar/0150_01_09012011.pdf (accessed June 4, 2012).

punitive solitary confinement, it is still used as a sanction.[307] Regarding YOS, officials reported:

> We do everything we can not to place young offenders in solitary confinement or disciplinary segregation. At YOS, we have the code of penal discipline available to us. But we have trained our staff to go to immediate sanctions, logical sanctions, immediate and programmatic sanctions. What we have found is that if you address the issue immediately and if the consequence is immediate, we can change behavior. We have focused a lot on that with our younger offenders. To punish—certainly there is a need to punish. The longest time we can put someone in segregation is 60 days for a class 1 offense. We try not to use it; there are reviews every 28 days. The goal is to get them back to programming.[308]

Research Findings

Colorado Jails

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with 15 young people who reported being held in protective solitary confinement while in pre-trial detention in Colorado jails. A number of those young people reported spending the significant periods—or the entire period of their pre-trial detention—in protective solitary confinement. Ten young people said they had spent five months or longer in protective solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed three young people who reported being held in punitive solitary confinement while in pre-trial detention in Colorado jails. Two of those young people said they spent more than one period in punitive solitary confinement of 15 days or more.

Young people held in solitary confinement in Colorado jails generally described being allowed out of their cell one hour each day into a day room or common space, generally alone, during which they could shower and sometimes make phone calls to loved ones. Young people reported being able to receive visits from loved ones, but four young people

[307] Human Rights Watch telephone interview with Steve Hager, Director, Youthful Offender System (YOS), Colorado Department of Corrections, Colorado, June 18, 2012.

[308] Human Rights Watch telephone interview with Steve Hager, Director, Youthful Offender System (YOS), Colorado Department of Corrections, Colorado, June 18, 2012.

told us they were unable to have contact visits. Three young people said they were unable to access any reading materials and one youth reported being unable to access writing materials in his or her cell while in solitary confinement. Three young people said they had considered suicide; two reported having attempted suicide while in solitary confinement.

Colorado Prisons

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with nine young people who reported being held in punitive or administrative solitary confinement while in state prison in Colorado. A number of those young people told us they had spent significant periods in administrative solitary confinement, with three young people reporting having spent four months or longer in administrative solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed six young people who told us they were held in punitive solitary confinement while in Colorado prisons. Three of those young people reported spending more than one period in punitive solitary confinement of 20 days or more.

Young people held in solitary confinement in Colorado prisons while under age 18 generally described being allowed out of their cell one hour each day, generally into an indoor recreation room, and being permitted a daily shower. Young people reported being able to receive non-contact visits from loved ones. One young person told us he or she was classified directly into long-term solitary confinement while under age 18; others reported beginning periods of administrative solitary confinement while under age 18 that continued for many years. Young people in long-term administrative solitary confinement said they were never permitted outdoors.

Avenues for Reform

In spite of these challenges, the legal and policy landscape in Colorado is shifting in a positive direction. In 2012, Colorado enacted legislation requiring that youth charged as if adults be held in juvenile facilities, unless a judge orders otherwise.[309] The state has not yet reported on how this has affected the population of youth in adult facilities. The

[309] House Bill 12-1139, Concerning Pretrial Detention of Children Prosecuted as Adults, signed March 15, 2012, http://cjdc.org/wp/wp-content/uploads/2012/08/HB-1139_Final.pdf (accessed August 27, 2012); "Colorado: Assembly Acts to Protect Youth Accused of Crimes," Human Rights Watch and American Civil Liberties Union news release, March 6, 2012, http://www.hrw.org/news/2012/03/06/colorado-assembly-acts-protect-youth-accused-crimes.

director of the CO DOC has also ordered a review of those in prolonged solitary confinement in prison, resulting in a significant reduction of numbers held.[310] The CO DOC acknowledges that youth are different, and has signaled openness to additional reform:

> The challenge for us is, as we manage [inmates] when they are younger, how do we manage them ... in a way that takes into consideration where they are at in terms of their age, their impulsivity, their mental health issues.... Our true goal is to manage inmates so they behave differently because 97 percent are going to walk out the door and be somebody's next door neighbor.... If I had a wish list, it would be to have the flexibility to have more intensive case management, mental health, and other programming to keep [youth] engaged in something that can build positive self-esteem and positive values. At that young age, it is important to develop a positive view and see a light at the end of the tunnel.[311]

To continue down the road to reform, Colorado must ensure that young people under age 18 are never subjected to solitary confinement in jails or in prisons.[312]

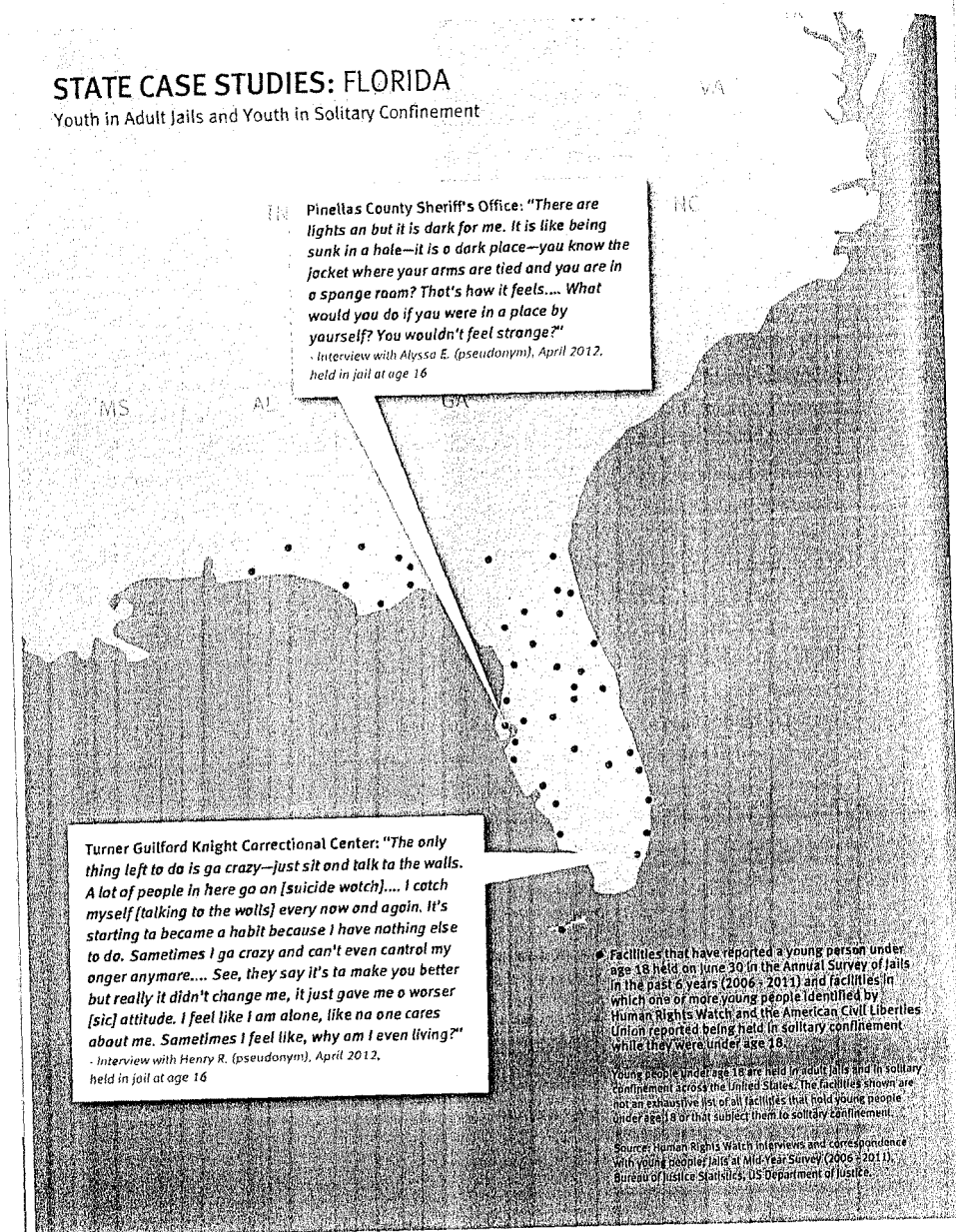
[310] Colorado Department of Corrections, Report of the Colorado Department of Corrections on Administrative Segregation, January 2012, http://www.aclu.org/files/assets/co_adseg_rept_jan2012.pdf (accessed August 27, 2012).

[311] Human Rights Watch telephone interview with Tom Clements, June 18, 2012.

[312] For detailed recommendations, see recommendations section above.

STATE CASE STUDIES: FLORIDA

Youth in Adult Jails and Youth in Solitary Confinement



there is no prohibition in state law against holding young people in solitary confinement in adult jails.[318]

In January 2012, Florida jails reported holding 579 young people under age 18 statewide.[319] Jail officials in Hernando, Pinellas, and St. Lucie counties reported that youth are subject to the same disciplinary rules as adults when confined in their facilities.[320] Officials in Duval county told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.[321] Such conditions constitute solitary confinement.

Florida Prisons

The Florida Department of Corrections (FL DOC) holds young people who have been convicted of criminal offenses and sentenced while under age 18. Youth and adults under age 21 who have been sentenced or designated as "youthful offenders" are detained in the youthful offender facilities (where young people and adults under age 19 are separated from older youthful offenders); some youth—including many of those sentenced for particularly serious offenses—are held in mainline prisons.[322] In fiscal year 2010-2011, the FL DOC reported holding 276 young people under age 18 (although 398 young people under age 18 were admitted to FL DOC custody) and 1,640 youthful offenders; the youngest was 14 years old and serving a sentence for robbery with a gun or deadly weapon.[323] There is no prohibition in state law or FL DOC policies or regulations against holding young people in solitary confinement in Florida prisons.

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[318] The various forms of solitary confinement are discussed in Section III of the report.

[319] Florida Department of Corrections, "Florida County Detention Facilities Average Inmate Population January 2012," January 2012, http://www.dc.state.fl.us/pub/jails/2012/01/FCDF.PDF (accessed August 27, 2012).

[320] Letter from Dan Carriveau, Classification Sergeant, Hernando County Detention Center, Florida, to Human Rights Watch, January 6, 2012; Letter from David Robinson, Lieutenant, Pinellas County Sheriff's Office, Florida, to Human Rights Watch, February 2, 2012; and Letter from F. Patrick Tighe, Major, St. Lucie County Jail, Florida, to Human Rights Watch, January 4, 2012.

[321] Human Rights Watch telephone interview with Daryl Tyus, Operations Lieutenant, Jackson County Correctional Facility, Florida, April 3, 2012.

[322] Florida Statutes Title 47, Ch. 958.04, 958.11; Human Rights Watch email correspondence with Ann Howard, Communications Director, Florida Department of Corrections, July 31, 2012.

[323] 2010-2011 Agency Annual Report, Florida Department of Corrections, "Inmate Population," http://www.dc.state.fl.us/pub/annual/1011/ar-im-population.html (accessed August 27, 2012); 2010-2011 Agency Annual Report, Florida Department of Corrections, "Inmate Admissions," http://www.dc.state.fl.us/pub/annual/1011/ar-im-admissions.html (accessed August 27, 2012); 2010-2011 Agency Annual Report, Florida Department of Corrections, "Youthful Offenders," http://www.dc.state.fl.us/pub/annual/1011/ar-additional-facts-youth.html (accessed August 27, 2012).

Human Rights Watch and the American Civil Liberties Union have found that some Florida jails and prisons use solitary confinement to manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union corresponded with and interviewed 38 individuals who had been subjected to solitary confinement while under age 18 in jails in Bay, Citrus, Clay, Duval, Escambia, Highlands, Hillsboro, Jackson, Lee, Leon, Miami, Okaloosa, Okeechobee, Orange, Palm Beach, Pinellas, Polk, and St. Lucie Counties; and in a number of state prisons. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Alachua, Brevard, Broward, Charlotte, Collier, Franklin, Gadsen, Hamilton, Hernando, Lake, Levy, Manatee, Marion, Monroe, Osceola, Pasco, Putnam, Volusia, Walton, Sarasota, Seminole, St. Johns, and Wakulla Counties have reported detaining young people under age 18 in the last six years.[313] Human Right Watch also interviewed or corresponded with jail and prison officials in the state.

The Law and Policy Landscape

Florida law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.[314]

Florida Jails

By statute, young people under age 18 charged as if adults *must* be held in adult jails.[315] The state requires that young people held in adult jails be prevented from having sight and sound contact with adults and be held in a separate section of the jail.[316] A recent legal change, signed into law in 2011, also allows young people under age 18 *not* charged as if adults to be held in Florida jails, though few jails have yet to exercise this authority.[317] But

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[313] Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

[314] Throughout the report, "solitary confinement" is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/44570/pdf/N1144570.pdf?OpenElement (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

[315] Fla. Stat. Ann. § 985.265.

[316] Fla. Stat. Ann. § 985.265.

[317] Florida law SB2112 on Juvenile Detention Facilities, effective July 1, 2011; David J. Utter, Southern Poverty Law Center, "One Florida County Wisely Says No to Putting Children in Adult Jails," May 8, 2012, http://www.splcenter.org/get-informed/news/one-florida-county-wisely-says-no-to-putting-children-in-adult-jails (accessed August 27, 2012).

FL DOC officials reported that both youthful offenders and non-youthful offenders can be placed in confinement, including for disciplinary and other management purposes.[324] Inmates in FL DOC custody who are held in disciplinary confinement (DC) or administrative confinement (AC) are entitled out of their cell three times per week to take a shower and—but only after *thirty* days—an additional three hours per week to exercise.[325] Inmates in "Close Management, Level I" status (CM-1) are entitled out of their cell three times per week to take a shower and an additional six hours per week to exercise.[326] Conditions in AC, DC, and CM-1 constitute solitary confinement. FL DOC officials confirmed that there are no differences between the disciplinary rules for managing the behavior of young people under age 18 and those for managing the behavior of adults over age 18; that there are no age-specific limits on the use of close management, AC, or DC for young people under age 18; and that there are no restrictions on housing young people alone in AC, DC, or close management in DOC facilities.[327]

Research Findings

Florida Jails

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with four young people who reported being held in protective solitary confinement while in pre-trial detention in Florida jails. All of these young people reported spending three or more months in protective solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed 21 young people who reported being held in punitive solitary confinement while in pre-trial detention in Florida jails. Seven of those young people said they spent more than one period in punitive solitary confinement of 15 days at a time or longer. Fourteen young people reported being held in administrative solitary confinement, generally when accused of committing a disciplinary infraction, while in pre-trial detention in Florida jails. Five young people reported spending one or more period in medical solitary confinement, three of them after they attempted or spoke about having considered attempting suicide.

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[324] Human Rights Watch email correspondence with Ann Howard, July 31, 2012.

[325] Regulation 33-602.222, Florida Department of Corrections, "Disciplinary Confinement," https://www.flrules.org/gateway/ruleno.asp?id=33-602.222&Section=0 (accessed August 27, 2012), Sections 2(e) and 2(p); Regulation 33-602.220, Florida Department of Corrections, "Administrative Confinement," https://www.flrules.org/gateway/ruleno.asp?id=33-602.220&Section=0 (accessed August 27, 2012), Sections 5(e) and 5(p).

[326] Regulations 33-601.800, Florida Department of Corrections, "Close Management," https://www.flrules.org/gateway/ruleno.asp?id=33-601.800 (accessed August 27, 2012).

[327] Human Rights Watch email correspondence with Ann Howard, August 28, 2012.

Young people held in solitary confinement in Florida jails generally described being allowed out of their cell one hour each day, or for two hours, two or three times per week. Generally, young people were permitted to shower regularly and sometimes make phone calls to loved ones. Ten young people described spending a period of time in solitary confinement during which they were only allowed out of their cell for showers; seven reported being unable to call or visit with loved ones. Seven young people said they spent a period in solitary confinement during which they were unable to access any reading or writing materials in their cell. Four young people said they had attempted suicide while in solitary confinement.

Florida Prisons

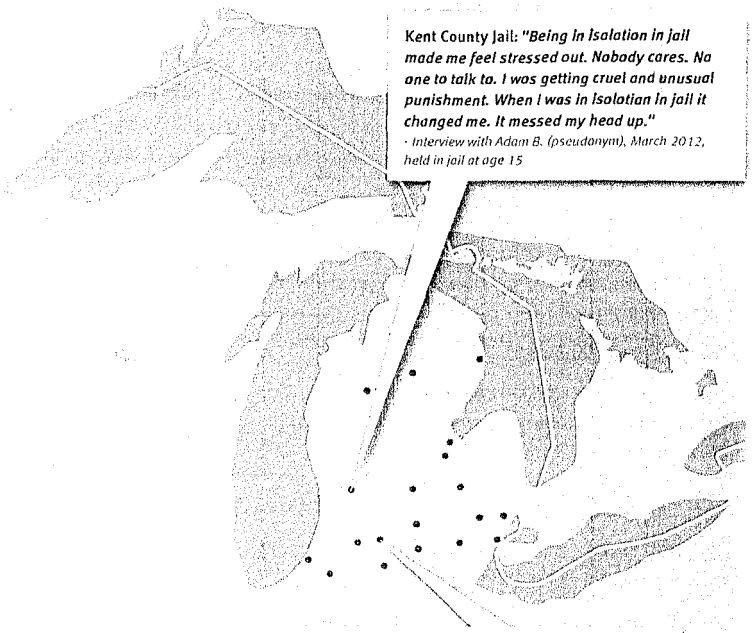
Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with six young people who reported being held in administrative solitary confinement while under age 18 in state prison in Florida. Three of those young people reported having spent three months or longer in administrative solitary confinement (in either CM-1 and AC status) while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed six young people who told us they were held in punitive solitary confinement while in Florida prisons. Human Rights Watch and the American Civil Liberties Union also interviewed seven young people who told us they spent time in DC with a cell-mate.[328]

Young people in solitary confinement in Florida prisons reported spending prolonged periods (sometimes longer than 30 days) without any out-of-cell exercise. Those who did get out-of-cell exercise described being able to exercise alone in a small fenced-in area. Young people reported being able to shower regularly, but not every day. Some young people under age 18 with intellectual disabilities reported receiving in-cell study packets; other young people under age 18 reported receiving no educational programming while in solitary confinement.

[328] This report does not address the practice of holding two individual in prolonged segregation but Human Rights Watch, mental health experts, and advocates have raised serious concerns about the practice.

STATE CASE STUDIES: MICHIGAN

Youth in Adult Jails and Youth in Solitary Confinement



Kent County Jail: ***"Being in isolation in jail made me feel stressed out. Nobody cares. No one to talk to. I was getting cruel and unusual punishment. When I was in isolation in jail it changed me. It messed my head up."***
- Interview with Adam B. (pseudonym), March 2012, held in jail at age 15

Calhoun County Jail: ***"[There] was a stone bed with a blue mattress with a built-in pillow...a very disgusting slot that they slide food in. The light [was] on 24/7 so you couldn't sleep at all. They don't give you a blanket. It smelled really bad.... I was scared to death."***
- Interview with Carter P. (pseudonym), March 2012, held in jail at age 14

- **Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.**

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

Human Rights Watch and the American Civil Liberties Union have found that some Michigan jails and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union corresponded with or interviewed 15 individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails in Berrien, Calhoun, Ingham, Kent, Oakland, Wayne, and Saginaw counties; and in a number of state prisons. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Alcona, Bay, Branch, Cass, Clinton, Genesee, Jackson, Kalamazoo, Macomb, Roscommon, Washtenaw, and Wexford Counties have reported detaining young people under age 18 in the last six years.[329] Human Right Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

Michigan law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.[330]

Michigan Jails

Most Michigan young people under age 18 who are charged as if adults are treated this way because criminal majority begins at 17 (although younger young people can also be charged as adults).[331] Young people under age 17 *may* be detained in adult jails with the permission of the county sheriff (this includes both young people charged as if adults *and*, for up to 30 days, certain juvenile delinquents who violate probation).[332] The state requires that young people under age 17 held in adult jails be held physically separate from 17 year

[329] Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

[330] Throughout the report, "solitary confinement" is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc., http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

[331] Mich. Comp. Laws Ann. § 712A.2 (restricting exclusive jurisdiction of the juvenile court to youth under age 17); Mich. Comp. Laws Ann. § 712A.2d (permitting the filing of criminal charges—and trial as if adults—for certain youth under age 17).

[332] Mich. Comp. Laws Ann. § 764.27a(3) (permitting the detention of youth under age 17 charged as adults in adult facilities); Mich. Comp. Laws Ann. § 771.7(1)(f) (permitting the detention of certain juvenile delinquents who violate probation).

olds and adults.[333] But there is no prohibition in state law against holding young people in solitary confinement in adult jails.[334]

Jail officials in Bay, Benzie, Cass, Cheboygan, Gladwin, Houghton, Lapeer, and Oakland counties reported that young people under age 18 are subject to the same disciplinary rules as adults when confined in their facilities.[335] Officials in Cheboygan, Gladwin, Houghton, Muskegon, and St. Joseph counties told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.[336] Officials in Oakland and Macomb counties reported that while young people age 17 are housed with adults, young people under age 17 are generally held in medical cells to keep them separate from adults; officials in Oakland County reported that such young people spend less than two hours per day outside of their cell.[337] Such conditions constitute solitary confinement.

Michigan Prisons

The Michigan Department of Corrections (MI DOC) holds young people who are convicted of criminal offenses and sentenced while under age 18. Young people and adults between age 17 and 20 can be sentenced as "youthful trainees," except those who commit certain, generally serious, offenses.[338] By policy, young people under age 17 and youthful trainees are held in specialized facilities (either at the Thumb Correctional Facility or the Women's

[333] Mich. Comp. Laws Ann. §764.27a.

[334] The various forms of solitary confinement are discussed in Section III of the report.

[335] Human Rights Watch telephone interview with Troy Stewart, Administrator Bay County Jail, Michigan, March 23, 2012; and with Ann Russell, Corrections Administrator, Oakland County, Michigan, March 23, 2012; Letter from Jeffrey Conquest, Lieutenant/Jail Administrator, Benzie County Jail, Michigan, to Human Rights Watch, January 11, 2012; Letter from Joseph Underwood, Sheriff, Cass County Sheriff's Office/Correctional Facility, Michigan, to Human Rights Watch, January 30, 2012; Letter from David Deeter, Jail Administrator, Cheboygan County Sheriff Department, Michigan, to Human Rights Watch, January 4, 2012; Letter from Carl Gruzhit, Corrections Officer, Gladwin County Jail, Michigan, to Human Rights Watch, January 31, 2012; Letter from Marjorie Chandonais, Captain Houghton County Sheriff's Office, Michigan, to Human Rights Watch, January 4, 2012; and Letter from Duane Engelhardt, Jail Administrator, Lapeer County Sheriff's Office, Michigan, to Human Rights Watch, February 1, 2012;

[336] Letter from David Deeter, Jail Administrator, Cheboygan County Sheriff Department, Michigan, January 4, 2012; Letter from Carl Gruzhit, Corrections Officer, Gladwin County Jail, Michigan, January 31, 2012; Letter from Marjorie Chandonais, Captain Houghton County Sheriff's Office, Michigan, January 4, 2012; Letter from Scott Lamiman, Jail Population Coordinator, Muskegon County Jail, Michigan, to Human Rights Watch, January 24, 2012; and Letter from Tim Schuler, Captain, St. Joseph County Sheriff's Office, Michigan, to Human Rights Watch, January 5, 2012.

[337] Human Rights Watch telephone interview with Ann Russell, Corrections Administrator, Oakland County, Michigan, March 23, 2012; and with Michelle M. Sanborn, Jail Administrator, Macomb County, Michigan, March 9, 2012.

[338] Mich. Comp. Laws Ann. §762.11.

Huron Valley Correctional Facility).[339] Young people under age 17 are, to the extent practicable, kept sight and sound separated from 17 year olds and adults.[340] However, the department can designate any young person under age 18 for housing and placement at a mainline prison (including if the person is deemed to pose a risk to others, or if requires psychiatric care).[341] There is no prohibition in state law or MI DOC policies or regulations against holding young people in solitary confinement in Michigan prisons.

MI DOC officials declined to comment on MI DOC disciplinary policies with regard to young people under age 18, though the officials did indicate that the MI DOC classification system does not consider age as a factor in inmate classification.[342] Inmates in MI DOC custody who are held in temporary, punitive, or administrative segregation are entitled out of their cell three times per week to take a shower and shave and a minimum of one hour per day, five days per week, to exercise.[343] Such conditions constitute solitary confinement.

Research Findings

Michigan Jails

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with seven young people who reported being held in protective solitary confinement while in pre-trial detention in Michigan jails. Five young people said they had spent two months or longer in protective solitary confinement while under age 18. Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with six young people who reported being held in punitive solitary confinement while in pre-trial detention in Michigan jails. Three of those young people said they spent ten days or more in punitive solitary confinement while under age 18. One young person reported being held in administrative solitary confinement for approximately one month while under age 18.

[339] Policy Directive 05.01.140, Michigan Department of Corrections, "Prisoner Placement and Transfer," October 2011, http://www.michigan.gov/documents/corrections/0501140_365947_7.pdf (accessed August 27, 2012), at CC-EE.

[340] Ibid., at EE.

[341] Ibid., at DD-GG.

[342] Human Rights Watch email correspondence with Russell Marlan, Administrator, Executive Bureau, Michigan Department of Corrections, June 19, 2012.

[343] Policies in place governing youth in Department custody suggest that the segregation of youth is regulated in the same way as the segregation of adults. Michigan Department of Corrections, "Prisoner Placement and Transfer," at DD; Policy Directive 04.05.120, Michigan Department of Corrections, "Segregation Standards," September 2010, http://www.michigan.gov/documents/corrections/0405120_333436_7.pdf (accessed August 27, 2012), at V.9 and V.21.

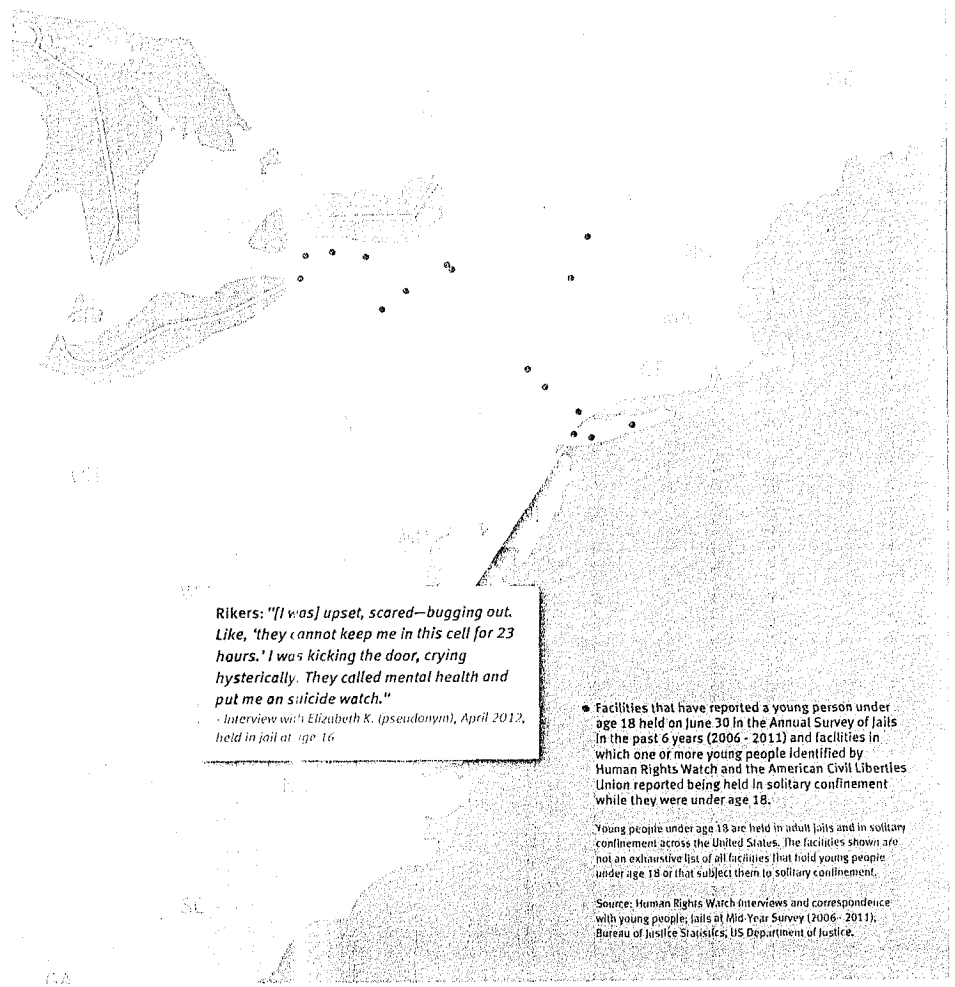
Young people held in solitary confinement in Michigan jails generally described being allowed out of their cell one hour each day, or for one-and-a-half or two hours a few times each week, in a day room or common space, generally alone, during which they could shower and sometimes make phone calls to loved ones. Young people generally reported being able to receive visits from loved ones, but four young people told us they were unable to have contact visits. Young people generally said they were able to access reading materials. One young person said he or she was only able to receive reading materials sent by others directly from the publisher. Two young people said they received a Christian bible and no other reading materials while in solitary confinement. Three young people reported receiving no educational materials or programming while in solitary confinement. Two young people said they had considered suicide while in solitary confinement.

Michigan Prisons

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with eight young people who reported being held in solitary confinement while in state prison in Michigan. Human Rights Watch and the American Civil Liberties Union interviewed five young people who told us they were held in punitive solitary confinement while in Michigan prisons. Three of those young people reported spending more than one period in punitive solitary confinement of one month or longer.

STATE CASE STUDIES: NEW YORK

Youth in Adult Jails and Youth in Solitary Confinement



Rikers: ***"[I was] upset, scared—bugging out. Like, 'they cannot keep me in this cell for 23 hours.' I was kicking the door, crying hysterically. They called mental health and put me on suicide watch."***

Interview with Elizabeth K. (pseudonym), April 2012, held in jail at age 16

- **Facilities that have reported a young person under age 18 held on June 30 in the Annual Survey of Jails in the past 6 years (2006 - 2011) and facilities in which one or more young people identified by Human Rights Watch and the American Civil Liberties Union reported being held in solitary confinement while they were under age 18.**

Young people under age 18 are held in adult jails and in solitary confinement across the United States. The facilities shown are not an exhaustive list of all facilities that hold young people under age 18 or that subject them to solitary confinement.

Source: Human Rights Watch interviews and correspondence with young people; Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

Human Rights Watch and the American Civil Liberties Union have found that some New York jails and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances. Human Rights Watch and the American Civil Liberties Union interviewed seven individuals who reported being subjected to one or more periods of solitary confinement while under age 18 in jails at Rikers Island. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Albany, Erie, Madison, Monroe, Nassau, Niagara, Onandaga, Orange, Orleans, Seneca, Steuben, Suffolk, Sullivan, Washington, and Westchester Counties have reported detaining young people under age 18 in the last six years.[344] Human Rights Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

New York law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.[345]

New York Jails

Most New York young people under age 18 who are charged as if adults are treated this way because criminal majority begins at 16 (although younger adolescents can also be charged as adults).[346] Young people under age 18 who are charged as if adults can be held in adult jails.[347] The state requires that adolescents under age 19 held in adult jails be held

[344] Jails at Mid-Year Survey (2006 - 2011), Bureau of Justice Statistics, US Department of Justice.

[345] Throughout the report, "solitary confinement" is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement (accessed August 27, 2012).. This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

[346] The defense of infancy can only be invoked by youth under age 16 (and in certain circumstances). New York Penal Law § 30. See also Remarks of Chief Judge Lippman to the New York Citizens Crime Commission, September 21, 2011, http://www.nycrimecommission.org/pdfs/Lippman110921.pdf (accessed August 27, 2012). There is a procedure for sentencing such youth as "youthful offenders" in particular circumstances, though this is distinct from treating them as "juveniles" under New York law. New York Criminal Procedure Law § 720.

[347] All youth between 16 and 18 are generally held in adult jails, and youth under 16 can be held there in certain circumstances. N.Y. Crim. Proc. Law § 510.15(1) (McKinney2006).

physically separate from adults age 19 and older.[348] But there is no prohibition in state law against holding young people in solitary confinement in adult jails.[349]

Between 45,000 and 50,000 young people under age 18 are arrested each year in New York and prosecuted as if adults.[350] A significant proportion of those young people are held in adult jails: in 2010, 16 jails reported to the US Department of Justice that on a single day in June, they held 942 young people; New York City alone held 786 adolescents in fiscal year 2012.[351] Jail officials in Erie, Fulton, Lewis, Monroe, Orange, and Rensselaer counties and in New York City reported that adolescents are subject to the same disciplinary rules as adults when confined in their facilities.[352] Officials in Orange county and New York City told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.[353] Such conditions constitute solitary confinement.

New York Prisons

The New York Department of Corrections and Community Supervision (NY DOCCS) holds young people who are convicted of criminal offenses and sentenced while under age 18. Young people under age 18 and adults under age 21 in DOCCS custody are detained in

[348] The statute reads, "No person under nineteen years of age shall be placed or kept or allowed to be at any time with any prisoner or prisoners nineteen years of age or older, in any room, dormitory, cell or tier of the buildings of such institution unless separately grouped to prevent access to persons under nineteen years of age by prisoners nineteen years of age or older." N.Y. Correct. Law § 500-b(.). The New York City Board of Corrections, which separately regulates New York City jails, refers to this population as "adolescents." NYC Board of Correction (BOC), "Variances Granted by the Board of Correction. Minimum Standards for New York City Correctional Facilities," Section 1-02, "Classification of Prisoners," March 1989, http://www.nyc.gov/html/boc/html/rules/variances.shtml (accessed August 27, 2012).

[349] The various forms of solitary confinement are discussed in Section III of the report.

[350] Remarks of Chief Judge Lippman, September 21, 2011. This data is hard to estimate because New York State does not publish age-disaggregated felony arrest statistics. See New York State Division of Criminal Justice Services, "Adult Arrests: 2002-2011," http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/index.htm (accessed August 27, 2012).

[351] See Appendix 1 above; New York City data is drawn from City of New York Department of Corrections, "Adolescents: Overview," http://www.nyc.gov/html/doc/html/adolescent/doc_stats_adol.shtml (accessed August 27, 2012).

[352] Human Rights Watch telephone interviews with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012; with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012; and with Dominick Orsino, Corrections Administrator, Orange County Correctional Facility, New York, April 9, 2012; and letter from Randy Benedict, Captain/Jail Administrator, Fulton County Correctional Facility, New York, to Human Rights Watch, January 10, 2012; Letter from Sherry Stanford, Lieutenant, Lewis County Jail, New York, to Human Rights Watch, January 7, 2012; Letter from Jason Tripoli, Corporal, Monroe County Jail New York, to Human Rights Watch, January 23, 2012; and Letter from David Hetman, Program/Support Lieutenant, Correction Bureau, Rensselaer County Office of the Sheriff, New York, to Human Rights Watch, April 19, 2012.

[353] Human Rights Watch telephone interviews with Dominick Orsino, Corrections Administrator, Orange County Correctional Facility, New York, April 9, 2012; and with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

specialized facilities.[354] On January 1, 2012, the NY DOCCS held 181 young people under age 18; 11 of them were 16 years old.[355] There is no prohibition in state law or NY DOCCS policies or regulations against holding young people in solitary confinement in New York prisons. Young people under age 18 in NY DOCCS facilities are subjected to the same disciplinary rules as adults.[356]

Young people under age 18 in NY DOCCS custody can be held in Special Housing Units (SHUs), a form of segregated isolation, for disciplinary or administrative purposes; however, between a third and half of all people held in SHUs are held two per cell (or "double-celled").[357] Officials confirmed that in certain circumstances, young people under age 18 are held in conditions that constitute solitary confinement.[358] On January 1, 2012, the NY DOCCS held 83 young people between age 16 and 18 in SHUs.[359]

Research Findings

New York Jails

Human Rights Watch and the American Civil Liberties Union interviewed seven young people who reported being held in solitary confinement while in pre-trial detention in jail in New York City. A number of those adolescents reported spending significant periods in punitive solitary confinement. Five young people said they had spent a total of longer than thirty days in solitary confinement while under age eighteen; two of those adolescents said they had spent longer than six months in solitary confinement.

[354] Human Rights Watch telephone interview with Jeff McKoy, Deputy Commissioner for Program Services, New York Department of Corrections and Community Supervision, June 28, 2012.

[355] Human Rights Watch email correspondence with Peter Cutler, Director of Public Information, New York Department of Corrections and Community Supervision, July 20, 2012.

[356] Human Rights Watch email Correspondence with Peter Cutler, June 15, 2012.

[357] In a recent op-ed, New York Department of Corrections and Community Supervision (NYDOCCS) Commissioner Brian Fischer stated that of the 4,300 inmates in disciplinary segregation in DOCCS facilities as of August 19, 2012, 1,400 (or approximately one-third) live in two-man cells. Brian Fischer, "Safety has to come first in N.Y.'s prisons," *Times Union*, August 19, 2012, http://www.timesunion.com/default/article/Safety-has-to-come-first-in-N-Y-s-prisons-3798859.php (accessed August 27, 2012). This report does not address the practice of holding two individual in prolonged segregation, but Human Rights Watch, mental health experts, and other advocates have raised serious concerns about the practice. See for example, New York Civil Liberties Union, "Boxed In: The True Cost of Extreme Isolation in New York's Prisons," October 2012, http://www.nyclu.org/BoxedIn.

[358] Human Rights Watch telephone interview with Jeff McKoy, June 28, 2012 ("As with any other offender, when they go to SHU they are double-celled unless it is determined that they shouldn't be double celled.").

[359] Human Rights Watch email correspondence with Peter Cutler, July 20, 2012.

New York City jail officials reported to Human Rights Watch that 14.4 percent of adolescents between age 16 and 18 at Rikers Island spend at least one period of time in punitive segregation.[360] Officials also reported that in FY2012, 48 percent of all adolescents had been identified as having a mental disability (or "a diagnosed mental disorder," as defined in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders).[361] Officials confirmed that young people in punitive segregation spend less than two hours per day outside of their cell; thus, the practice constitutes solitary confinement.[362]

Officials also provided data that shows that adolescents are held in solitary confinement as the result of a range of disciplinary infractions.[363]

Table 1: Infractions leading to a term of punitive segregation in New York City

Disciplinary Infraction	Percent of Punitive Segregation Terms Involving Each Infraction
Fighting resulting in injury	19%
Assault on inmate	18%
Assault on staff	14%
Fighting	11%
Contraband-weapon	7%
Physically resisting staff members	6%
Assault with a weapon	3%
Destruction of city property	3%
Making threats to staff	3%
Assault—spitting/throwing	2%
Other	14%

[360] Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections,July 27, 2012; Human Rigths Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

[361] As discussed in the report, Human Rights Watch and the American Civil Liberties Union use the term "mental disability" to refer to this population. The Department of Corrections did not provide data about what percentage of youth subjected to punitive segregation had a mental disability. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

[362] Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York July 6, 2012.

[363] This data is for FY2012. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

Officials provided data that suggests that adolescents are subjected to longer periods of time in solitary confinement than adults; and generally spend longer than a month in solitary confinement, with some adolescents spending significantly longer periods in solitary.[364]

Table 2: Time spent in punitive segregation in New York City

Punitive Segregation Durations for Adolescents	
Average Length of Stay	43.1 days
Median Length of Stay	29 days
Modal Length of Stay	20 days
Punitive Segregation Durations for Adults	
Average Length of Stay	42.3 days
Median Length of Stay	27.3 days
Modal Length of Stay	18 days

Finally, officials provided data that suggests that adolescents subjected to solitary confinement are broadly representative of the general population of adolescents in terms of the offense with which they are charged.[365]

Table 3: Charges of adolescents in segregation in New York City compared to general population

Adolescents in Punitive Segregation		All Adolescents	
Charged Offense	% of Total	Charged Offense	% of Total
Robbery	45.4%	Robbery	43.7%
Murder/attempted murder/manslaughter	16.1%	Murder/attempted murder/manslaughter	14.2%
Weapons	9.5%	Weapons	8.2%
Assault	8.2%	Assault	7.0%
Other felonies	4.7%	Burglary	6.9%

[364] This data is for FY2012. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

[365] Note that the data, which is for FY2012, is not completely parallel between the two groups. Human Rights Watch email correspondence with Sharman Stein, Deputy Commissioner, New York City Department of Corrections, July 27, 2012; Human Rights Watch email correspondence with Robin Campbell, Deputy Commissioner, New York City Department of Corrections, September 26, 2012.

Young people held in solitary confinement in New York City jails described being allowed out of their cell for one hour each day in a caged recreation area, but two young people told us that they were only allowed exercise if they woke up before breakfast and requested it. They also reported being let out of their cell for a short shower once per day. Young people reported being able to receive regular visits from loved ones. Three young people said they were able to access reading and writing materials while in solitary confinement, but that the only educational programming they were permitted were in-cell study packets. One young person said he or she had attempted suicide while in solitary confinement.

Avenues for Reform

In spite of these challenges, the legal and policy landscape in New York is shifting in a positive direction. New York lawmakers have introduced legislation that would raise the age of criminal majority to 18.[366] New York City recently announced a new program that may deliver additional services to young people held in solitary confinement; and a new disciplinary approach to minor infractions, involving short-term disciplinary room confinement.[367] Jail officials in Erie County and New York City have acknowledged that young people are different, and have signaled openness to additional reform. Captain Hartman, of Erie County, told us,

> [I] [c]an tell you with absolute certainty that there is a point with everybody, but with these minors that point is much sooner, when solitary confinement goes from being an effective management tool and goes to being counterproductive. And when it goes to being counterproductive, it gets very rapidly, rapidly worse.... Teenagers live for now and today and don't take consequences into account. Whether it's hormonal, emotional—

[366] New York State Bill A9424-2011/S7020-2011, http://open.nysenate.gov/legislation/bill/A9424-2011 (accessed August 27, 2012).

[367] "New Privately Funded Program to Reduce Reincarceration—ABLE—is part of City's comprehensive Young Men's Initiative," August 2, 2012, News from the Blue Room, NYC.gov press release, http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2012b%2Fpr285-12.html&cc=unused1978&rc=1194&ndi=1 (accessed August 27, 2012); Human Rights Watch telephone interview with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012; New York City Board Of Corrections Letter to Commissioner Dora Schriro, September 20, 2012, http://www.nyc.gov/html/boc/downloads/pdf/Variance_Documents/201208/CELL%20RESTRICTION%20APPROVAL%20LTR.pdf (accessed October 2, 2012).

> regardless of the reason—fact is fact. [There] [n]eeds to be [an] environment that understands that and takes that into account—and channels all that stuff so it's not coming out violently.... Inmates who are successful in managing [their] own behavior in jail should be rewarded and provided incentives for continuing. There should be tangible consequences for not doing that, but something to look forward to if they do, but [by] using different amounts of privilege, living conditions, all that sort of stuff.[368]

Commissioner Schriro of the New York City Department of Corrections told us,

> If you can get in quick enough, [the ideal] would be the equivalent of 'go to your room.' A lot of these [conflicts] start small. If you have one youth who is monopolizing the channel-changer [for the housing area television], the option now [] if he does not respond is to infract him [which results in punitive segregation]. What I prefer is 'go to your room young man' and then to create a mechanism for review—so every two hours you double back and it wouldn't go any longer than six hours—so that it doesn't go beyond a *de facto* punitive segregation in your housing unit. So when you are ready to come out, all is forgiven.[369]

To continue down the road to reform, New York must ensure that young people under age 18 are never subjected to solitary confinement in jails or in prisons.[370]

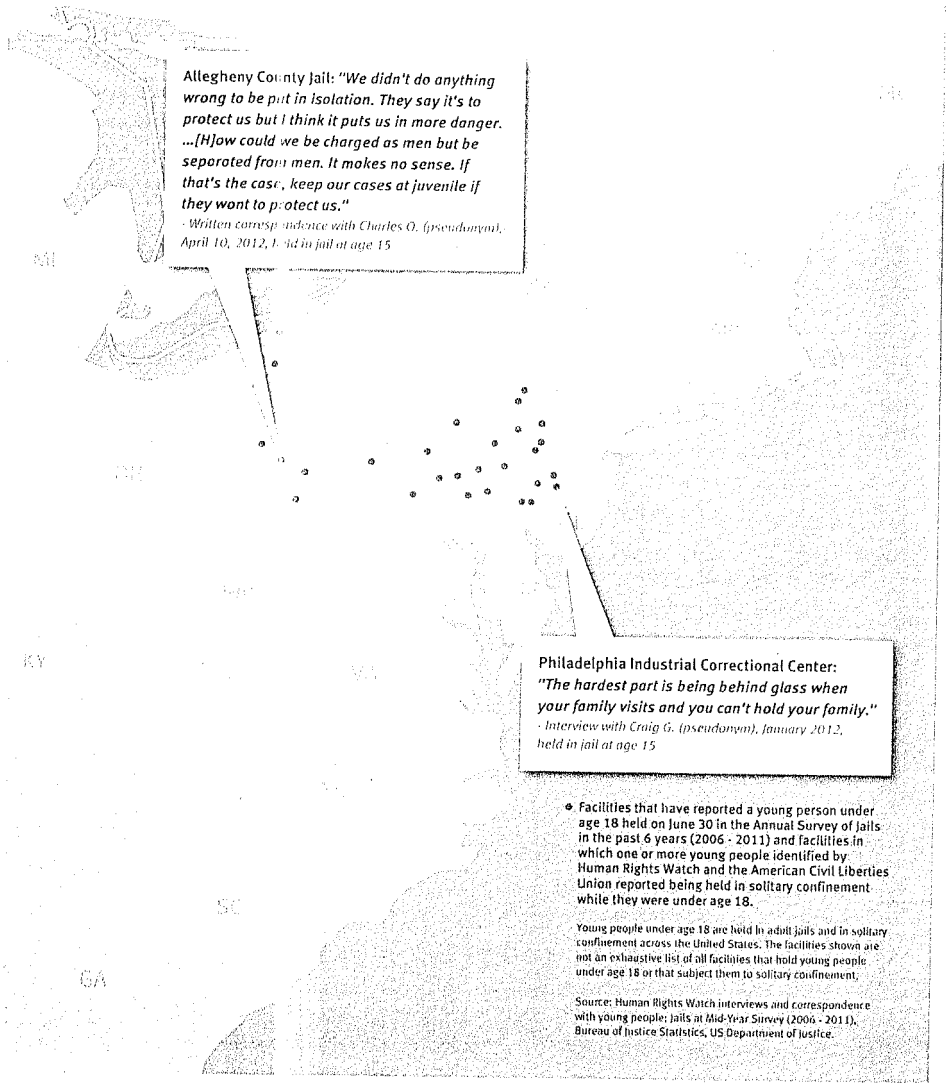
[368] Human Rights Watch telephone interview with Jeffrey Hartman, Captain, Erie County Holding Center, New York, March 2, 2012.

[369] Human Rights Watch telephone interview with with Dora B. Schriro, Commissioner, New York City Department of Corrections, New York, July 6, 2012.

[370] For detailed recommendations, see recommendations section above.

STATE CASE STUDIES: PENNSYLVANIA

Youth in Adult Jails and Youth in Solitary Confinement



Human Rights Watch and the American Civil Liberties Union have found that some Pennsylvania jails (also called county prisons) and prisons use solitary confinement to detain and manage young people under age 18 in a range of circumstances.[371] Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with 11 individuals who reported being subjected to one or more periods of solitary confinement while under 18 in jails in Alleghany, Dauphin, Lackawanna, Lebanon, Lehigh, and Philadelphia Counties; and in state prison. Though not investigated by Human Rights Watch and the American Civil Liberties Union, officials in Beaver, Blair, Berks, Bucks, Carbon, Chester, Crawford, Cumberland, Delaware, Erie, Fayette, Franklin, Juniata, Lancaster, Luzerne, Monroe, Montgomery, Northampton, Schuylkill, Union, Westmoreland and York, Counties have reported detaining young people under age 18 in the last six years.[372] Human Rights Watch also interviewed or corresponded with state jail and prison officials.

The Law and Policy Landscape

Pennsylvania law and policy governing jails and prisons permit holding young people in various forms of prolonged isolation or segregation that can constitute solitary confinement.[373]

Pennsylvania Jails (also called county prisons)

By statute, young people under age 18 charged as if adults *may* be held in jails.[374] Under a legislative reform passed in 2010, young people charged as if adults can be "transferred" back into the juvenile justice system.[375] But even young people awaiting transfer may be held in adult jails. The state requires that young people under age 18 held in adult jails be

[371] In Pennsylvania, county detention facilities are called "county prisons." However, because the term "jail" is used throughout the report, it is retained here for the sake of consistency.

[372] Jails at Mid-Year Survey (2006 - 2011). Bureau of Justice Statistics. US Department of Justice.

[373] Throughout the report, "solitary confinement" is used to refer to physical and social isolation that extended for more than 22 hours each day and lasted for one or more days. UN Human Rights Council, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, U.N. G.A. Doc. A/66/268, August 5, 2011, http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement (accessed August 27, 2012). This report does not address the practice of holding two individuals in prolonged segregation, but Human Rights Watch and mental health experts have raised serious concerns about the practice.

[374] Pa. Cons. Stat. § 6327(c)-(d). Youth under age 18 are charged as adults through the operation of statutory language excluding certain crimes from the definition of "delinquent acts." Pa. Const. Stat. § 6302.

[375] Pa. Cons. Stat. § 6322.

separated by sight and sound from adults.[376] But there is no prohibition in state law against holding young people in solitary confinement in adult jails.[377]

Pennsylvania jails reported—in a daily snapshot—holding 215 young people under age 18 in 66 jails on January 31, 2012.[378] Jail officials in Carbon, Chester, Clinton, and Mifflin counties reported that adolescents are subject to the same disciplinary rules as adults when confined in their facilities.[379] Officials in Clinton and Chester Counties told Human Rights Watch that young people under age 18 can be sentenced to time in segregation for disciplinary infractions, during which they are permitted out of their cell for less than two hours each day.[380] Such conditions constitute solitary confinement.

Pennsylvania Prisons

The Pennsylvania Department of Corrections (PA DOC) holds young people who are convicted of criminal offenses and sentenced while under age 18. Young people and adults under age nineteen-and-a-half are housed at Secure Correctional Institution Pine Grove (SCI Pine Grove) when entering department custody and participate in the Young Adult Offender Program through age 21.[381] As of July 31, 2012, there were 899 inmates under age 22 at SCI Pine Grove.[382] There is no prohibition in state law or PA DOC policies or regulations against holding young people in solitary confinement in Pennsylvania prisons.

[376] Pa. Cons. Stat. § 6327(c)(3).

[377] The various forms of solitary confinement are discussed in Section III of the report.

[378] Pennsylvania jails report detention data to the State Department of Corrections. It is available at http://www.portal.state.pa.us/portal/server.pt/document/1259638/2012_county_statistics_xls (accessed September 26, 2012).

[379] Human Rights Watch telephone interview with Jack Healy, Director of Inmate Services, Chester County Prison, Pennsylvania, February 29, 2012; Letter from Bernie Zook, Administrator/Warden, Mifflin County Correctional Facility, Pennsylvania, to Human Rights Watch, January 3, 2012; Letter from Joseph Gross, Warden, Carbon County Correctional Facility, Pennsylvania, to Human Rights Watch, January 6, 2012; and Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012.

[380] Human Rights Watch telephone interview with Jack Healy, Director of Inmate Services, Chester County Prison, Pennsylvania, February 29, 2012; Letter from Jacqueline Motter, Deputy Warden, Clinton County Correctional Facility, Pennsylvania, to Human Rights Watch, February 13, 2012.

[381] Human Rights Watch telephone interview with Eric Bush, Superintendent, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, June 21, 2012; Policy 11.2.1, Pennsylvania Department of Corrections, "Reception and Classification," http://www.portal.state.pa.us/portal/server.pt/document/916502/11_02_01_reception___classification_pdf (accessed August 27, 2012), section 8(A).

[382] Pennsylvania Department of Corrections, Monthly Population Report, http://www.portal.state.pa.us/portal/server.pt/document/ (accessed August 27, 2012).

PA DOC officials reported that, while they seek to avoid placing young people in punitive or administrative solitary confinement, young people are housed in this way.[383] Officials reported that the inmates at SCI Pine Grove are held in administrative or disciplinary confinement at high rates: "It has historically been about 10 percent of the population; about 4-5 percent are those we can't incorporate back into the population.... So that drives our average in the [Restrictive Housing Unit] 4-5 percent higher than [other prisons]."[384] On April 30, 2012, 10.9 percent of inmates under 22 at SCI Pine Grove were held in either administrative or disciplinary confinement.[385] However, officials report that they try to exercise their authority—when possible—to reduce the length of time young people spend in disciplinary confinement. Eric Bush, the superintendent at SCI Pine Grove, told us,

> The facility manager can reduce the time. And we use that tool. If we have an opportunity to reduce their DC [Disciplinary Confinement] status we try to do that. Unfortunately, some of them get into gang issues and they can't be put back into population. There [are] also mandatory issues that we can't reduce [under the Inmate Discipline Policy]—like assaulting a staff member.[386]

Research Findings

Pennsylvania Jails (also called county prisons)

Human Rights Watch and the American Civil Liberties Union interviewed or corresponded with six young people who reported being held in protective solitary confinement while in pre-trial detention in Pennsylvania jails. Five of those young people reported spending more than a month in protective solitary confinement. Human Rights Watch and the American Civil Liberties Union interviewed five young people who reported being held in punitive solitary confinement while in pre-trial detention in Pennsylvania jails. Three of those young people said they spent more than one period in punitive solitary confinement of 15 days or more. Human Rights Watch and the American Civil Liberties Union interviewed

[383] Human Rights Watch telephone interview with Marshall Shirley, Deputy, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

[384] Ibid.

[385] Pennsylvania Department of Corrections, Monthly Population Report, http://www.portal.state.pa.us/portal/server.pt/document/.

[386] Human Rights Watch telephone interview with Eric Bush, June 21, 2012; See also Policy DC-ADM 801, Pennsylvania Department of Corrections, "Inmate Discipline," http://www.portal.state.pa.us/portal/server.pt/document/916568/801_inmate_discipline_pdf (accessed August 27, 2012), section 4(B)(7).

three young people who reported spending two or more days in medical solitary confinement to quarantine them when they first entered jail.

Young people held in solitary confinement in Pennsylvania jails generally described being allowed out of their cell one or two hours each day into a day room or common space, generally alone, during which they could shower and sometimes make phone calls to loved ones. Young people reported being able to receive visits from loved ones, but one young person told us he or she was unable to have contact visits. Three young people said they were unable to access any reading materials and one young person reported being unable to access writing materials in his or her cell while in solitary confinement. One young person said he or she had considered suicide while in solitary confinement.

Pennsylvania Prisons

Human Rights Watch and the American Civil Liberties Union corresponded with two young people who reported being held in punitive solitary confinement while in state prison in Pennsylvania. One of those young people reported having spent eight-and-a-half months in punitive solitary confinement while under age 18.

Pennsylvania prison regulations mandate that young people in punitive or administrative solitary confinement receive only one hour of recreation each day, five days a week.[387] Officials confirmed that young people receive an in-cell study packet, meet weekly with a counselor, and with a psychological expert "regularly," but, "other than that they are pretty much in their cell."[388]

[387] Inmates in PA DOC custody who are placed in administrative confinement are subject to periodic review from the Program Review Committee, his or her counselor, and the Unit Management Team. A qualified psychologist or psychiatrist is to personally interview and conduct an assessment of any inmate remaining in administrative confinement for longer than 30 calendar days. For inmates kept further in administrative confinement for an extended period, a mental health assessment is to be completed every 90 calendar days. Policy DC-ADM 802, Pennsylvania Department of Corrections, "Administrative Custody Procedures," www.portal.state.pa.us/portal/server.pt/document/919463/802_administrative_custody_procedures_pdf+&hl=en&g (accessed August 27, 2012), section (2)(D). Inmates in administrative confinement are permitted only non-contact visits and are permitted exercise one hour per day, five days per week. Ibid., section (3)(D)(6).

[388] Human Rights Watch telephone interview with Jeff Dunmire, School Principal, Secure Correctional Institution Pine Grove, Pennsylvania Department of Corrections, Pennsylvania, June 21, 2012.

Avenues for Reform

The legal and policy landscape in Pennsylvania is shifting, and must move further if it is to adequately protect young people. The 2010 reform that permits young people charged as if adults to be transferred to the juvenile justice system is a promising change.[389] But the state must change its approach to detaining and managing young people. Fortunately, officials within the PA DOC acknowledge that young people are different, and that solitary confinement is not an effective way to manage young people. Eric Bush put it this way:

> I most definitely think there is a heightened risk for young adults. They are so impulsive and sometimes they "act out" out of anger rather than an intention to hurt themselves—or attention-seeking behaviors.... [Prolonged isolation] is detrimental to the youth. Unfortunately, we have people confined.... [O]ver the years we have learned that they don't get anything out of that. They really don't. My personal opinion is that it is a detriment to them to keep them in restrictive housing for any length of time. Unfortunately, those [Departmental rules] are the policies that guide us.... There is not enough to be gained on an individual basis for them to prepare themselves for release in restrictive housing.[390]

To continue down the road to reform, Pennsylvania must ensure that young people under age 18 are never subjected to solitary confinement in jails or in prisons.[391]

[389] See Campaign for Youth Justice, "The Pennsylvania Success Story: Pennsylvania Allows for Youth Sentenced as Adults to be Served by Juvenile Facilities," March 2011, http://www.campaignforyouthjustice.org/documents/PA_SB_1169.pdf (accessed August 27, 2012).

[390] Human Rights Watch telephone interview with Eric Bush, June 21, 2012

[391] For detailed recommendations, see recommendations section above.

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 Committee on Criminal Justice

BILL: SB 824

INTRODUCER: Senator Garcia

SUBJECT: Public Records/Forensic Behavioral Health Evaluation

DATE: March 12, 2013 REVISED:

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

I. Summary:

SB 824 makes forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., confidential and exempt from public records requirements.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemptions as required by the Florida Constitution. The bill specifies that the exemptions stand repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

This bill creates section 916.1065 of the Florida Statutes.

II. Present Situation:

Forensic Mental Health[1]

Forensic Services

Chapter 916, F.S., addresses the treatment and training of individuals who have been charged with felonies and found incompetent to proceed to trial due to mental illness, mental retardation, or autism, or who are acquitted by reason of insanity.

[1] Much of the information included in this portion of the analysis is from the Interim Report by the Senate Committee on Children, Families, and Elder Affairs, *Forensic Hospital Diversion Pilot Program* (Oct. 2010). The report is available at http://www.flsenate.gov/Committees/InterimReports/2011/2011-106cf.pdf (last visited March 12, 2013).

Department of Children and Family Services
Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed to trial due to mental illness or who have been adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., are committed to the custody of the Department of Children and Family Services (DCF).

Section 916.12(3), F.S., authorizes the court to appoint experts to evaluate a criminal defendant's mental condition. In determining whether a defendant is competent to proceed, the examining expert must provide a report to the court regarding the defendant's capacity to appreciate the charges or allegations against him, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel, behave appropriately in court, and testify relevantly. A defendant must be evaluated by at least two experts prior to being involuntarily committed.[2] A defendant charged with a felony who is found incompetent to proceed may be involuntarily committed if the court finds by clear and convincing evidence: (1) that the defendant is mentally ill; (2) all available, least restrictive alternatives are inadequate; and (3) there is a substantial probability that the mental illness will respond to treatment and that the defendant will be restored to competency.[3]

DCF provides mental health assessment, evaluation, and treatment of individuals who are committed following adjudication as incompetent to proceed or not guilty by reason of insanity. These individuals are charged with a felony offense and must be admitted to a treatment facility within 15 days of the department's receipt of the commitment packet from the court.[4]

Agency for Persons with Disabilities
The Agency for Persons with Disabilities (APD) provides forensic services to defendants charged with a felony who have been found incompetent to proceed due to retardation or autism. Defendants with retardation or autism must be evaluated by at least one expert with expertise in evaluating persons with retardation or autism in order to evaluate the mental condition of the defendant.[5] A defendant is considered incompetent to proceed if the expert finds that the defendant:

- Meets the definition of retardation or autism;
- Does not have the sufficient present ability to consult with his or her attorney with a reasonable degree of rational understanding; and
- Has no rational and factual, understanding of the proceedings.[6]

If the expert finds that the defendant is incompetent to proceed due to the defendant's retardation or autism, the expert must prepare a report for the court recommending training for the defendant in order to attain competency.[7] Individuals charged with a felony and found incompetent to

[2] s. 916.12(2), F.S.
[3] s. 916.13(1), F.S. *See also*, s. 916.302, F.S.
[4] *See* s. 916.107(1)(a), F.S.
[5] s. 916.301, F.S.
[6] s. 916.3012, F.S.
[7] s. 916.3012(4), F.S.

proceed due to retardation or autism are committed to APD for appropriate training.[8] In certain circumstances, the court may order the conditional release of a defendant found incompetent to proceed due to retardation or autism based on an approved plan for providing community-based training.[9]

Restoration of Competency

Competency restoration is designed to help defendants meaningfully participate in their own defense. If the court determines that the defendant is a danger to himself or others, it may involuntarily commit the defendant to a secure forensic facility.[10] If the court finds that the defendant does not pose a risk to public safety, it may place the defendant on conditional release to receive competency restoration training in the community [11]

A defendant who is committed or placed on conditional release pursuant to ch. 916, F.S., is returned to court periodically for a review and report on his or her condition.[12] Generally, a review is conducted:

- No later than 6 months after the date of admission;
- At the end of any extended period of commitment;
- At any time upon the facility administrator's communication to the court that the defendant no longer meets commitment criteria; and
- Upon counsel's Motion for Review having been granted.

Once a defendant is determined to have regained his or her competence to proceed, the court is notified and a hearing is set for the judge to determine the defendant's competency.[13] If the court finds the defendant to be competent, the criminal proceeding resumes. If, however, the court finds the defendant incompetent to proceed, the defendant is returned to a forensic facility or community restoration on conditional release until competency is restored.[14]

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[15] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[16] Article I, Section 24(a), of the Florida Constitution, provides that:

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[8] s. 916.302, F.S.
[9] s. 916.304, F.S.
[10] s. 916.13, F.S.
[11] s. 916.17, F.S.
[12] ss. 916.13(2), 916.15(3) and 916.302(2)(a), F.S. See also s. 985.19(4)(e), (5) and (6), F.S., related to the court's jurisdiction and reporting requirements in juvenile cases.
[13] Rule 3.212, Fla.R.Crim.P.
[14] *Id.*
[15] ss. 1390 & 1391, F.S. (Rev. 1892), concerning records to be kept by the Clerk of Circuit Court. Section 1390 list the types of records and includes the following statement: "Such records shall always be open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making extracts therefrom, but the clerk shall not be required to perform any service in connection with such inspection or making of extracts without payment of the compensation fixed by law." Section 1391 lists other records and includes a substantively identical statement.
[16] Article I, Section 24, of the Florida Constitution.

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

The Public Records Act, ch 119, F.S., specifies conditions under which public access must be provided to records of an agency.[17] Section 119.07(1)(a), F.S., states that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[18]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[19] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[20]

Only the Legislature is authorized to create exemptions to open government requirements.[21] Exemptions may be created by general law if approved by a two-thirds vote of the members present and voting in each house of the Legislature.[22] The law must state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose of the law.[23] A bill enacting an exemption[24] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[25]

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[17] The word "agency" is defined in s. 119.011(2), F.S., as 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.
[18] s. 119.011(12), F.S.
[19] *See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[20] *See generally Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[21] Article I, Section 24(c), of the Florida Constitution.
[22] *Id.*
[23] *Id.*
[24] Under s. 119.15(4)(b), F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[25] Article I, Section 24(c), of the Florida Constitution.

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 (the custodian of the record with the power to receive or communicate the record) to anyone other than to the persons or entities designated in the statute.[26] If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.[27]

The Open Government Sunset Review Act (Act)[28] provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law (public meetings).[29] Each year, by June 1, the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.[30] The Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[31]

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[32] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals, cause unwarranted damage to their good name or reputation, or would jeopardize their safety. (Only information that would identify such individuals may be exempted under this provision).
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.[33]

The Act also requires, as part of the review process, that the Legislature consider the following:

- What specific records or meetings are affected by the exemption?

[26] Attorney General Opinion 85-62.
[27] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).
[28] s. 119.15, F.S.
[29] s. 286.011, F.S.
[30] s. 119.15(5)(a), F.S.
[31] s. 119.15(3), F.S.
[32] s. 119.15(6)(b), F.S.

[33] *Id*.

- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?[34]

III. Effect of Proposed Changes:

The bill creates s. 916.1065, F.S., to make forensic behavioral health evaluations filed with the court pursuant to ch. 916, F.S., confidential and exempt from public records requirements. The term "forensic behavioral health evaluation" is defined in the bill as meaning:

> [A]ny record, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.

The types of records included in the bill are already afforded confidentiality pursuant to s. 916.107(8), F.S., if they become a clinical record. The bill recognizes that in such cases, release of the records is governed by the provisions of that subsection.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides the following statement of public necessity for the exemptions as required by the Florida Constitution:

> The Legislature finds that it is a public necessity that forensic behavioral health evaluations filed with the court pursuant to chapter 916, Florida Statutes, be confidential and exempt from disclosure under public records requirements. The personal health of an individual and the treatment he or she receives is an intensely private matter. An individual's forensic behavioral health evaluation should not be made public merely because it is filed with the court. Protecting forensic behavioral health evaluations is necessary to consistently protect the health care privacy rights of all persons. This exemption applies during all judicial proceedings unless such records are released as provided by law. This exemption is limited and no broader than necessary to accomplish the stated purpose.

The bill specifies that the exemptions stand repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

The bill takes effect upon becoming a law.

[34] s. 119.15(6)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created public records exemption. Because the bill creates new public records exemptions, the bill requires a two-thirds vote of each house of the Legislature for passage.

Public Necessity Statement

Article I, Section 24(c), of the Florida Constitution requires a public necessity statement for a newly created public records exemption. Because this bill creates new public records exemptions, 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:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Garcia

38-00926-13 2013824__

A bill to be entitled

An act relating to public records; creating s. 916.1065, F.S.; creating an exemption from public records requirements for a forensic behavioral health evaluation filed with a court; providing a definition for the term "forensic behavioral health evaluation"; authorizing the release of such evaluations under certain circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, applicability, and construction; providing an effective date.

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

Section 1. Section 916.1065, Florida Statutes, is created to read:

916.1065 Confidentiality of forensic behavioral health evaluations:

(1) A forensic behavioral health evaluation filed with the court under this chapter is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) As used in this section, the term "forensic behavioral health evaluation" means any record, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.

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

38-00926-13 2013824__

(3) As provided by law, if the evaluation becomes part of a clinical record, the evaluation may be released as provided in s. 916.107(8).

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

Section 2. The Legislature finds that it is a public necessity that forensic behavioral health evaluations filed with the court pursuant to chapter 916, Florida Statutes, be confidential and exempt from disclosure under public records requirements. The personal health of an individual and the treatment he or she receives is an intensely private matter. An individual's forensic behavioral health evaluation should not be made public merely because it is filed with the court. Protecting forensic behavioral health evaluations is necessary to consistently protect the health care privacy rights of all persons. This exemption applies during all judicial proceedings unless such records are released as provided by law. This exemption is limited and no broader than necessary to accomplish the stated purpose.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:
Joint Committee on Administrative Procedures

SENATOR RENE GARCIA
40th District

March 4, 2013

The Honorable Greg Evers
Chair, Criminal Justice Committee
308 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers:

This letter should serve as a request to have my bill ***SB 824*** *Public Records/Forensic Behavioral Health Evaluation* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 38

RG:dm

CC: Amanda Cannon, Staff Director

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic _____ Bill Number 824 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Behavioral Health P.R. Exemption

Bill Number: 824 (if applicable)

Name: Judge Steven Leifman

Amendment Barcode: (if applicable)

Job Title: MIAMI-Dade County Court Judge

Address: 1351 NW 12th ST Rm 617
Street

MIA, Fl 33125
City, State, Zip

Phone: 305/803-3181

E-mail:

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

Representing: State Courts System 11th circuit (Substance Abuse and Mental Health Task Force)

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 946

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Computer or Electronic Device Harassment

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 946 creates a third degree felony offense for non-consensual transmission or posting of nude photographs and videos and personal identification information to websites or social networking services or other websites. The bill enhances the conduct to a second degree felony if the offender was 18 years of age or older and the victim was younger than 16 years of age. It also adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, F.S.

This bill creates section 847.0042 of the Florida Statutes. The bill substantially amends section 921.0042 of the Florida Statutes.

II. Present Situation:

It has become fairly common to hear about people whose lives are disrupted because embarrassing pictures or other information is published on the Internet. In many cases, the pictures or information either originated when the aggrieved person was immature or in circumstances when they intended it to remain private. This problem often takes the form of what has been termed “revenge porn,” which is characterized by the publishing on the Internet of

a nude or semi-nude photograph or video that was originally intended to be kept private between two people. This occurred recently to a young woman in Brevard County whose ex-boyfriend posted nude photographs and videos of her online along with her name, e-mail address, and city where she lived. The woman is often embarrassed because the pictures have been seen by friends and co-workers. Some victims of such activity have been so emotionally affected that they have committed or attempted suicide.[1]

In many cases, the embarrassing photos or videos are posted on a website that is specifically designed to provide a forum for such activity. These websites generally do not create their own content, but allow persons to post content to the site after the person has agreed to certain terms and conditions.[2] Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of materials posted by third parties if the material is not illegal, such as child pornography.[3] This provision was applied by a federal appellate court to protect Yahoo! from a lawsuit for failure to remove nude pictures and personal identification information (PII) from a personal profile page that appeared to belong to an Oregon woman. As in most such cases, the false profile page had been created by the women's vengeful ex-boyfriend.[4] Currently, a group including dozens of Texas women are pursuing a lawsuit seeking damages against a revenge porn website operator in an attempt to pierce the protections provided by the Communications Decency Act.[5]

McAfee, an Internet security provider, recently published the results of a survey exploring the connection between romantic breakups and loss of privacy online. Among other results, the survey found that 1 in 10 ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time. Men reported being threatened with such exposure more often than women, and also reported that a higher proportion of the threats were carried out.[6]

In Florida, there are no criminal laws that prohibit posting pictures of a nude adult person on the Internet for viewing by other adults if the picture was taken with the knowledge and consent of the person. However, in some circumstances posting such pictures could be an element of the offenses of stalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Posting a picture that depicts nudity of a child may be punishable as a second-degree felony or a third-degree felony under chs. 827 or 847, F.S.

Regardless of whether accompanied by other material, s. 817.568(4), F.S., prohibits the non-consensual use of a person's personal identification information to harass that person. This

---

[1] *See* http://www.wftv.com/news/news/local/9-investigates-issue-nude-photos-posted-online-wit/nWgdb/ (last viewed March 13, 2013).
[2] The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.
[3] The relevant portion of the Act states: *No provider or user of an interactive computer service shall be treated as the publisher or speaker or any information provided by another information content provider.*
[4] *See Barnes v. Yahoo, Inc.!, 570 F.3d 1096 (9th Cir. 2009).*
[5] *See* http://abcnews.go.com/blogs/headlines/2013/01/womens-outrage-after-ex-boyfriends-post-nude-photos/ (last viewed on March 13, 2013); *see also* http://www.sfgate.com/opinion/article/Public-humiliation-over-private-photos-4264155.php (last viewed on March 13, 2013).
[6] http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx (last viewed on March 13, 2013).

offense of harassment by use of personal identification information is a misdemeanor of the first degree.

III. Effect of Proposed Changes:

The bill creates s. 847.0042, F.S., to specifically address the non-consensual transmission or posting of nude photographs and videos and personal information to websites or social networking services. Currently, it may be possible to prosecute such behavior under s. 817.568(4), F.S., as a first degree misdemeanor for harassment by use of personal identification information. If supported by additional facts, such actions might also be prosecuted as a felony if it includes the elements of crimes such as stalking (s. 784.048, F.S.), extortion (s. 836.05, F.S.), or an offense against a child under chs. 827 or 847, F.S.

Specifically, the bill prohibits a person from knowingly transmitting or posting to a social networking service or any other website, or causing to be transmitted or posted to a social networking service or any other website;

- any photograph or video which depicts nudity of another person,[7] and
- descriptive information that conveys the depicted person's PII;[8]
- that results in the PII being displayed together with, or being identifiable as being connected with the photograph or video;
- for the purpose of harassing the depicted person or causing others to harass the depicted person.[9]

The bill provides that the offense is committed in Florida if any conduct that is an element of the offense is committed in this state or if any harm to the depicted person occurs within this state.

---

[7] The following definition of "nudity" in s 847.001(9), F.S., would be applicable to the bill: " 'Nudity' means the 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."

[8] The bill incorporates the definition of PII from s. 817.568(1)(f), F.S.:

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
3. Unique electronic identification number, address, or routing code;
4. Medical records;
5. Telecommunication identifying information or access device; or
6. Other number or information that can be used to access a person's financial resources.

[9] As defined in the bill, "harass" means "to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose."

Section 2 of the bill adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, 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:

The bill could cause loss of revenues for operators of websites that feature the types of posts that are prohibited by the bill.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not yet estimated the impact of the bill on prison bed space requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 18, 2013:

- Clarifies that the personal identifying information (PII) must be that of the person whose nudity is depicted.
- Includes “harassment” as an element of the crime.

- Removes language regarding consent because harassment is inherently non-consensual.
- Eliminates specification of the method of transmitting or posting the offending information.
- Provides that the resulting post must result in identification of the PII as being connected with the photo or video, eliminating the bill's inadvertent requirement that the picture actually contain the PII.
- Removes reference to fictitious or counterfeit PII.
- Removes "harm to privacy interests" as part of the jurisdictional language.

B. Amendments:

None.

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

275298

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 23 - 55
4 and insert:
5 847.0042 Nude depictions with personal identifying
6 information.—
7 (1) A person may not knowingly transmit or post to a social
8 networking service or any other website, or knowingly cause to
9 be transmitted or posted to a social networking service or any
10 other website, in one or more transmissions or posts:
11 (a) A photograph or video which depicts nudity of another
12 person, and

275298

13 (b) Descriptive information in any form that conveys the
14 personal identification information, as defined in s. 817.568,
15 of the person whose nudity is depicted in the photograph or
16 video;
17 (c) That results in the personal identification information
18 being displayed together with, or being otherwise identifiable
19 as connected with, the photograph or video;
20
21 for the purpose of harassing the depicted person or causing
22 others to harass the depicted person. "Harass" means to engage
23 in conduct directed at a specific person that is intended to
24 cause substantial emotional distress to such person and serves
25 no legitimate purpose.
26 (2)(a) Except as provided in paragraph (b), a person who
27 violates this section commits a felony of the third degree,
28 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
29 (b) A person who is 18 years of age or older at the time of
30 violating this section commits a felony of the second degree,
31 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
32 if the violation involves a photograph or video of a person who
33 was younger than 16 years of age at the time the photograph or
34 video was made.
35 (3) An offense is committed within this state if any
36 conduct that is an element of the offense or any harm to the
37 depicted person resulting from the offense occurs within this
38 state.
39
40 ========== T I T L E A M E N D M E N T ==========
41 And the title is amended as follows:

275298

42 Delete lines 6 - 9
43 and insert:
44 depicts nudity and specified information relating to
45 the depicted individual for the purpose of harassment;
46 providing criminal penalties;

By Senator Simmons

10-00425C-13 2013946__

A bill to be entitled

An act relating to computer or electronic device harassment; creating s. 847.0042, F.S.; prohibiting knowing use of a computer or other device to transmit or post any photograph or video of an individual which depicts nudity and contains specified information relating to the depicted individual without first obtaining the depicted person's written consent; providing an exception; providing criminal penalties; providing enhanced penalties for violations by persons 18 years of age or older involving victims younger than 16 years of age; providing for jurisdiction; amending s. 921.244, F.S.; providing that a person convicted of a violation of s. 847.0042, F.S., be ordered to have no contact with the victim; providing criminal penalties for violation of such an order; providing an effective date.

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

Section 1. Section 847.0042, Florida Statutes, is created to read:

847.0042 Nude depictions with personal identifying information.—

(1) A person may not knowingly use a computer or other device capable of electronic data transmission or distribution to transmit or post to a website or any other social networking service, or cause to be posted to a website or any other social networking service, any photograph or video of an individual

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

10-00425C-13 2013946__

which depicts nudity and contains any of the depicted individual's personal identification information, as defined in s. 817.568, or counterfeit or fictitious information purporting to be such personal identification information, without first obtaining the depicted person's written consent unless the victim was photographed or videotaped in public and a lack of objection to the photography or videotaping could reasonably be implied by the victim's conduct.

(2)(a) Except as provided in paragraph (b), a person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who is 18 years of age or older at the time of the transmission or posting of a video or photograph to a website or any other social networking service, or the causing to be posted to a website or any other social networking service of a video or photograph, who violates this section through such conduct and the violation involves a photograph or video of a person who was younger than 16 years of age at the time of making the photograph or video commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) An offense is committed within this state if any conduct that is an element of the offense or any harm to the depicted person, including any harm to the depicted person's privacy interests, resulting from the offense occurs within this state.

Section 2. Section 921.244, Florida Statutes, is amended to read:

921.244 Order of no contact; penalties.—

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

59 (1) At the time of sentencing an offender convicted of a
60 violation of s. 794.011, s. 800.04, s. 847.0042, s. 847.0135(5),
61 or any offense in s. 775.084(1)(b)1.a.-o., the court shall order
62 that the offender be prohibited from having any contact with the
63 victim, directly or indirectly, including through a third
64 person, for the duration of the sentence imposed. The court may
65 reconsider the order upon the request of the victim if the
66 request is made at any time after the victim has attained 18
67 years of age. In considering the request, the court shall
68 conduct an evidentiary hearing to determine whether a change of
69 circumstances has occurred which warrants a change in the court
70 order prohibiting contact and whether it is in the best interest
71 of the victim that the court order be modified or rescinded.
72 (2) Any offender who violates a court order issued under
73 this section commits a felony of the third degree, punishable as
74 provided in s. 775.082, s. 775.083, or s. 775.084.
75 (3) The punishment imposed under this section shall run
76 consecutive to any former sentence imposed for a conviction for
77 any offense under s. 794.011, s. 800.04, s. 847.0135(5), or any
78 offense in s. 775.084(1)(b)1.a.-o.
79 Section 3. This act shall take effect October 1, 2013.

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

The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 21, 2013

I respectfully request that **Senate Bill 946**, relating to Computer or Electronic Device Harassment, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic _____ Bill Number 946 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.18.13
Meeting Date

Topic: Electronic Device Harassment

Bill Number: 946 *(if applicable)*

Name: Sarah Carroll

Amendment Barcode: *(if applicable)*

Job Title: ASSA Exe Director

Address: 2617 Mahan Dr
Street

Tallahassee FL 32308
City *State* *Zip*

Phone: 2845993

E-mail: scarroll@flsheriffs.org

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

Representing: Florida Sheriffs Association

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: CYBER HARASSMENT

Bill Number: SB 946 (if applicable)

Name: DANIEL OGDEN

Amendment Barcode: _____ (if applicable)

Job Title: AGENT

Address: 340 GUS HIPP BLVD (Street)

ROCKLEDGE, FL 32955 (City, State, Zip)

Phone: 321-633-8419

E-mail: _____

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

Representing: BREVARD COUNTY SHERIFF

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1216

INTRODUCER: Senator Bradley

SUBJECT: Wage Theft

DATE: March 6, 2013 REVISED:

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

I. Summary:

SB 1216 generally preempts local regulation of wage theft issues and provides a specific civil action in the court system for wage theft claims. Under the bill, "wage theft" is defined as an illegal or improper underpayment or nonpayment of an individual employee's wages, salaries, commissions, or other similar form of compensation.

This bill substantially amends section 34.01 of the Florida Statutes. The bill creates sections 448.115 and 448.116 of the Florida Statutes.

II. Present Situation:

Wage Theft

"Wage theft" is a general term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Wage theft may occur if:

- An employee is paid below the state or federal minimum wage;
- An employee is paid partial wages or not paid at all;
- A non-exempt employee is not paid time and a half for overtime hours;
- An employee is required to work off the clock;
- An employee has their time card altered;
- An employee is misclassified as an independent contractor; or
- An employee does not receive a final paycheck after the termination of employment.

Employee Protection: Federal and State

A variety of federal and state laws protect employees from wage theft. Federal laws are administered by the United States Department of Labor, and may be enforced by federal authorities or by private lawsuits.[1] The Fair Labor Standards Act (FLSA)[2] is the federal law most often used to address wage theft. State court actions to recover unpaid wages can be brought under Florida's minimum wage laws or through a common law breach of contract claim.

Federal Protection of Employees: Fair Labor Standards Act

The FLSA establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States. Currently, the federal minimum wage is $7.25 per hour.[3] A state may set the rate higher than the federal minimum but not lower.[4]

The FLSA also requires employers to pay one and one-half times regular wages for any time worked in excess of 40 hours during a workweek.[5] In addition, it establishes standards for recordkeeping and child labor. The FLSA applies to most classes of workers, but a major exception is that it does not apply to most employees of businesses that have less than $500,000 in annual business.[6]

The FLSA provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;
- Criminal prosecutions by the United States Department of Justice; or
- Private lawsuits by employees or workers, which includes individual lawsuits and collective actions.

An employer who violates section 206 (minimum wage) or section 207 (maximum hours) of the FLSA is liable to the employee for the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages. An employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.

State Protection of Employees

State law provides for protection of employees, including anti-discrimination,[7] work safety,[8] and a state minimum wage. Article X, s. 24(c) of the Florida Constitution provides that "Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida."

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[1] Links to most federal laws and regulations that affect wage and hour issues are located at www.dol.gov/whd/reg-library.htm (last visited March 6, 2013).
[2] 29 U.S.C. ch. 8.
[3] The U.S. Department of Labor Wage and Hour Division provides information about the minimum wage and minimum wage laws at http://www.dol.gov/whd/minimumwage.htm (last visited March 6, 2013).
[4] 29 U.S.C. s. 218(a).
[5] 29 U.S.C. s. 207(a)(1).
[6] The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at http://www.dol.gov/compliance/guide/minwage.htm#who (last visited March 6, 2013).
[7] Section 760.10, F.S.
[8] Sections 448.20-26 and 487.2011-2071, F.S.

If an employer does not pay the state minimum wage, the constitution provides that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld. If the employee prevails, in addition to the unpaid wages, a court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs. Further, any employer that willfully violates the minimum wage law is fined $1,000 for each violation. The Attorney General is also empowered to bring a civil action to enforce the state's minimum wage laws.

The current state minimum wage is $7.79 per hour, which is higher than the federal minimum wage.[9] Federal law requires the payment of the higher of the federal or state minimum wage.[10]

Chapter 448, F.S., includes the State Minimum Wage Act, which implements the constitutional minimum wage requirements. Chapter 448, F.S., also prohibits an employer from retaliating against the employee for enforcing his or her rights, and it preserves the rights that an employee has under any collective bargaining agreement or employee contract.[11]

In addition to remedies under state minimum wage laws, an employee may bring a common law breach of contract claim for unpaid wages. Section 448.08, F.S., allows the court to award attorney's fees and costs to the prevailing party in an action for unpaid wages.

Home Rule and Preemption

Article VIII, ss. 1 and 2, of the State Constitution establishes two types of local governments: counties[12] and municipalities. Local governments have wide authority to enact various ordinances to accomplish their local needs.[13] Under home rule powers, a municipality or county may legislate concurrently with the Legislature on any subject that has not been preempted to the state.

Preemption essentially takes a topic or field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the state.[14] Florida law recognizes two types of preemption: express and implied.[15] Express preemption requires a specific legislative statement and cannot be implied or inferred.[16] Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.

The absence of express preemption does not bar a court from a finding of preemption by implication, though courts are careful when imputing intent on behalf of the Legislature to preclude a local government from using its home rule powers.[17] Before finding that implied

[9] *See* Department of Employment Opportunity website for information regarding the Florida minimum wage, http://www.floridajobs.org/minimumwage/FloridaMinimumWageHistory2000-2013.pdf (last visited March 6, 2013).
[10] 29 U.S.C. §218(a).
[11] Section 448.105, F.S.
[12] Florida has both charter and non-charter counties.
[13] Article VIII of the state constitution establishes the powers of charter counties, non-charter counties, and municipalities. Chapters 125 and 166, F.S., provide the additional powers and constraints of counties and municipalities.
[14] *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).
[15] *Id*.
[16] *Id*.
[17] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d. 880, 886 (Fla. 2010).

preemption exists, a court will first consider whether the legislative scheme is so pervasive as to evidence intent to preempt the particular area.[18] Factors that point to a pervasive legislative scheme include the nature of the subject matter, the need for state uniformity, and the scope and purpose of the state legislation.[19] Second, a court will consider whether strong public policy reasons exist for finding an area to be preempted by the Legislature.[20] An example of an area where the courts have found implied preemption is the regulation of public records.[21]

There is no apparent express preemption of wage laws to the federal or state government. It is unclear whether a court would find that the existing laws regarding employee wages are an implied preemption of the subject.

Local Regulation of Wage Theft

Florida's two most populous counties, Miami-Dade County and Broward County, have passed ordinances dealing with wage theft claims. In addition, Palm Beach County has passed a resolution condemning wage theft and has created a program for wage theft claimants to be represented by the Legal Aid Society of Palm Beach County. Alachua County commissioners are also considering whether to enact a wage theft ordinance.[22]

Miami-Dade's ordinance,[23] passed in February 2010, was one of the first local wage theft ordinances in the United States. The ordinance is administered by the county's Department of Small Business Development (SBD) and provides a local process for employees to file claims for unpaid wages. The process cannot be used if the employee has made a claim under state or federal law; however, a claim under the ordinance does not preclude later claims under state or federal law. The ordinance only applies to claims for payment of more than $60 in wages, and claims must be filed within one year after the last day the unpaid work was performed. Claims that are not resolved before the hearing are heard by a hearing examiner who is deemed to be qualified to hear wage theft matters. If the hearing officer determines by a preponderance of the evidence that back wages are owed, the employee must be awarded three times the amount of the wages found to be owed and the employer must pay the county's administrative processing costs and costs of the proceeding. If the employee is not successful, neither party reimburses the county's costs.

From the inception of the ordinance through January 6, 2012, the Department of Small Business Development reports that there have been a total of 1596 wage complaints, claims, or inquiries logged, resulting in a total of $813,369.71 awarded to employees.[24]

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[18] *See Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).
[19] *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[20] *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[21] *See Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).
[22] Gainesville Sun, *Residents state their case for wage-theft ordinance*, published January 8, 2013, www.gainesville.com/article/20130108/ARTICLES/130109676 (last visited March 7, 2013).
[23] Miami Dade County, Fla., Code ch. 22.
[24] Department of Small Business Development, *Wage Theft Status Report* (Jan. 2012) (on file with the Senate Committee on Judiciary).

Broward County's ordinance took effect on January 2, 2013.[25] It provides a process that is similar to Miami-Dade County's ordinance, but that has some significant differences. These differences include:

- A claim cannot be considered unless the employee gave the employer written notice of the failure to pay wages within 60 days of the date the wages were due and the employer had a minimum of 15 days to pay or resolve the claim before it was filed.
- A successful claimant is awarded double the amount of unpaid wages, rather than triple wages as in the Miami-Dade County ordinance.
- In addition to paying the county's costs as is required by the Miami-Dade County ordinance, a losing employer is also required to reimburse the employee for reasonable costs and attorney's fees incurred in connection with the hearing.
- Like the Miami-Dade County ordinance, an unsuccessful claimant is not required to pay either the employer's or the county's costs. However, under the Palm Beach County ordinance the employee must be ordered to pay the employer's reasonable costs and attorney's fees and the county's costs if the hearing officer finds that the claim had no basis in law or fact.

Palm Beach County considered passing a wage theft ordinance since a proposed ordinance was brought before the commissioners in February 2011. Following that time, Palm Beach County supported a Wage Recovery Program administered by the Legal Aid Society of Palm Beach County. The Legal Aid Society program assists employees in collecting unpaid wages through existing civil or administrative remedies. As of November 16, 2012, the Wage Recovery Program had retained 168 clients and has been able to recover $115,915 in unpaid wages for 59 of those clients.[26] On December 4, 2012, the commission passed a resolution condemning wage theft and providing $100,000 to the Legal Aid Society to expand the Wage Recovery Program.[27]

III. Effect of Proposed Changes:

The bill generally preempts local regulation of wage theft issues and provides a specific civil action in the court system for wage theft claims.

Section 1 of the bill amends s. 34.01, F.S., to expand the jurisdiction of county courts to include actions for collection of unpaid wages that are brought under the new process created in section 2 of the bill. The expanded jurisdiction includes an exception that allows the county court to have jurisdiction of these cases even if the amount in controversy exceeds $15,000.

Section 2 of the bill creates s. 448.115, F.S., which provides a new civil claim for wage theft that is brought in the county court and governed by Florida Small Claims Rules. Under the new statute, wage theft is illegal or improper underpayment or nonpayment of an individual employee's wages, salaries, commissions, or similar compensation within a reasonable time from

[25] Broward County Code of Ordinances, s. 20½, Non-Payment of Earned Wages.
[26] See Legal Aid Society of Palm Beach County, Inc., *Wage Recovery Project November 16, 2012 Update*, included in Palm Beach County Board of County Commissioner Agenda Item Summary Packet for Agenda Item 4A-2 at December 4, 2012 meeting. The packet is available online at http://www.ordinancewatch.com/files/72011/LocalGovernment79272.pdf , (last visited March 7, 2013).
[27] *Id.*

when the employee should have been paid. If there is no established pay schedule, a reasonable time for payment is deemed to be 15 days from the date on which the work is performed.

A claim for wage theft under s. 448.115, F.S., must be brought in the county where the unpaid work was alleged to have been performed within one year of the last date of performance. Prior to filing a claim, the employee must give the employer written notice of the particulars of the allegations and of the intent to file a claim. The claim cannot be filed unless the employer fails to pay the amount of unpaid compensation or otherwise resolves the claim to the employee's satisfaction within 15 days of service of the notice.

The claim is generally governed by Florida Small Claims Rules. However, the amount claimed can exceed the small claims threshold of $5000 and neither party has the right to a jury trial. If the employee proves the claim by a preponderance of the evidence, he or she is entitled to damages in the amount of the compensation that is due. The court cannot award any other damages, and the bill prohibits award of attorney fees or costs to a prevailing employee as otherwise permitted by s. 448.08, F.S. However, the court can award attorney fees and costs to the employer under s. 448.08, F.S., if the employee does not prove the claim.

Attorney General Civil Action: The bill also provides that the Attorney General can bring a civil action for wage theft. In such an action, the Attorney General can seek an injunction against the employer. The Attorney General can also seek imposition of a civil penalty of no more than $1000 per violation against employers who have willfully engaged in wage theft.

Local Government Administrative Process: The bill allows local governments to establish an administrative program to help an employee recover unpaid wages. The process must give the parties an opportunity to negotiate a resolution of the claim, but it cannot include adjudication of the dispute or an award of damages. The program can provide for the payment of the filing fee for a county court action or assistance with filing an application for determination of civil indigent status under s. 57.082, F.S.

Preemption of Local Ordinances: With one exception, the bill preempts any local regulation addressing claims for unpaid compensation other than establishment of an administrative process as described above. The exception is that the Miami-Dade County wage theft ordinance, which can be applied if the employer from whom compensation is sought has an annual gross volume of sales or business transacted of less than $500,000. This would allow employees who could not file an action under the FLSA because of their employer's size to file a claim under the ordinance.

Section 3 of the bill creates s. 448.116, F.S., which precludes local governments from adopting or enforcing a law governing a condition of employment or creating a process for resolving disputes regarding conditions of employment. "Condition of employment" is defined in the new statute to include preemployment screening, job classification, job responsibilities, hours of work, wages, payment of wages, leave, and employee benefits. There are two exceptions to this preemption: it does not include the local government's regulation of its own employees, and it does not apply to the extent it conflicts with the minimum wage law set forth in s. 218.077, F.S. The statewide preemption in this section appears to be in conflict with provisions included in Section 2 of the bill.

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:

As noted in the discussion of the effects of the bill, the Florida Constitution sets forth certain requirements and remedies regarding minimum wage claims. This bill cannot be interpreted to preclude an employee from exercising those state constitutional rights, which are currently implemented in ch. 448, F.S.

The provision in section 2 of the bill providing that there is no right to a jury trial in actions brought under new s. 448.115, F.S., also raises constitutional concerns. Article I, Section 22 of the Florida Constitution provides: "The right of trial by jury shall be secure to all and remain inviolate. . . ." It has long been established that there is a right to trial by jury in legal actions, but no such right in equitable actions.[28] An action to recover unpaid wages could be legal (such as when the claim is based upon a contract) or equitable (such as when the claim is based upon unjust enrichment). Because the bill does not appear to create an exclusive remedy for wage theft claims, it may not be constitutionally impermissible to prohibit jury trials to the extent that the employee/plaintiff has an option to pursue another remedy that includes a right to trial by jury. However, the employer/defendant would not have such an option. A possible resolution of this concern would be to provide that the newly-created cause of action could only be utilized if the employer agrees to waive the right to trial by jury.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will have an impact on both employees seeking payment of allegedly unpaid compensation and employers who are sued for payment of unpaid wages. For employee/

[28] Although there is no longer a distinction between law and equity, courts consider the history of the type of action when determining the right to a trial by jury. *Cerrito v. Kovitch*, 457 So.2d 1021 (Fla. 1984). *See also B.J.Y. v. M.A.*, 617 So.2d 1061 (Fla. 1993); 5 Fla. Prac., Civil Practice s. 14:2 (2012 ed.).

claimants in Broward County and employees of large companies who work in Miami-Dade County, it would remove the option to seek payment under those counties' wage theft ordinances. Since those ordinances appear to require little cost to the employee, they would presumably incur greater costs under the new statute and their recovery would be limited to the actual amount of unpaid compensation.[29] Conversely, employers defending actions in those counties would not be faced with paying double or triple the amount of unpaid compensation or costs of the proceeding. It is reasonable to expect that the statute would have the net effect of reducing wage theft claims in Broward and Miami-Dade counties. However, it provides a new means of redress for employees in all other counties of the state, and would likely result in an increase in claims.

C. Government Sector Impact:

Because the bill creates a new civil action for redress of wage theft claims in county court, there will be an increase of costs to the judiciary to the extent that the new procedure is utilized by aggrieved employees who would not have otherwise pursued their claims in court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

[29] Filing an action in county court typically costs $300, but the bill allows counties to create programs to pay this cost.

411024

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/13/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (1) of section 34.01, Florida
6 Statutes, is amended to read:
7 34.01 Jurisdiction of county court.—
8 (1) County courts shall have original jurisdiction:
9 (a) In all misdemeanor cases not cognizable by the circuit
10 courts.~~;~~
11 (b) Of all violations of municipal and county ordinances.~~;~~
12 (c) Of all actions at law in which the matter in

411024

13 controversy does not exceed the sum of $15,000, exclusive of
14 interest, costs, and attorney's fees, except those within the
15 exclusive jurisdiction of the circuit courts.~~; and~~
16 (d) Of disputes occurring in the homeowners' associations
17 as described in s. 720.311(2)(a), which shall be concurrent with
18 jurisdiction of the circuit courts.
19 (e) Of actions for the collection of compensation under s.
20 448.115, notwithstanding the amount in controversy prescribed in
21 paragraph (c).
22 Section 2. Section 448.115, Florida Statutes, is created to
23 read:
24 448.115 Civil action for wage theft; notice; civil penalty;
25 preemption.—
26 (1)(a) As used in this section, the term "wage theft" means
27 an illegal or improper underpayment or nonpayment of an
28 individual employee's wage, salary, commission, or other similar
29 form of compensation within a reasonable time from the date on
30 which the employee performed the work to be compensated.
31 (b) A wage theft occurs when an employer fails to pay a
32 portion of wages, salary, commissions, or other similar form of
33 compensation due to an employee within a reasonable time from
34 the date on which the employee performed the work, according to
35 the already applicable rate and the pay schedule of the employer
36 established by policy or practice. In the absence of an
37 established pay schedule, a reasonable time from the date on
38 which the employee performed the work is 2 weeks.
39 (2)(a) If an employer commits wage theft as defined in
40 paragraph (1)(a), an aggrieved employee may initiate a civil
41 action as provided in this section.

411024

42 (b) County courts shall have original and exclusive
43 jurisdiction in all actions involving wage theft, as provided in
44 s. 34.01.
45 (c) The action shall:
46 1. Be brought in the county court in the county where the
47 employee performed the work;
48 2. Not include a right to a jury trial; and
49 3. Be governed by the Florida Small Claims Rules.
50 (3)(a) Before bringing an action, the claimant must notify
51 the employer who is alleged to have engaged in wage theft of an
52 intent to initiate a civil action in writing.
53 (b) The notice must identify the amount that the claimant
54 alleges is owed, the actual or estimated work dates and hours
55 for which compensation is sought, and the total amount of
56 compensation unpaid through the date of the notice.
57 (c) The employer has 15 days after the date of service of
58 the notice to pay the total amount of unpaid compensation or
59 otherwise resolve the action to the satisfaction of the
60 claimant.
61 (4) The action must be filed within 1 year after the last
62 date that the alleged unpaid work was performed by the employee.
63 (5) The claimant must prove wage theft by a preponderance
64 of the evidence. A prevailing claimant is entitled to damages
65 limited to the actual compensation due and owing.
66 (a) The court may only award economic damages expressly
67 authorized in this subsection.
68 (b) The court may not award noneconomic or punitive damages
69 or attorney fees or costs to a prevailing claimant,
70 notwithstanding s. 448.08.

411024

71 (6) The Attorney General may bring a civil action against
72 an employer for wage theft. The Attorney General may seek
73 injunctive relief. In addition to injunctive relief, or in lieu
74 of injunctive relief, for any employer found to have willfully
75 engaged in wage theft, the Attorney General may seek to impose a
76 civil penalty not to exceed $1,000 per violation, payable to the
77 state. The clerk of court shall remit the penalty collected
78 under this subsection to the Department of Revenue for deposit
79 into the General Revenue Fund.
80 (7)(a) A county, municipality, or political subdivision may
81 establish an administrative, nonjudicial process under which an
82 assertion of unpaid compensation may be submitted by, or on
83 behalf of, an employee in order to assist in the collection of
84 compensation owed to the employee. Any such process, at a
85 minimum, shall afford the parties involved an opportunity to
86 negotiate a resolution regarding the compensation in question.
87 The county, municipality, or political subdivision may, as part
88 of the process, pay the filing fee under s. 34.041 on behalf of
89 the employee or assist the employee in completing an application
90 for a determination of civil indigent status under s. 57.082.
91 The process may not adjudicate a compensation dispute between an
92 employee and an employer nor award damages to the employee.
93 (b) A county, municipality, or political subdivision may
94 not adopt or maintain in effect any law, ordinance, or rule that
95 creates requirements or regulations for the purpose of
96 addressing unpaid compensation claims other than to establish
97 the administrative, nonjudicial process provided for in this
98 subsection.
99 (c) Notwithstanding paragraph (b), a local ordinance

411024

100 governing wage theft enacted before January 1, 2011, is not
101 preempted by this section. However, any local ordinance
102 governing wage theft enacted before January 1, 2011, may not
103 apply to an employer whose annual gross volume of sales or
104 business transacted is more than $500,000, exclusive of sales
105 tax collected or excise taxes paid.
106 (d) Any other regulation, ordinance, or provision for the
107 recovery of unpaid compensation by a county, municipality, or
108 political subdivision is expressly prohibited and is preempted
109 to the state.
110 Section 3. This act shall take effect upon becoming a law
111
112 ========== T I T L E A M E N D M E N T ==========
113 And the title is amended as follows:
114 Delete everything before the enacting clause
115 and insert:
116 A bill to be entitled
117 An act relating to employers and employees; amending
118 s. 34.01, F.S.; providing jurisdiction of county
119 courts over wage theft civil actions; creating s.
120 448.115, F.S.; providing a definition for the term
121 “wage theft”; creating a civil cause of action for
122 wage theft; providing the procedure for filing of a
123 civil action for wage theft; providing jurisdiction;
124 requiring a claimant to notify the employer of the
125 employee’s intention to initiate a civil action;
126 allotting the employer a specific time to resolve the
127 action; providing a statute of limitations; requiring
128 a claimant to prove wage theft by a preponderance of

411024

129 the evidence; prohibiting certain damages; authorizing
130 the Attorney General to bring a civil action for wage
131 theft and seek injunctive relief; providing a civil
132 penalty; authorizing a county, municipality, or
133 political subdivision to establish a process by which
134 a claim may be filed; prohibiting a local government
135 from adopting or maintaining in effect a law,
136 ordinance, or rule for the purpose of addressing
137 unpaid wage claims; prohibiting the preemption of
138 certain local ordinances governing wage theft;
139 providing that any regulation, ordinance, or other
140 provision for recovery of unpaid wages by counties,
141 municipalities, or political subdivisions is
142 prohibited and preempted to the state; providing an
143 effective date.

901110

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/13/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

1 **Senate Amendment to Amendment (411024)**
2
3 Delete lines 45 - 49
4 and insert:
5 (c) The action shall:
6 1. Be brought in the county court in the county where the
7 employee performed the work; and
8 2. Be governed by the Florida Small Claims Rules.

459014

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/13/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

1 **Senate Amendment to Amendment (411024)**
2
3 Delete lines 63 - 70
4 and insert:
5 (5) The claimant must prove wage theft by a preponderance
6 of the evidence. A prevailing claimant is entitled to damages
7 limited to the actual compensation due and owing. The court may
8 only award economic damages expressly authorized in this
9 subsection, and may not award noneconomic or punitive damages.

841392

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/14/2013	.	
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The Committee on Criminal Justice (Smith) recommended the following:

1 **Senate Amendment to Amendment (411024)**
2
3 Delete lines 99 - 102
4 and insert:
5 (c) Notwithstanding paragraphs (a) and (b), a local
6 ordinance governing wage theft or recovery which is enacted or
7 effective on or before January 2, 2013, is not preempted by this
8 section. However, a local ordinance governing wage theft or
9 recovery which is enacted or effective on or before January 2,
10 2013, may not

420660

LEGISLATIVE ACTION

Senate	.	House
Comm: PEND	.	
03/18/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (1) of section 34.01, Florida
6 Statutes, is amended to read:
7 34.01 Jurisdiction of county court.—
8 (1) County courts shall have original jurisdiction:
9 (a) In all misdemeanor cases not cognizable by the circuit
10 courts.~~;~~
11 (b) Of all violations of municipal and county ordinances.~~;~~
12 (c) Of all actions at law in which the matter in

420660

13 controversy does not exceed the sum of $15,000, exclusive of
14 interest, costs, and attorney's fees, except those within the
15 exclusive jurisdiction of the circuit courts.~~; and~~
16 (d) Of disputes occurring in the homeowners' associations
17 as described in s. 720.311(2)(a), which shall be concurrent with
18 jurisdiction of the circuit courts.
19 (e) Of actions for the collection of compensation under s.
20 448.115, notwithstanding the amount in controversy prescribed in
21 paragraph (c).
22 Section 2. Section 448.115, Florida Statutes, is created to
23 read:
24 448.115 Civil action for wage theft; notice; civil penalty;
25 preemption.—
26 (1)(a) As used in this section, the term "wage theft" means
27 an illegal or improper underpayment or nonpayment of an
28 individual employee's wage, salary, commission, or other similar
29 form of compensation within a reasonable time from the date on
30 which the employee performed the work to be compensated.
31 (b) A wage theft occurs when an employer fails to pay a
32 portion of wages, salary, commissions, or other similar form of
33 compensation due to an employee within a reasonable time from
34 the date on which the employee performed the work, according to
35 the already applicable rate and the pay schedule of the employer
36 established by policy or practice. In the absence of an
37 established pay schedule, a reasonable time from the date on
38 which the employee performed the work is 2 weeks.
39 (2)(a) If an employer commits wage theft as defined in
40 paragraph (1)(a), an aggrieved employee may initiate a civil
41 action as provided in this section.

420660

42 (b) County courts shall have original and exclusive
43 jurisdiction in all actions involving wage theft, as provided in
44 s. 34.01.
45 (c) The action shall:
46 1. Be brought in the county court in the county where the
47 employee performed the work; and
48 2. Be governed by the Florida Small Claims Rules.
49 (3)(a) Before bringing an action, the claimant must notify
50 the employer who is alleged to have engaged in wage theft of an
51 intent to initiate a civil action in writing.
52 (b) The notice must identify the amount that the claimant
53 alleges is owed, the actual or estimated work dates and hours
54 for which compensation is sought, and the total amount of
55 compensation unpaid through the date of the notice.
56 (c) The employer has 15 days after the date of service of
57 the notice to pay the total amount of unpaid compensation or
58 otherwise resolve the action to the satisfaction of the
59 claimant.
60 (4) The action must be filed within 1 year after the last
61 date that the alleged unpaid work was performed by the employee.
62 (5) The claimant must prove wage theft by a preponderance
63 of the evidence. A prevailing claimant is entitled to damages
64 limited to the actual compensation due and owing. The court may
65 only award economic damages expressly authorized in this
66 subsection, and may not award noneconomic or punitive damages.
67 (6)(a) A county, municipality, or political subdivision may
68 establish an administrative, nonjudicial process under which an
69 assertion of unpaid compensation may be submitted by, or on
70 behalf of, an employee in order to assist in the collection of

420660

71 compensation owed to the employee. Any such process, at a
72 minimum, shall afford the parties involved an opportunity to
73 negotiate a resolution regarding the compensation in question.
74 The county, municipality, or political subdivision may, as part
75 of the process, assist the employee in completing an application
76 for a determination of civil indigent status under s. 57.082 and
77 may pay the filing fee under s. 34.041 on behalf of the
78 employee, if applicable. The process may not adjudicate a
79 compensation dispute between an employee and an employer nor
80 award damages to the employee.
81 (b) A county, municipality, or political subdivision may
82 not adopt or maintain in effect any law, ordinance, or rule that
83 creates requirements or regulations for the purpose of
84 addressing unpaid compensation claims other than to establish
85 the administrative, nonjudicial process provided for in this
86 subsection.
87 (c) Notwithstanding paragraph (b), a local ordinance
88 governing wage theft enacted before January 1, 2011, is not
89 preempted by this section. However, any local ordinance
90 governing wage theft enacted before January 1, 2011, may not
91 apply to an employer whose annual gross volume of sales or
92 business transacted is more than $500,000, exclusive of sales
93 tax collected or excise taxes paid.
94 (d) Any other regulation, ordinance, or provision for the
95 recovery of unpaid compensation by a county, municipality, or
96 political subdivision is expressly prohibited and is preempted
97 to the state.
98 Section 3. This act shall take effect upon becoming a law
99

420660

100 ========== T I T L E A M E N D M E N T ==========
101 And the title is amended as follows:
102 Delete everything before the enacting clause
103 and insert:
104 A bill to be entitled
105 An act relating to employers and employees; amending
106 s. 34.01, F.S.; providing jurisdiction of county
107 courts over wage theft civil actions; creating s.
108 448.115, F.S.; providing a definition for the term
109 “wage theft”; creating a civil cause of action for
110 wage theft; providing the procedure for filing of a
111 civil action for wage theft; providing jurisdiction;
112 requiring a claimant to notify the employer of the
113 employee’s intention to initiate a civil action;
114 allotting the employer a specific time to resolve the
115 action; providing a statute of limitations; requiring
116 a claimant to prove wage theft by a preponderance of
117 the evidence; prohibiting certain damages; authorizing
118 a county, municipality, or political subdivision to
119 establish a process by which a claim may be filed;
120 prohibiting a local government from adopting or
121 maintaining in effect a law, ordinance, or rule for
122 the purpose of addressing unpaid wage claims;
123 prohibiting the preemption of certain local ordinances
124 governing wage theft; providing that any regulation,
125 ordinance, or other provision for recovery of unpaid
126 wages by counties, municipalities, or political
127 subdivisions is prohibited and preempted to the state;
128 providing an effective date.

929198

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (420660)**
2
3 Delete lines 87 - 90
4 and insert:
5 (c) Notwithstanding paragraphs (a) and (b), a local
6 ordinance governing wage theft or recovery which is enacted or
7 effective on or before January 2, 2013, is not preempted by this
8 section. However, a local ordinance governing wage theft or
9 recovery which is enacted or effective on or before January 2,
10 2013, may not

663082

LEGISLATIVE ACTION

Senate	.	House
Comm: PEND	.	
03/18/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (420660)**
2
3 Delete lines 87 - 93
4 and insert:
5 (c) Notwithstanding paragraphs (a) and (b), a local
6 ordinance governing wage theft or recovery which was enacted, or
7 which became effective, on or before January 2, 2013, is not
8 preempted by this section.

By Senator Bradley

7-00788-13 20131216__

A bill to be entitled

An act relating to wage theft; amending s. 34.01, F.S.; granting county courts original jurisdiction over specified collection actions; creating s. 448.115, F.S.; defining the term "wage theft"; providing circumstances under which an employer commits wage theft; providing specific notice requirements; requiring a claim to be filed within a specified time; requiring an employer to pay or resolve the matter within a specified time; providing that a claim is governed by the Florida Small Claims Rules; providing procedural requirements; requiring the claimant to prove wage theft by a preponderance of the evidence; limiting damages to actual compensation owed; prohibiting attorney fees or other damage awards; authorizing the Attorney General to seek injunctive relief against an employer accused of wage theft; authorizing the Attorney General to seek money damages, up to a specified amount, in addition to injunctive relief under certain circumstances; authorizing a county, municipality, or political subdivision to establish an administrative process to facilitate the collection of money owed to an employee; requiring such process to include an opportunity for negotiation between parties; authorizing a county, municipality, or political subdivision to include in the process payment of certain fees and assistance with certain applications; prohibiting adjudication; prohibiting any law,

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

7-00788-13 20131216__

ordinance, or rule regarding unpaid compensation claims other than as authorized for the administrative process; grandfathering local ordinances that govern wage theft and that were enacted before a specified date; providing an exception; creating s. 448.116, F.S.; providing definitions; prohibiting a political subdivision from adopting or enforcing certain rules and ordinances and voiding such rules and ordinances; providing that this section does not limit the authority of a political subdivision to establish conditions of employment for certain persons or to establish a certain process or forum; providing that this section does not prohibit a certain tribal government from establishing conditions of employment for certain persons; providing an effective date.

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

Section 1. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts ~~shall~~ have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts;

(b) Of all violations of municipal and county ordinances;

(c) Of all actions at law in which the matter in controversy does not exceed the sum of $15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts; ~~and~~

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

59 (d) Of disputes occurring in the homeowners' associations
60 as described in s. 720.311(2)(a), which shall be concurrent with
61 jurisdiction of the circuit courts; and
62 (e) Of actions for the collection of compensation under s.
63 448.115, notwithstanding the amount in controversy prescribed in
64 paragraph (c).
65 Section 2. Section 448.115, Florida Statutes, is created to
66 read:
67 448.115 Civil claim for wage theft; notice; civil penalty;
68 preemption.—
69 (1) As used in this section, the term "wage theft" means an
70 illegal or improper underpayment or nonpayment of an individual
71 employee's wages, salaries, commissions, or other similar forms
72 of compensation, within a reasonable time from the date on which
73 the employee performs the work that is to be compensated.
74 (2) An employer commits wage theft if the employer fails to
75 pay a portion of wages, salaries, commissions, or other similar
76 forms of compensation due to an employee for the agreed upon
77 work within a reasonable time from the date on which the
78 employee performs the work, according to the already applicable
79 rate and the pay schedule of the employer which are established
80 by policy or practice. In the absence of an established pay
81 schedule, 2 weeks after the date on which the employee performs
82 the work shall be deemed a reasonable time.
83 (3)(a) An employee may bring a claim for wage theft against
84 an employer. However, before bringing a claim for wage theft
85 against an employer, an employee must notify the employer in
86 writing of his or her intent to initiate a claim. The notice
87 must identify the amount that the employee alleges he or she is

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

88 owed, the actual or estimated work dates and hours for which
89 compensation is sought, and the total amount of compensation
90 unpaid through the date of the notice.
91 (b) A claim under this section must be filed within 1 year
92 of the last date that the allegedly unpaid work is performed by
93 the employee.
94 (c) The employer shall pay the total amount of unpaid
95 compensation or otherwise resolve the matter to the satisfaction
96 of the employee within 15 days after the date of service of the
97 notice.
98 (4)(a) A county court has original jurisdiction, as
99 provided under s. 34.01, over a claim for wage theft. A claim
100 for wage theft has venue in the county where the employee
101 performs the work. A claim for wage theft does not include a
102 right to a jury trial and is governed by the Florida Small
103 Claims Rules.
104 (b) The claimant must prove wage theft by a preponderance
105 of the evidence. A prevailing claimant is entitled to damages,
106 limited to the actual compensation due and owing. A court may
107 not award economic damages other than those expressly authorized
108 in this section. A court may not award noneconomic or punitive
109 damages or attorney fees or costs to a prevailing claimant on a
110 claim under this section, notwithstanding s. 448.08.
111 (5) The Attorney General may bring a civil action against
112 an employer for wage theft. The Attorney General may seek
113 injunctive relief. For any employer found to have willfully
114 engaged in wage theft, the Attorney General may also seek to
115 impose a civil penalty not to exceed $1,000 per violation,
116 payable to the state. The clerk of court shall remit the penalty

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

117 collected under this subsection to the Department of Revenue for
118 deposit into the General Revenue Fund.
119 (6)(a) A county, municipality, or political subdivision may
120 establish an administrative, nonjudicial process under which an
121 assertion of unpaid compensation may be submitted by, or on
122 behalf of, an employee to assist in the collection of
123 compensation owed to the employee. Any such process, at a
124 minimum, must afford the parties involved an opportunity to
125 negotiate a resolution regarding the compensation in question.
126 The county, municipality, or political subdivision may, as part
127 of the process, pay the filing fee under s. 34.041 on behalf of
128 the employee or assist the employee in completing an application
129 for a determination of civil indigent status under s. 57.082.
130 The process may not adjudicate a compensation dispute between an
131 employee and an employer nor award damages to the employee.
132 (b) A county, municipality, or political subdivision may
133 not adopt or maintain in effect any law, ordinance, or rule that
134 creates requirements or regulations for the purpose of
135 addressing unpaid compensation claims other than to establish
136 the administrative, nonjudicial process provided for in this
137 subsection.
138 (c) Notwithstanding paragraph (b), any local ordinance
139 governing wage theft enacted before January 1, 2011, is not
140 preempted by this section. Such local ordinance may not apply to
141 an employer whose annual gross volume of sales or business
142 transacted is more than $500,000, exclusive of sales tax
143 collected or excise taxes paid.
144 Section 3. Section 448.116, Florida Statutes, is created to
145 read:

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

146 448.116 State retention of powers.—
147 (1) As used in this section, the term:
148 (a) "Condition of employment" means those terms that form
149 the basis of the relationship between an employer and a
150 prospective or actual employee, including, but not limited to,
151 preemployment screening, job classification, job
152 responsibilities, hours of work, wages, payment of wages, leave,
153 and employee benefits such as retirement and insurance.
154 (b) "Employee" means an individual employed in this state
155 by an employer.
156 (c) "Employer" means a person engaging in any activity,
157 enterprise, or business in this state employing at least one
158 employee.
159 (d) "Political subdivision" means a county, municipality,
160 department, commission, district, board, or other public body,
161 whether corporate or otherwise, created by or under state law.
162 (2) Except as otherwise provided in subsection (3) or in s.
163 218.077, a political subdivision may not adopt or enforce a rule
164 or ordinance that governs a condition of employment or
165 establishes a process or forum for the resolution of disputes
166 involving a condition of employment, the regulation of such
167 matters being expressly preempted to the state. Any such
168 existing rule or ordinance is void.
169 (3) This section does not limit the authority of a
170 political subdivision to establish conditions of employment for
171 the employees of the political subdivision or to establish any
172 process or forum for the resolution of disputes within that
173 employment relationship.
174 (4) This section does not prohibit a federally authorized

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

175 and recognized tribal government from establishing conditions of
176 employment for persons employed within any territory over which
177 the tribe has jurisdiction.
178 Section 4. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Marty Cassini

Amendment Barcode: 929198 *(if applicable)*

Job Title: Legislative Counsel

Address: 115 S. Andrews Ave 426
Street

Fort Lauderdale FL 33301
City *State* *Zip*

Phone: 954-357-7575

E-mail: mcassini@broward.org

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

Representing: Broward County

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 18 2013
Meeting Date

Hand written

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: 929198 *(if applicable)*

Job Title: General Counsel

Address: 227 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 222-4082

E-mail: samantha@frf.org

Speaking: ☐ For ☒ Against the amendment ☐ Information

Representing: Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Handwritten Amend.

3-18-13
Meeting Date

Topic

Bill Number 1216 (if applicable)

Name JESS MCCARTY

Amendment Barcode SMITH HANDWRITTEN (if applicable)

Job Title ASS'T COUNTY ATTY

Address 111 NW 1ST ST 2810
Street

MIAMI, FL 33138
City State Zip

Phone 305-979-7110

E-mail JMM2@MIAMIDADE.GOV

SMITH HANDWRITTEN AMENDMENT

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

Representing MIAMI-DADE COUNTY

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.18.13
Meeting Date

Topic: IDENTITY THEFT

Bill Number: 1216 *(if applicable)*

Name: JESS MCCARTY

Amendment Barcode: *(if applicable)*

Job Title: ASST COUNTY ATTY

Address: 111 NW 1ST ST 2810
Street

MIAMI 33128
City *State* *Zip*

Phone: 305-979-7110

E-mail: JMM2@MIAMIDADE.GOV

Speaking: ☐ For ☑ Against ☐ Information

Representing: MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic: WAGES

Bill Number: 1216 (if applicable)

Name: GAIL MARIE PERRY

Amendment Barcode: (if applicable)

Job Title: CHAIR, COUNCIL of FLORIDA

Address: PO BOX 1766
Street

POMPANO BCH FLA 33061
City State Zip

Phone: 954 850 4055

E-mail: workingfolk@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: COMMUNICATIONS WORKERS of AMERICA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Mark Sexton

Amendment Barcode: _____ (if applicable)

Job Title: Communications

Address: 12 SE 1st Street (Street)

Gainesville (City) FL (State) 32601 (Zip)

Phone: 352-283-2317

E-mail: msexton@alachuacounty.us

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

Representing: Alachua County Commission

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Lisa Thurley

Amendment Barcode: (if applicable)

Job Title:

Address: 100 S. Monroe St.
Street

Tallahassee FL 32301
City State Zip

Phone: 850.922.4300

E-mail: lthurley@fl-counties.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Fl Assoc. of Counties

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Sheila Hopkins

Amendment Barcode: *(if applicable)*

Job Title: Director of Social Concerns

Address: 201 W. Park Ave.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 205-6826

E-mail: shopkins@flacathconf.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: Fl. Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Rich Templin

Amendment Barcode: (if applicable)

Job Title:

Address: 135 S. Monroe
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-224-6926

E-mail:

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

Representing: Florida AFL-CIO

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: SB 1216 (if applicable)

Name: Karen Woodall

Amendment Barcode: (if applicable)

Job Title:

Address: 529 E. Call St.
Street

Tallahassee, Fl 32301
City, State, Zip

Phone: 850-321-9386

E-mail: kwtally@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage theft - SB 1216

Bill Number: SB 1216 *(if applicable)*

Name: Jim Junecko

Amendment Barcode: *(if applicable)*

Job Title:

Address: 701 NE 67th St #1
Street

Miami, FL 33138
City *State* *Zip*

Phone: 407-346-3525

E-mail: Jim.Junecko@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Shannan Reaze

Amendment Barcode: N/A *(if applicable)*

Job Title:

Address: 45 NE 45th St.
Street

Miami, FL 33137
City, State, Zip

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Natasha Royal

Amendment Barcode: *(if applicable)*

Job Title: Organizer

Address: 10789 NW 40th Street
Street

Sunrise Fl. 33351
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: Wage Theft.

Bill Number: 1210 (if applicable)

Name: Gloria Docilhit

Amendment Barcode: _____ (if applicable)

Job Title: _____

Address: 390 SW 14th St
Street

deerfield bch FL 33441
City State Zip

Phone: _____

E-mail: _____

Speaking: ☐ For ☒ Against ☐ Information

Representing: _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18
Meeting Date

Topic: Wage Theft.

Bill Number: 1216 *(if applicable)*

Name: Wessa Milien

Amendment Barcode: N/A. *(if applicable)*

Job Title:

Address: 8220 SW 22nd St Apt D204
Street

N-lauderdale FL 33068
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: SB 1216 (if applicable)

Name: Dorene Barker

Amendment Barcode: (if applicable)

Job Title: Legislative Director

Address: 2425 Fremont Dr
Street

Tall FL 32303
City State Zip

Phone: 850-509 3631

E-mail: dorene@floridalegal.

Speaking: ☐ For ☑ Against ☐ Information Waive in Opposition

Representing: Florida Legal Services, In

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: SB 1216 (if applicable)

Name: Ron Bilbao

Amendment Barcode: (if applicable)

Job Title: Sr. Legislative Assoc.

Address: 4500 Biscayne Blvd
Street

Miami, FL 33137
City, State, Zip

Phone: 919-923-7288

E-mail: rbilbao@aclufl.org

Speaking: ☐ For ☑ Against ☐ Information

Representing: ACLU of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 18th 2013
Meeting Date

Topic: Wage theft

Bill Number: SB 1216 (if applicable)

Name: Richard Turner

Amendment Barcode: (if applicable)

Job Title: General Counsel

Address: 230 S. Adams
Street

Tallahassee FL 32309
City State Zip

Phone: 850 224-2250

E-mail: RTurner@FRLA.ORG

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

Representing: Florida Restaurant & Lodging Assn.

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 18, 2013
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: _____ *(if applicable)*

Job Title: General Counsel

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Tallahassee, FL 32301
City *State* *Zip*

Phone: 850 222-4082

E-mail: samantha@frf.org

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

Representing: Florida Retail Federation

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: SB 1216 *(if applicable)*

Name: Carolyn Johnson

Amendment Barcode: *(if applicable)*

Job Title: Director of Business Policy

Address: 136 S Bronough St
Street

Tallahassee, FL 32311
City, State, Zip

Phone: 850-521-1235

E-mail: CJohnson@flchamber.com

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

Representing: Florida Chamber of Commerce

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: SB 1216 *(if applicable)*

Name: Brewster Bevis

Amendment Barcode: *(if applicable)*

Job Title: Senior VP

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Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 224-7173

E-mail: bbevis@aifl.com

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

Representing: Associated Industries of Florida

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Chris Scoonover

Amendment Barcode: (if applicable)

Job Title: Lobbyist

Address: 101 E. College Ave Ste 303
Street

TLH FL 32308
City State Zip

Phone: 222-9075

E-mail: cschoonover@capcityconsult.com

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

Representing: Office Depot

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 / 18 /2013
Meeting Date

Topic _____

Bill Number 1216 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Richard Watson

Amendment Barcode: *(if applicable)*

Job Title: Legislative Counsel

Address: P.O. Box 10038
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Tallahassee, FL 32302
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Phone: 850 222-0060

E-mail: rick@watsonassociates.com

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

Representing: Associated Builders and Contractors

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: WAGE THEFT PROHIBITION

Bill Number: SB 1216 (if applicable)

Name: KARI HEBRANK

Amendment Barcode: (if applicable)

Job Title:

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Street

TALLAHASSEE FL 32301
City State Zip

Phone: 514-5183

E-mail: khebrank@wilsonmgmt.com

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

Representing: FLORIDA HOME BUILDERS ASSOC.

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

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

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

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1222

INTRODUCER: Senator Richter

SUBJECT: Protection of Vulnerable Persons

DATE: March 12, 2013 REVISED:

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

I. Summary:

SB 1222 amends s. 812.0145, F.S., theft of persons at least 65 years old, by deleting the minimum threshold amount ($300) necessary to trigger the enhanced third degree felony penalty when committing theft against a person 65 years of age or older.

The bill amends ch. 825, F.S., abuse, neglect, and exploitation of elderly persons and disabled adults, by deleting the definitions of "disabled adult" and "elderly person" and instead, substituting "vulnerable adult." The bill deletes the definition "lacks capacity to consent" and instead, substitutes "vulnerable adult's ability to consent is impaired," along with a definition of "impaired."

The definitions of "deception" and "intimidation" are also deleted from the statute, resulting in fewer elements of the crime that must be proved in a prosecution for exploitation of a vulnerable adult by someone who stands in a position of trust or has a business relationship with the vulnerable adult.

Finally, the bill amends numerous statutes to conform with the terminology changes made by the bill.

This bill substantially amends the following sections of the Florida Statutes: 812.0145, 825.101, 825.102, 825.1025, 825.103, 825.105, and 825.106, and conforms 90.803, 435.04, 775.084, 775.0844, 775.0877, 782.07, 921.0022, 948.06, 960.003 and 1012.315 to changes made by the bill.

II. Present Situation:

Section 812.0145. F.S., provides enhanced criminal penalties for committing theft against persons 65 years of age or older as follows:

- If the funds, assets, or property involved is valued at $50,000 or more, it is a first degree felony[1];
- If the funds, assets, or property involved is valued at $10,000 or more, but less than $50,000, it is a second degree felony[2]; and
- If the funds, assets, or property involved is valued at $300 or more, but less than $10,000, it is a third degree felony.[3, 4]

Chapter 825, F.S., proscribes the offenses of abusing, neglecting, and exploiting elderly persons and disabled adults.[5] "Disabled adult" is defined to include a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.[6] "Elderly person" is defined to include a person at least 60 years old who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dyfunctioning to the extent that the ability to provide adequately for his or her own care is impaired.[7]

Chapter 415, F.S., encompassing the "Adult Protective Services Act," does not use the terms "disabled adult" or "elderly person" but rather provides a definition of "vulnerable adult." This definition means a person 18 years of age or older whose ability to perform normal activities of daily living or provide for his or her care or protection is impaired due to mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[8]

Although there is no current statutory definition of "impaired" in either statute, there are definitions provided for "deception" and "intimidation." Both are elements of the crime of exploitation in s. 825.103, F.S.[9] The phrase "lacks capacity to consent"[10] is also defined in statute

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[1] Punishable by up to 30 years in prison and up to $10,000 in fines. Sections 775.082 and 775.083, F.S.
[2] Punishable by up to 15 years in prison and up to $10,000 in fines. Sections 775.082 and 775.083, F.S.
[3] Punishable by up to 5 years in prison and up to $5,000 in fines. Sections 775.082 and 775.083, F.S.
[4] Section 812.0145(2)(a), (b), and (c), F.S.
[5] Sections 825.102, 825.1025, and 825.103, F.S.
[6] Section 825.101(4), F.S.
[7] Section 825.101(5), F.S.
[8] Section 415.102(27), F.S.
[9] Section 825.101(3) (8), F.S. "Deception" means misrepresenting or concealing a material fact relating to: (a) services rendered when such services are intended to benefit an elderly person or disabled adult; terms of a contract or agreement entered into with an elderly person or disabled adult; or an existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or (b) using any misrepresentation to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement. "Intimidation" means communication to an elderly person or disabled adult that he or she will be deprived of basic necessities or will suffer physical violence.
[10] Section 825.101(9), F.S. It means an impairment by mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes

because it is necessary to prove when prosecuting someone for exploitation of an elderly person or disabled adult[11] or committing lewd or lascivious offenses against an elderly person or disabled adult.[12]

III. Effect of Proposed Changes:

The bill amends s. 812.0145, F.S., theft of persons at least 65 years old, by deleting the minimum threshold amount ($300) necessary to trigger the enhanced third degree felony penalty when committing theft against a person 65 years of age or older. So, rather than currently requiring the value of property involved be at least $300 and not more than $10,000, the bill broadens it so that any value under $10,000 triggers the third degree felony penalty.

The bill also amends ch. 825, F.S., abuse, neglect, and exploitation of elderly persons and disabled adults, by deleting the definitions of "disabled adult" and "elderly person" and instead, substituting "vulnerable adult." "Vulnerable adult" is defined to mean a person 18 years of age or older whose ability to perform normal activities of daily living or provide for his or her care or protection is impaired.

"Impaired" is also newly defined to mean any loss or abnormality of psychological, physiological, or anatomical structure or function due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, brain damage, or the infirmities of aging resulting in a decreased ability to perform mental tasks and physical activities of daily living. (Although the newly created definition of "vulnerable adult" is different from the definition currently found in the adult protective services chapter, ch. 415, F.S., by reading together the new definitions of "vulnerable adult" and "impaired," they are similar to the definition in ch. 415, F.S.)

The bill also deletes the definition "lacks capacity to consent" and instead, substitutes "vulnerable adult's ability to consent is impaired." This phrase comes into play when prosecuting someone for exploiting an elderly person or disabled adult or committing lewd or lascivious offenses against such vulnerable adults.

The definitions of "deception" and "intimidation" are also deleted from the statute, resulting in fewer elements of the crime that must be proved in a prosecution for exploitation of a vulnerable adult by someone who stands in a position of trust or has a business relationship with the vulnerable adult. (Intent and knowledge must still be proven under the bill.)

Finally, the bill amends numerous statutes to conform with the terminology changes made by the bill.

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an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning himself or his property.

[11] Section 825.103, F.S.

[12] Section 825.1025, 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:

This bill may result in more prosecutions for theft and exploitation of persons 65 years of age or older, thereby protecting more of the state's vulnerable citizens.

C. Government Sector Impact:

This bill may result in more third degree felony prosecutions for theft of persons 65 years of age or older. However, the Criminal Justice Impact Conference has not yet met to determine whether this bill will have any impact on prison bed space.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Richter

23-00887A-13 20131222__

A bill to be entitled

An act relating to protection of vulnerable persons; amending s. 812.0145, F.S.; reducing the minimum amount of a theft from a person 65 years of age or older that constitutes a felony of the third degree; providing criminal penalties; amending s. 825.101, F.S.; revising definitions; adding the definitions for the terms “impaired” and “vulnerable adult”; amending s. 825.102, F.S.; revising terminology to prohibit specified offenses against a vulnerable adult; amending s. 825.1025, F.S.; revising terminology to prohibit specified lewd and lascivious offenses committed upon or in the presence of a vulnerable adult; conforming provisions to changes made by the act; amending s. 825.103, F.S.; revising terminology to prohibit specified offenses involving exploitation of a vulnerable adult; conforming provisions to changes made by the act; amending s. 825.105, F.S.; revising terminology to provide legislative intent relating to good faith assistance to a vulnerable adult; amending s. 825.106, F.S.; revising terminology concerning speedy trial of specified offenses; amending ss. 90.803, 435.04, 775.084, 775.0844, 775.0877, 782.07, 921.0022, 948.06, 960.003, and 1012.315, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

23-00887A-13 20131222__

Section 1. Paragraph (c) of subsection (2) of section 812.0145, Florida Statutes, is amended to read:

812.0145 Theft from persons 65 years of age or older; reclassification of offenses.—

(2) Whenever a person is charged with committing theft from a person 65 years of age or older, when he or she knows or has reason to believe that the victim was 65 years of age or older, the offense for which the person is charged shall be reclassified as follows:

(c) If the funds, assets, or property involved in the theft from a person 65 years of age or older is valued at ~~$300 or more, but~~ less than $10,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 825.101, Florida Statutes, is amended to read:

825.101 Definitions.—As used in this chapter:

(1) “Business relationship” means a relationship between two or more individuals or entities where there exists an oral or written contract or agreement for goods or services.

(2) “Caregiver” means a person who has been entrusted with or has assumed responsibility for the care or the property of a vulnerable ~~an elderly person or disabled~~ adult. “Caregiver” includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities as defined in subsection (4) ~~(7)~~.

~~(3) “Deception” means:~~

~~(a) Misrepresenting or concealing a material fact relating~~

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~~to:~~

~~1. Services rendered, disposition of property, or use of property, when such services or property are intended to benefit an elderly person or disabled adult;~~

~~2. Terms of a contract or agreement entered into with an elderly person or disabled adult; or~~

~~3. An existing or preexisting condition of any property involved in a contract or agreement entered into with an elderly person or disabled adult; or~~

~~(b) Using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit an elderly person or disabled adult to enter into a contract or agreement.~~

~~(4) "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.~~

~~(5) "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.~~

(3) ~~(6)~~ "Endeavor" means to attempt or try.

(4) ~~(7)~~ "Facility" means any location providing day or residential care or treatment for vulnerable ~~elderly persons or disabled~~ adults. The term "facility" may include, but is not limited to, any hospital, training center, state institution,

nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.

(5) ~~(8)~~ "Impaired" means any loss or abnormality of psychological, physiological, or anatomical structure or function due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, brain damage, or the infirmities of aging which results in a vulnerable adult's decreased ability to perform mental tasks and physical activities of daily living as defined in s. 415.102. ~~"Intimidation" means the communication by word or act to an elderly person or disabled adult that the elderly person or disabled adult will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.~~

~~(9) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.~~

(6) ~~(10)~~ "Obtains or uses" means any manner of:

(a) Taking or exercising control over property; or

(b) Making any use, disposition, or transfer of property.

(7) ~~(11)~~ "Position of trust and confidence" with respect to a vulnerable ~~an elderly person or a disabled~~ adult means the position of a person who:

(a) Is a parent, spouse, adult child, or other relative by blood or marriage of the vulnerable ~~elderly person or disabled~~ adult;

(b) Is a joint tenant or tenant in common with the vulnerable ~~elderly person or disabled~~ adult;

(c) Has a legal or fiduciary relationship with the vulnerable ~~elderly person or disabled~~ adult, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;

(d) Is a caregiver of the vulnerable ~~elderly person or disabled~~ adult; or

(e) Is any other person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable ~~elderly person's or disabled~~ adult's funds, assets, or property.

(8) ~~(12)~~ "Property" means anything of value and includes:

(a) Real property, including things growing on, affixed to, and found in land.

(b) Tangible or intangible personal property, including rights, privileges, interests, and claims.

(c) Services.

(9) ~~(13)~~ "Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

(a) Repairs or improvements to property.

(b) Professional services.

(c) Private, public, or governmental communication, transportation, power, water, or sanitation services.

(d) Lodging accommodations.

(e) Admissions to places of exhibition or entertainment.

(10) ~~(14)~~ "Value" means value determined according to any of the following:

(a)1. The market value of the property at the time and place of the offense or, if the market value cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after the offense.

2. In the case of a written instrument such as a check, draft, or promissory note, which does not have a readily ascertainable market value, the value is the amount due or collectible. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by the loss of the instrument.

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing advantage over those who do not know of or use the trade secret.

(b) If the value of the property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than $100.

(c) Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether the exploitation involves the same person or several persons, may be aggregated in determining the degree of the offense.

(11) "Vulnerable adult" means a person 18 years of age or

175 older whose ability to perform the normal activities of daily
176 living or to provide for his or her own care or protection is
177 impaired.
178 Section 3. Section 825.102, Florida Statutes, is amended to
179 read:
180 825.102 Abuse, aggravated abuse, and neglect of a
181 vulnerable ~~an elderly person or disabled~~ adult; penalties.—
182 (1) "Abuse of a vulnerable ~~an elderly person or disabled~~
183 adult" means:
184 (a) Intentional infliction of physical or psychological
185 injury upon a vulnerable ~~an elderly person or disabled~~ adult;
186 (b) An intentional act that could reasonably be expected to
187 result in physical or psychological injury to a vulnerable ~~an~~
188 ~~elderly person or disabled~~ adult; or
189 (c) Active encouragement of any person to commit an act
190 that results or could reasonably be expected to result in
191 physical or psychological injury to a vulnerable ~~an elderly~~
192 ~~person or disabled~~ adult.
193
194 A person who knowingly or willfully abuses a vulnerable ~~an~~
195 ~~elderly person or disabled~~ adult without causing great bodily
196 harm, permanent disability, or permanent disfigurement to the
197 vulnerable ~~elderly person or disabled~~ adult commits a felony of
198 the third degree, punishable as provided in s. 775.082, s.
199 775.083, or s. 775.084.
200 (2) "Aggravated abuse of a vulnerable ~~an elderly person or~~
201 ~~disabled~~ adult" occurs when a person:
202 (a) Commits aggravated battery on a vulnerable ~~an elderly~~
203 ~~person or disabled~~ adult;

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204 (b) Willfully tortures, maliciously punishes, or willfully
205 and unlawfully cages, a vulnerable ~~an elderly person or disabled~~
206 adult; or
207 (c) Knowingly or willfully abuses a vulnerable ~~an elderly~~
208 ~~person or disabled~~ adult and in so doing causes great bodily
209 harm, permanent disability, or permanent disfigurement to the
210 vulnerable ~~elderly person or disabled~~ adult.
211
212 A person who commits aggravated abuse of a vulnerable ~~an elderly~~
213 ~~person or disabled~~ adult commits a felony of the first degree,
214 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
215 (3)(a) "Neglect of a vulnerable ~~an elderly person or~~
216 ~~disabled~~ adult" means:
217 1. A caregiver's failure or omission to provide a
218 vulnerable ~~an elderly person or disabled~~ adult with the care,
219 supervision, and services necessary to maintain the vulnerable
220 ~~elderly person's or disabled~~ adult's physical and mental health,
221 including, but not limited to, food, nutrition, clothing,
222 shelter, supervision, medicine, and medical services that a
223 prudent person would consider essential for the well-being of
224 the vulnerable ~~elderly person or disabled~~ adult; or
225 2. A caregiver's failure to make a reasonable effort to
226 protect a vulnerable ~~an elderly person or disabled~~ adult from
227 abuse, neglect, or exploitation by another person.
228
229 Neglect of a vulnerable ~~an elderly person or disabled~~ adult may
230 be based on repeated conduct or on a single incident or omission
231 that results in, or could reasonably be expected to result in,
232 serious physical or psychological injury, or a substantial risk

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of death, to a vulnerable ~~an elderly person or disabled~~ adult.

(b) A person who willfully or by culpable negligence neglects a vulnerable ~~an elderly person or disabled~~ adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the a vulnerable ~~elderly person or disabled~~ adult commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who willfully or by culpable negligence neglects a vulnerable ~~an elderly person or disabled~~ adult without causing great bodily harm, permanent disability, or permanent disfigurement to the vulnerable ~~elderly person or disabled~~ adult commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 825.1025, Florida Statutes, is amended to read:

825.1025 Lewd or lascivious offenses committed upon or in the presence of a vulnerable adult ~~an elderly person or disabled person~~.—

(1) As used in this section, "sexual activity" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(2)(a) "Lewd or lascivious battery upon a vulnerable adult ~~an elderly person or disabled person~~" occurs when a person encourages, forces, or entices a vulnerable adult ~~an elderly person or disabled person~~ to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity, when the person knows or reasonably should know

that the vulnerable adult's ability ~~elderly person or disabled person either lacks the capacity~~ to consent is impaired or the vulnerable adult fails to give consent.

(b) A person who commits lewd or lascivious battery upon a vulnerable adult ~~an elderly person or disabled person~~ commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) "Lewd or lascivious molestation of a vulnerable adult ~~an elderly person or disabled person~~" occurs when a person intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a vulnerable adult ~~an elderly person or disabled person~~ when the person knows or reasonably should know that the vulnerable adult's ability ~~elderly person or disabled person either lacks the capacity~~ to consent is impaired or the vulnerable adult fails to give consent.

(b) A person who commits lewd or lascivious molestation of a vulnerable adult ~~an elderly person or disabled person~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) "Lewd or lascivious exhibition in the presence of a vulnerable adult ~~an elderly person or disabled person~~" occurs when a person, in the presence of a vulnerable adult ~~an elderly person or disabled person~~:

1. Intentionally masturbates;

2. Intentionally exposes his or her genitals in a lewd or lascivious manner; or

3. Intentionally commits any other lewd or lascivious act that does not involve actual physical or sexual contact with the

291 vulnerable adult ~~elderly person or disabled person~~, including
292 but not limited to, sadomasochistic abuse, sexual bestiality, or
293 the simulation of any act involving sexual activity,
294
295 when the person knows or reasonably should know that the
296 vulnerable adult's ability ~~elderly person or disabled person~~
297 ~~either lacks the capacity to consent or fails~~ to give consent to
298 having such act committed in his or her presence is impaired or
299 the vulnerable adult fails to give consent.
300 (b) A person who commits a lewd or lascivious exhibition in
301 the presence of a vulnerable adult ~~an elderly person or disabled~~
302 ~~person~~ commits a felony of the third degree, punishable as
303 provided in s. 775.082, s. 775.083, or s. 775.084.
304 Section 5. Section 825.103, Florida Statutes, is amended to
305 read:
306 825.103 Exploitation of a vulnerable ~~an elderly person or~~
307 ~~disabled~~ adult; penalties.—
308 (1) "Exploitation of a vulnerable ~~an elderly person or~~
309 ~~disabled~~ adult" means:
310 (a) Knowingly~~, by deception or intimidation,~~ obtaining or
311 using, or endeavoring to obtain or use, the vulnerable ~~an~~
312 ~~elderly person's or disabled~~ adult's funds, assets, or property
313 with the intent to temporarily or permanently deprive the
314 vulnerable ~~elderly person or disabled~~ adult of the use, benefit,
315 or possession of the funds, assets, or property, or to benefit
316 someone other than the vulnerable ~~elderly person or disabled~~
317 adult, by a person who:
318 1. Stands in a position of trust and confidence with the
319 vulnerable ~~elderly person or disabled~~ adult; or

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320 2. Has a business relationship with the vulnerable ~~elderly~~
321 ~~person or disabled~~ adult;
322 (b) Obtaining or using, endeavoring to obtain or use, or
323 conspiring with another to obtain or use a vulnerable ~~an elderly~~
324 ~~person's or disabled~~ adult's funds, assets, or property with the
325 intent to temporarily or permanently deprive the vulnerable
326 ~~elderly person or disabled~~ adult of the use, benefit, or
327 possession of the funds, assets, or property, or to benefit
328 someone other than the vulnerable ~~elderly person or disabled~~
329 adult, by a person who knows or reasonably should know that the
330 vulnerable adult's ability ~~elderly person or disabled adult~~
331 ~~lacks the capacity~~ to consent is impaired; or
332 (c) Breach of a fiduciary duty to a vulnerable ~~an elderly~~
333 ~~person or disabled~~ adult by his or her ~~the person's~~ guardian or
334 agent under a power of attorney which results in an unauthorized
335 appropriation, sale, or transfer of property.
336 (2)(a) If the funds, assets, or property involved in the
337 exploitation of a vulnerable ~~the elderly person or disabled~~
338 adult is valued at $100,000 or more, the offender commits a
339 felony of the first degree, punishable as provided in s.
340 775.082, s. 775.083, or s. 775.084.
341 (b) If the funds, assets, or property involved in the
342 exploitation of the vulnerable ~~elderly person or disabled~~ adult
343 is valued at $20,000 or more, but less than $100,000, the
344 offender commits a felony of the second degree, punishable as
345 provided in s. 775.082, s. 775.083, or s. 775.084.
346 (c) If the funds, assets, or property involved in the
347 exploitation of a vulnerable ~~an elderly person or disabled~~ adult
348 is valued at less than $20,000, the offender commits a felony of

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349 the third degree, punishable as provided in s. 775.082, s.
350 775.083, or s. 775.084.
351 Section 6. Section 825.105, Florida Statutes, is amended to
352 read:
353 825.105 Good faith assistance.—This chapter is not intended
354 to impose criminal liability on a person who makes a good faith
355 effort to assist a vulnerable ~~an elderly person or disabled~~
356 adult in the management of the funds, assets, or property of the
357 vulnerable ~~elderly person or disabled~~ adult, which effort fails
358 through no fault of the person.
359 Section 7. Section 825.106, Florida Statutes, is amended to
360 read:
361 825.106 Criminal actions involving vulnerable ~~elderly~~
362 ~~persons or disabled~~ adults; speedy trial.—In a criminal action
363 in which a vulnerable ~~an elderly person or disabled~~ adult is a
364 victim, the state may move the court to advance the trial on the
365 docket. The presiding judge, after consideration of the age and
366 health of the victim, may advance the trial on the docket. The
367 motion may be filed and served with the information or charges
368 or at any time thereafter.
369 Section 8. Paragraph (a) of subsection (24) of section
370 90.803, Florida Statutes, is amended to read:
371 90.803 Hearsay exceptions; availability of declarant
372 immaterial.—The provision of s. 90.802 to the contrary
373 notwithstanding, the following are not inadmissible as evidence,
374 even though the declarant is available as a witness:
375 (24) HEARSAY EXCEPTION; STATEMENT OF VULNERABLE ~~ELDERLY~~
376 ~~PERSON OR DISABLED~~ ADULT.—
377 (a) Unless the source of information or the method or

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378 circumstances by which the statement is reported indicates a
379 lack of trustworthiness, an out-of-court statement made by a
380 vulnerable ~~an elderly person or disabled~~ adult, as defined in s.
381 825.101, describing any act of abuse or neglect, any act of
382 exploitation, the offense of battery or aggravated battery or
383 assault or aggravated assault or sexual battery, or any other
384 violent act on the declarant vulnerable ~~elderly person or~~
385 ~~disabled~~ adult, not otherwise admissible, is admissible in
386 evidence in any civil or criminal proceeding if:
387 1. The court finds in a hearing conducted outside the
388 presence of the jury that the time, content, and circumstances
389 of the statement provide sufficient safeguards of reliability.
390 In making its determination, the court may consider the mental
391 and physical age and maturity of the vulnerable ~~elderly person~~
392 ~~or disabled~~ adult, the nature and duration of the abuse or
393 offense, the relationship of the victim to the offender, the
394 reliability of the assertion, the reliability of the vulnerable
395 ~~elderly person or disabled~~ adult, and any other factor deemed
396 appropriate; and
397 2. The vulnerable ~~elderly person or disabled~~ adult either:
398 a. Testifies; or
399 b. Is unavailable as a witness, provided that there is
400 corroborative evidence of the abuse or offense. Unavailability
401 shall include a finding by the court that the vulnerable adult
402 is impaired, as defined in s. 825.101, or that the vulnerable
403 ~~elderly person's or disabled~~ adult's participation in the trial
404 or proceeding would result in a substantial likelihood of severe
405 emotional, mental, or physical harm, in addition to findings
406 pursuant to s. 90.804(1).

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407 Section 9. Paragraphs (dd), (ee), and (ff) of subsection
408 (2) of section 435.04, Florida Statutes, are amended to read:
409 435.04 Level 2 screening standards.—
410 (2) The security background investigations under this
411 section must ensure that no persons subject to the provisions of
412 this section have been arrested for and are awaiting final
413 disposition of, have been found guilty of, regardless of
414 adjudication, or entered a plea of nolo contendere or guilty to,
415 or have been adjudicated delinquent and the record has not been
416 sealed or expunged for, any offense prohibited under any of the
417 following provisions of state law or similar law of another
418 jurisdiction:
419 (dd) Section 825.102, relating to abuse, aggravated abuse,
420 or neglect of a vulnerable ~~an elderly person or disabled~~ adult.
421 (ee) Section 825.1025, relating to lewd or lascivious
422 offenses committed upon or in the presence of a vulnerable ~~an~~
423 ~~elderly person or disabled~~ adult.
424 (ff) Section 825.103, relating to exploitation of a
425 vulnerable ~~an elderly person or disabled~~ adult, if the offense
426 was a felony.
427 Section 10. Paragraph (d) of subsection (1) of section
428 775.084, Florida Statutes, is amended to read:
429 775.084 Violent career criminals; habitual felony offenders
430 and habitual violent felony offenders; three-time violent felony
431 offenders; definitions; procedure; enhanced penalties or
432 mandatory minimum prison terms.—
433 (1) As used in this act:
434 (d) "Violent career criminal" means a defendant for whom
435 the court must impose imprisonment pursuant to paragraph (4)(d),

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436 if it finds that:
437 1. The defendant has previously been convicted as an adult
438 three or more times for an offense in this state or other
439 qualified offense that is:
440 a. Any forcible felony, as described in s. 776.08;
441 b. Aggravated stalking, as described in s. 784.048(3) and
442 (4);
443 c. Aggravated child abuse, as described in s. 827.03(2)(a);
444 d. Aggravated abuse of a vulnerable ~~an elderly person or~~
445 ~~disabled~~ adult, as described in s. 825.102(2);
446 e. Lewd or lascivious battery, lewd or lascivious
447 molestation, lewd or lascivious conduct, or lewd or lascivious
448 exhibition, as described in s. 800.04 or s. 847.0135(5);
449 f. Escape, as described in s. 944.40; or
450 g. A felony violation of chapter 790 involving the use or
451 possession of a firearm.
452 2. The defendant has been incarcerated in a state prison or
453 a federal prison.
454 3. The primary felony offense for which the defendant is to
455 be sentenced is a felony enumerated in subparagraph 1. and was
456 committed on or after October 1, 1995, and:
457 a. While the defendant was serving a prison sentence or
458 other sentence, or court-ordered or lawfully imposed supervision
459 that is imposed as a result of a prior conviction for an
460 enumerated felony; or
461 b. Within 5 years after the conviction of the last prior
462 enumerated felony, or within 5 years after the defendant's
463 release from a prison sentence, probation, community control,
464 control release, conditional release, parole, or court-ordered

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465 or lawfully imposed supervision or other sentence that is
466 imposed as a result of a prior conviction for an enumerated
467 felony, whichever is later.
468 4. The defendant has not received a pardon for any felony
469 or other qualified offense that is necessary for the operation
470 of this paragraph.
471 5. A conviction of a felony or other qualified offense
472 necessary to the operation of this paragraph has not been set
473 aside in any postconviction proceeding.
474 Section 11. Paragraph (a) of subsection (5) of section
475 775.0844, Florida Statutes, is amended to read:
476 775.0844 White Collar Crime Victim Protection Act.—
477 (5) Any person who commits an aggravated white collar crime
478 as defined in this section and in so doing either:
479 (a) Victimizes 10 or more vulnerable adults ~~elderly~~
480 ~~persons~~, as defined in s. 825.101~~(5)~~;
481
482 and thereby obtains or attempts to obtain $50,000 or more,
483 commits a felony of the first degree, punishable as provided in
484 s. 775.082, s. 775.083, or s. 775.084.
485 Section 12. Paragraphs (j) and (k) of subsection (1) of
486 section 775.0877, Florida Statutes, are amended to read:
487 775.0877 Criminal transmission of HIV; procedures;
488 penalties.—
489 (1) In any case in which a person has been convicted of or
490 has pled nolo contendere or guilty to, regardless of whether
491 adjudication is withheld, any of the following offenses, or the
492 attempt thereof, which offense or attempted offense involves the
493 transmission of body fluids from one person to another:

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494 (j) Section 825.102(1), relating to abuse of a vulnerable
495 ~~an elderly person or disabled~~ adult;
496 (k) Section 825.102(2), relating to aggravated abuse of a
497 vulnerable ~~an elderly person or disabled~~ adult;
498
499 the court shall order the offender to undergo HIV testing, to be
500 performed under the direction of the Department of Health in
501 accordance with s. 381.004, unless the offender has undergone
502 HIV testing voluntarily or pursuant to procedures established in
503 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
504 rule providing for HIV testing of criminal offenders or inmates,
505 subsequent to her or his arrest for an offense enumerated in
506 paragraphs (a)-(n) for which she or he was convicted or to which
507 she or he pled nolo contendere or guilty. The results of an HIV
508 test performed on an offender pursuant to this subsection are
509 not admissible in any criminal proceeding arising out of the
510 alleged offense.
511 Section 13. Subsection (2) of section 782.07, Florida
512 Statutes, is amended to read:
513 782.07 Manslaughter; aggravated manslaughter of a
514 vulnerable ~~an elderly person or disabled~~ adult; aggravated
515 manslaughter of a child; aggravated manslaughter of an officer,
516 a firefighter, an emergency medical technician, or a paramedic.—
517 (2) A person who causes the death of a vulnerable ~~any~~
518 ~~elderly person or disabled~~ adult by culpable negligence under s.
519 825.102(3) commits aggravated manslaughter of a vulnerable ~~an~~
520 ~~elderly person or disabled~~ adult, a felony of the first degree,
521 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
522 Section 14. Paragraphs (c), (e), (f), (g), and (h) of

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523 subsection (3) of section 921.0022, Florida Statutes, are
524 amended to read:
525 921.0022 Criminal Punishment Code; offense severity ranking
526 chart.—
527 (3) OFFENSE SEVERITY RANKING CHART
528 (c) LEVEL 3
529

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.

319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle

		Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.

796.05(1)	3rd	Live on earnings of a prostitute.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $1 ~~$300~~ or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.

817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.

838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.

893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an

		animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.

440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms,

		ammunition, or electronic weapons or devices.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.

817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more individuals.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of a vulnerable ~~an elderly person or disabled~~ adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture,

		etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.

499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official

		or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.

800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.

674

812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

675

817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.

676

817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

677

825.102(1)	3rd	Abuse of a vulnerable ~~an elderly person or disabled~~ adult.

678

825.102(3)(c)	3rd	Neglect of a vulnerable ~~an elderly person or disabled~~ adult.

679

825.1025(3)	3rd	Lewd or lascivious molestation of a vulnerable ~~an elderly person or disabled~~ adult.

680

825.103(2)(c)	3rd	Exploiting a vulnerable ~~an elderly person or disabled~~ adult and property is valued at less than $20,000.

681

827.03(2)(c)	3rd	Abuse of a child.

682

827.03(2)(d)	3rd	Neglect of a child.

683

827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.

684

836.05	2nd	Threats; extortion.

685

836.10	2nd	Written threats to kill or do bodily injury.

686

843.12	3rd	Aids or assists person to escape.

687

847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

688

847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.

689

847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

690

914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.

691

944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community

		supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to

		elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.

710

460.411(1)	3rd	Practicing chiropractic medicine without a license.

711

461.012(1)	3rd	Practicing podiatric medicine without a license.

712

462.17	3rd	Practicing naturopathy without a license.

713

463.015(1)	3rd	Practicing optometry without a license.

714

464.016(1)	3rd	Practicing nursing without a license.

715

465.015(2)	3rd	Practicing pharmacy without a license.

716

466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.

717

467.201	3rd	Practicing midwifery without a license.

718

468.366	3rd	Delivering respiratory care services without a license.

719

483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.

720

483.901(9)	3rd	Practicing medical physics without a license.

721

484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

722

484.053	3rd	Dispensing hearing aids without a license.

723

494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.

724

560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.

725

560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.

726

655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.

727

775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration

			violations.
728	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
729	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
730	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
731	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
732	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
733	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
734	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.

735	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
736	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
737	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
738	784.048(7)	3rd	Aggravated stalking; violation of court order.
739	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
740	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
741	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
742	784.081(1)	1st	Aggravated battery on specified official or employee.
743	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
744	784.083(1)	1st	Aggravated battery on code inspector.

745

787.06(3)(a)	1st	Human trafficking using coercion for labor and services.

746

787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

747

790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

748

790.16(1)	1st	Discharge of a machine gun under specified circumstances.

749

790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.

750

790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

751

790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

752

790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass

		destruction while committing or attempting to commit a felony.

753

790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.

754

794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.

755

796.03	2nd	Procuring any person under 16 years for prostitution.

756

800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

757

800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.

758

806.01(2)	2nd	Maliciously damage structure by fire or explosive.

759

810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.

760

810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.

812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
825.102(3)(b)	2nd	Neglecting a vulnerable ~~an elderly person or disabled~~ adult causing great bodily harm, disability, or disfigurement.

776

825.103(2)(b)	2nd	Exploiting a vulnerable ~~an elderly person or disabled~~ adult and property is valued at $20,000 or more, but less than $100,000.

777

827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.

778

827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.

779

837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.

780

838.015	2nd	Bribery.

781

838.016	2nd	Unlawful compensation or reward for official behavior.

782

838.021(3)(a)	2nd	Unlawful harm to a public servant.

783

838.22	2nd	Bid tampering.

784

847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

785

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

786

872.06	2nd	Abuse of a dead human body.

787

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

788

893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

789

893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

790

893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

791

893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

792

893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.

793

893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

794

893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

795

893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

796

893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.

797

893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.

798

893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.

799

893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

800

893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.

801

893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.

802

896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.

803

896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.

804

943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.

805

943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

806

943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.

807

943.0435(13)	3rd	Failure to report or providing false

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

		reregister; failure to respond to address verification.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or

		payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.

782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.
787.06(3)(f)	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.

800.04(4)	2nd	Lewd or lascivious battery.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of a vulnerable ~~an~~

		~~elderly person or disabled~~ adult.
825.1025(2)	2nd	Lewd or lascivious battery upon a vulnerable ~~an elderly person or disabled~~ adult.
825.103(2)(a)	1st	Exploiting a vulnerable ~~an elderly person or disabled~~ adult and property is valued at $100,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any

		substance specified in s. 893.03(1)(a) or (b).
856		
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
857		
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
858		
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
859		
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
860		
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
861		
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
862		
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
863		
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
864		
893.135	1st	Trafficking in gamma-hydroxybutyric

(1)(h)1.b.		acid (GHB), 5 kilograms or more, less than 10 kilograms.
865		
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
866		
893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
867		
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
868		
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
869		
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
870		
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
871		
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.

872

896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

873

874

875 Section 15. Paragraph (c) of subsection (8) of section
876 948.06, Florida Statutes, is amended to read:
877 948.06 Violation of probation or community control;
878 revocation; modification; continuance; failure to pay
879 restitution or cost of supervision.—
880 (8)
881 (c) For purposes of this section, the term "qualifying
882 offense" means any of the following:
883 1. Kidnapping or attempted kidnapping under s. 787.01,
884 false imprisonment of a child under the age of 13 under s.
885 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
886 or (c).
887 2. Murder or attempted murder under s. 782.04, attempted
888 felony murder under s. 782.051, or manslaughter under s. 782.07.
889 3. Aggravated battery or attempted aggravated battery under
890 s. 784.045.
891 4. Sexual battery or attempted sexual battery under s.
892 794.011(2), (3), (4), or (8)(b) or (c).
893 5. Lewd or lascivious battery or attempted lewd or
894 lascivious battery under s. 800.04(4), lewd or lascivious
895 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious

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

896 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
897 under s. 800.04(7)(b), or lewd or lascivious exhibition on
898 computer under s. 847.0135(5)(b).
899 6. Robbery or attempted robbery under s. 812.13, carjacking
900 or attempted carjacking under s. 812.133, or home invasion
901 robbery or attempted home invasion robbery under s. 812.135.
902 7. Lewd or lascivious offense upon or in the presence of a
903 vulnerable adult ~~an elderly or disabled person~~ or attempted lewd
904 or lascivious offense upon or in the presence of a vulnerable
905 adult ~~an elderly or disabled person~~ under s. 825.1025.
906 8. Sexual performance by a child or attempted sexual
907 performance by a child under s. 827.071.
908 9. Computer pornography under s. 847.0135(2) or (3),
909 transmission of child pornography under s. 847.0137, or selling
910 or buying of minors under s. 847.0145.
911 10. Poisoning food or water under s. 859.01.
912 11. Abuse of a dead human body under s. 872.06.
913 12. Any burglary offense or attempted burglary offense that
914 is either a first degree felony or second degree felony under s.
915 810.02(2) or (3).
916 13. Arson or attempted arson under s. 806.01(1).
917 14. Aggravated assault under s. 784.021.
918 15. Aggravated stalking under s. 784.048(3), (4), (5), or
919 (7).
920 16. Aircraft piracy under s. 860.16.
921 17. Unlawful throwing, placing, or discharging of a
922 destructive device or bomb under s. 790.161(2), (3), or (4).
923 18. Treason under s. 876.32.
924 19. Any offense committed in another jurisdiction which

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

925 would be an offense listed in this paragraph if that offense had
926 been committed in this state.
927 Section 16. Paragraph (b) of subsection (2) of section
928 960.003, Florida Statutes, is amended to read:
929 960.003 Hepatitis and HIV testing for persons charged with
930 or alleged by petition for delinquency to have committed certain
931 offenses; disclosure of results to victims.—
932 (2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY PETITION
933 FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.—
934 (b) However, when a victim of any sexual offense enumerated
935 in s. 775.0877(1)(a)-(n) is under the age of 18 at the time the
936 offense was committed or when a victim of any sexual offense
937 enumerated in s. 775.0877(1)(a)-(n) or s. 825.1025 is a
938 vulnerable ~~disabled~~ adult ~~or elderly person~~ as defined in s.
939 825.101 ~~825.1025~~ regardless of whether the offense involves the
940 transmission of bodily fluids from one person to another, then
941 upon the request of the victim or the victim's legal guardian,
942 or of the parent or legal guardian, the court shall order such
943 person to undergo hepatitis and HIV testing within 48 hours
944 after the information, indictment, or petition for delinquency
945 is filed. In the event the victim or, if the victim is a minor,
946 the victim's parent or legal guardian requests hepatitis and HIV
947 testing after 48 hours have elapsed from the filing of the
948 indictment, information, or petition for delinquency, the
949 testing shall be done within 48 hours after the request. The
950 testing shall be performed under the direction of the Department
951 of Health in accordance with s. 381.004. The results of a
952 hepatitis and HIV test performed on a defendant or juvenile
953 offender pursuant to this subsection is ~~shall~~ not ~~be~~ admissible

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

954 in any criminal or juvenile proceeding arising out of the
955 alleged offense.
956 Section 17. Paragraphs (gg), (hh), and (ii) of subsection
957 (1) of section 1012.315, Florida Statutes, are amended to read:
958 1012.315 Disqualification from employment.—A person is
959 ineligible for educator certification, and instructional
960 personnel and school administrators, as defined in s. 1012.01,
961 are ineligible for employment in any position that requires
962 direct contact with students in a district school system,
963 charter school, or private school that accepts scholarship
964 students under s. 1002.39 or s. 1002.395, if the person,
965 instructional personnel, or school administrator has been
966 convicted of:
967 (1) Any felony offense prohibited under any of the
968 following statutes:
969 (gg) Section 825.102, relating to abuse, aggravated abuse,
970 or neglect of a vulnerable ~~an elderly person or disabled~~ adult.
971 (hh) Section 825.103, relating to exploitation of a
972 vulnerable ~~an elderly person or disabled~~ adult.
973 (ii) Section 825.1025, relating to lewd or lascivious
974 offenses committed upon or in the presence of a vulnerable adult
975 ~~an elderly person or disabled person~~.
976 Section 18. This act shall take effect October 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 11, 2013

The Honorable Greg Evers, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Evers:

Senate Bill 1222 relating to protection of vulnerable persons has been reffered to Criminal Justice as its first committee of reference. I would appreciate the placing of this bill on the committee's next available agenda.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Amanda Cannon, Staff Director

REPLY TO:
❒ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
❒ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
❒ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-13
Meeting Date

Topic: Vulnerable Person

Bill Number: 1222 *(if applicable)*

Name: Bob Dillinger

Amendment Barcode: _____ *(if applicable)*

Job Title: Public Defender - 6th

Address: CJC
Street

Clearwater, FL 33762
City *State* *Zip*

Phone: 727-464-6806

E-mail: wearethehope.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: PD Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Protection of Vulnerable Adults

Bill Number: 1222 *(if applicable)*

Name: Laura Cantwell

Amendment Barcode: *(if applicable)*

Job Title: Associate State Director Advocacy

Address: 200 West College Avenue, Suite 304
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 577-5163

E-mail: lcantwell@aarp.org

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

Representing: AARP

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic _____ Bill Number 1222 *(if applicable)*

Name Amy Stevens Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 9166 Sunrise Dr.
Street

Largo Fla. 33773
City *State* *Zip*

Phone _____

E-mail _____

Speaking: ☐ For ☐ Against ☒ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 15, 2013

The Honorable Greg Evers, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Evers:

Senate Bill 1222 relating to protection of vulnerable persons is scheduled to be heard in the Committee on Criminal Justice this next Monday, March 18th at 1:00 PM. Due to conflicts in my committee schedule, I will be sending my Legislative Assistant Michael Nachef as a representative to present the bill for your committee's consideration.

Sincerely,

Garrett Richter

cc: Amanda Cannon, Staff Director

REPLY TO:
☐3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
☐404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
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Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Committee on Criminal Justice

BILL: SB 1330

INTRODUCER: Senator Latvala

SUBJECT: Licensed Security Officers

DATE: March 8, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.			ACJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1330 amends ch. 493, F.S., as it relates to security officers, security agency managers, and others, to:

- Authorize a licensed security officer or licensed security agency manager, in uniform and on the premises of a critical infrastructure facility, who has probable cause to believe that a person has committed or is committing a crime against the client operating the premises or the client's patron, to temporarily detain the person to ascertain the person's identity and the circumstances of the person's activity. The bill provides procedures for notifying law enforcement and transferring the detained person.
- Authorize the licensed security officer or licensed security agency manager, while temporarily detaining the person, to search the detainee or the detainee's belongings if the officer or manager observes that the person is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the officer, manager, or any person for whom the officer or manager is responsible for providing protection, or if the detainee admits to having a weapon in his or her possession. The search may only be to the extent necessary to disclose the presence of the weapon. The bill provides procedures for seizure and transfer of the weapon.
- Make it a first degree misdemeanor for a person to engage in any activity for which ch. 493, F.S., requires a license if the person does not hold the required license, if this is the offender's first violation. A second or subsequent violation is a third degree felony and the department may seek the imposition of a civil penalty not to exceed $10,000. This offense does not apply if the person engages in unlicensed activity within 90 days after the expiration date of the person's license.

- Make it a third degree felony for a person, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., to knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S. However, it is a second degree felony if a person commits this violation during the course of committing a felony, and a first degree felony if a person commits this violation during the course of committing a felony that results in death or serious bodily injury to another human being.
- Species uniform and badge or patch requirements for a security officer or security agency manager who possess a valid Class "G" license performing duties regulated by s. 493.631, F.S. (created by the bill).
- Provides that a law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with s. 493.631, F.S.

This bill substantially amends section 493.6120 of the Florida Statutes. The bill creates section 493.631, F.S.

II. Present Situation:

Private Security, Private Investigative, and Recovery Services

The Division of Licensing within the Department of Agriculture and Consumer Services (department) is responsible for the regulation of licensing of private security, private investigative, and recovery services.[1] Section 493.6101(19), F.S., defines a "security officer" 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, choses 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.

Section 493.6101(16), F.S., defines a "private investigator" as "any individual who, for consideration, advertises as providing or performs private investigation." 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.

[1] 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.

- 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.
- 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.[2]

Section 493.6101(21), F.S., defines a "recovery agent" as "any individual who, for consideration, advertises as providing or performs repossessions." Section 493.6101(20), F.S., defines "recovery agency" as "any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions." Section 493.6101(22), F.S., defines "repossession" as recovery of motor vehicles, motor boats, airplanes, personal watercraft, all-terrain vehicles, farm equipment, or industrial equipment, "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."

Certain individuals are exempt from the licensing requirements for private security and private investigative services. These individuals include, but are not limited to: local, state, and federal law enforcement officers, licensed insurance investigators or adjusters; 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"; and any unarmed individual engaged in security services who is employed exclusively to work on the premises of her or his employer, or "in connection with the business of her or his employer, when there exists an employer-employee relationship."[3]

Section 493.6106(1), F.S, 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.

[2] Section 493.6101(17), F.S.
[3] Section 493.6102(1)-(4), F.S.

- 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.
- 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 permanent legal resident alien of the United States or have appropriate authorization issued by the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

License Classifications

Chapter 493, F.S., provides for numerous classifications of licenses within the three general categories of licenses, as follows:[4]

PRIVATE INVESTIGATION	
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”
PRIVATE SECURITY	
Agency	Class “B”
Security Officer	Class “D”
Armed Security Officer	Class “D” & Class “G”
Branch Office	Class “BB”
Manager	Class “MB” or Class “M”
REPOSSESSION ACTIVITY	
Agency	Class “R”
Recovery Agent	Class “E”
Branch Office	Class “RR”
Manager	Class “MR” or Class “E”
Intern	Class “EE”
COMBINED PRIVATE INVESTIGATION AND SECURITY	
Agency	Class “A” & Class “B”
Branch Office	Class “AB”
Manager	Class “M”
SCHOOLS	
Security Officer School or Training Facility	Class “DS”
Security Officer Instructor	Class “DI”
Recovery Agent School or Training Facility	Class “RS”

[4] *See* 5N-1.116(1), F.A.C.

Recovery Agent Instructor	Class "RI"
FIREARMS	
Instructor	Class "K"
Statewide Firearm License	Class "G"
MANAGERS	
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"

D, MB, and G Licenses

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 of the training course and the number of hours of each subject area to be taught. An agency providing security services must also be licensed by the department, and, with certain exceptions, the person managing that agency must have a Class "MB" security agency manager license. If a licensed security officer is required to carry a firearm while on duty and performing regulated services, he must obtain a Class "G" Statewide Firearm License. An applicant for the Class "G" license must complete 28 hours of specialized firearms training, which includes both classroom instruction and range time.[5]

Detention by Certified Seaport Security Officers

The seaport security officer designation is not required for an individual to be employed at a seaport as a security officer. The department (through its licensing division) began issuing security officer licenses with the seaport security officer designation in March of 2012, and to date there have been only 34 security officers who have submitted the proof of training required under s. 311.121, F.S., in order to receive the seaport security officer designation.[6]

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.[7]

Pursuant to s. 311.124, F.S., any Class D or Class G seaport security officer certified under the federal Maritime Transportation Security Act of 2002 guidelines or any employee of the seaport security force certified under the federal Maritime Transportation Security Act of 2002 guidelines has the power to detain persons in a reasonable manner for a reasonable period of time pending arrival of a law enforcement officer if they have "probable cause to believe that a person is trespassing … in a designated restricted area...."[8] 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.

[5] Information provided via e-mail on March 13, 2013, by staff of the Department of Agriculture and Consumer Services.
[6] *Id.*
[7] *Id.*
[8] "Restricted area" is defined by 33 C.F.R. part 105. See also s. 311.12, F.S.

Impersonating a Licensee

Section 493.6118(1), F.S., authorizes the department 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, but are not limited to:

- Conducting activities regulated under ch. 493, F.S., 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.

When the department finds any of the above violations it may impose an administrative fine not to exceed $1,000 for every count or separate offense.[9] Section 493.6120, F.S., provides that any person who violates any provision of ch. 493, F.S., with one exception,[10] commits a first degree misdemeanor.[11] The department is authorized to institute judicial proceedings in the appropriate circuit court seeking enforcement of ch. 493, F.S., or any rule or order of the department.[12]

The Power to Detain and Search

Section 901.151(2)-(5), F.S., provides:

- Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.[13]
- No person shall be temporarily detained [under the provisions of s. 901.151(2), F.S.] longer than is reasonably necessary to effect the purposes of that subsection. Such temporary

[9] Section 493.6118(2)(c), F.S.
[10] The exception is in s. 493.6405, F.S. This section 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, and provides that a violation is a third degree felony.
[11] A first degree misdemeanor is punishable by up to 1 year in a county jail, a fine of up to $1,000, or both a jail sentence and fine. See ss. 775.082 and 775.083, F.S.
[12] Section 493.6121(6), F.S.
[13] "This standard is consonant with the holding in *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), which requires 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' For reasonable suspicion justifying a detention to exist, 'the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.' *United States v. Cortez*, 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)." *Tillman v. State*, 934 So.2d 1263, 1273 (Fla.2006).

detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.

- If at any time after the onset of the temporary detention authorized by s. 901.151(2), F.S., probable cause for arrest of the person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person shall be released.
- Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of s. 901.151(2), F.S., has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

Section 812.015(3)(a), F.S., authorizes a law enforcement officer, a merchant, a farmer, or a transit agency's employee or agent, who has probable cause to believe that a retail theft, farm theft, a transit fare evasion, or trespass, or unlawful use or attempted use of any antishoplifting or inventory control device countermeasure, 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.

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

"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.[14]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 493.6120, F.S., to make it a first degree misdemeanor for a person to engage in any activity for which ch. 493, F.S., requires a license if the person does not hold the required license, if the violation is the person's first violation. A second or subsequent violation is a third degree felony[15] and the department may seek the imposition of a civil penalty

[14] *Phoenix v. State*, 455 So.2d 1024 (Fla.1984).
[15] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. See ss. 775.082 and 775.083, F.S.

not to exceed $10,000. This offense does not apply if the person engages in unlicensed activity within 90 days after the expiration date of the person's license.

This statute is also amended to make it a third degree felony for a person, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., to knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S. However, it is a second degree felony[16] if a person commits this violation during the course of committing a felony, and a first degree felony if a person commits this violation during the course of committing a felony that results in death or serious bodily injury to another human being.[17]

Section 2 of the bill creates s. 493.631, F.S., which provides that a licensed security officer or licensed security agency manager, in uniform and on the premises of a critical infrastructure facility, who has probable cause to believe that a person has committed or is committing a crime against the client operating the premises or the client's patron, to temporarily detain the person to ascertain the person's identity and the circumstances of the person's activity.

When temporarily detaining a person, the security officer or security agency manager shall notify the appropriate law enforcement agency of the detention as soon as reasonably possible. A security officer or security agency manager may temporarily detain a person only until a law enforcement officer arrives at the premises of the client and is in the presence of the detainee. Upon arrival of the law enforcement officer, the security officer or security agency manager shall immediately transfer custody of a person being temporarily detained to the responding law enforcement officer.

A security officer or security agency manager may not detain a person under this section after the arrival of a law enforcement officer unless the law enforcement officer requests that the security officer or security agency manager continue detaining the person. The authority of the security officer or security agency manager to continue detaining a person after the arrival of a law enforcement officer does not extend beyond the place where the person was first detained or in the immediate vicinity of that place.

A security officer or security agency manager may not temporarily detain a person under this section longer than is reasonably necessary to affect the purposes of this section.

While detaining a person under this section, if a security officer or security agency manager observes that the person temporarily detained is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the security officer, the security agency manager, or any person for whom the security officer or security agency manager is responsible for providing protection, or if the detainee admits to having a weapon in his or her possession, the security officer or security agency manager may conduct a search of the person and his or her belongings only to the extent necessary to disclose the presence of a weapon. If the security

[16] A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. See ss. 775.082 and 775.083, F.S.
[17] A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to $10,000, or both. See ss. 775.082 and 775.083, F.S.

officer or security agency manager finds a weapon during the search, he or she shall seize and transfer the weapon to the responding law enforcement officer.

A security officer or security agency manager who possesses a valid Class "G" license shall perform duties regulated under this section in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager.

A law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with this section.

The term "critical infrastructure facility" means any one of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

- A chemical manufacturing facility.
- A refinery.
- An electrical power plant as defined in s. 403.031, F.S., including a substation, switching station, electrical control center, or electric 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 port or railroad switching yard.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

"Security officer" and "security agency manager" mean a security officer or security agency manager who possesses a valid Class "D" or Class "MB" license pursuant to s. 493.6301, F.S., and a valid Class "G" license pursuant to s. 493.6115, F.S.

Section 3 provides that the bill would take effect on July 1, 2013.

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 unclear at this point whether the limited searches and seizures which security officers and security agency managers are authorized to make under the bill would raise any Fourth Amendment issues. Since the bill is not law and current law does not specifically provide such search and seizure authorization (e.g., s. 311.124, F.S., which is relevant to seaport security officers, only authorizes temporary *detention* of a person in certain circumstances), there is no relevant and controlling Fourth Amendment case regarding searches and seizures by security officers or security agency managers. However, security officers and security agency managers should be aware that any evidence they seize may be later used as evidence in a criminal case and should be handled accordingly.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed this bill, in 2012 the CJIC estimated that a very similar bill (CS/SB 154) would have an insignificant prison bed impact. Further, the Legislature's Office of Economic and Demographic Research (EDR) has reviewed the bill and has indicated to staff that it intends to recommend to the CJIC that the bill has an insignificant prison bed impact.[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[18] E-mail from EDR staff to Senate Committee on Criminal Justice staff, dated March 7, 2013.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Latvala

20-01116-13 20131330__

A bill to be entitled

An act relating to licensed security officers; amending s. 493.6120, F.S.; providing penalties for an unlicensed person who engages in an activity for which ch. 493, F.S., requires a license; providing an exception; providing penalties if a person commits a felony while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S.; creating s. 493.631, F.S.; defining terms; authorizing a licensed security officer or licensed security agency manager to detain a person on the premises of a critical infrastructure facility in certain circumstances; providing procedures and requirements with respect thereto; authorizing the security officer or security agency manager to search the person detained under certain circumstances; providing identification requirements for certain licensed security officers and security agency managers; providing immunity to law enforcement officers, licensed security officers, and licensed security agency managers under certain circumstances; providing an effective date.

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

Section 1. Section 493.6120, Florida Statutes, is amended to read:

493.6120 Violations; penalty.—

(1)(a) Except as provided in paragraph (b), a person who

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

20-01116-13 20131330__

engages in any activity for which this chapter requires a license and who does not hold the required license commits:

1. For a first violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. For a second or subsequent violation, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and the department may seek the imposition of a civil penalty not to exceed $10,000.

(b) Paragraph (a) does not apply if the person engages in unlicensed activity within 90 days after the date of the expiration of his or her license.

(2)(a) A person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under this chapter, knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (a) during the course of committing a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who violates paragraph (a) during the course of committing a felony resulting in death or serious bodily injury to another human being commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) ~~(1)~~ Except as otherwise provided in this chapter, a ~~Any~~ person who violates any provision of this chapter ~~except s.~~

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59 ~~493.6405~~ commits a misdemeanor of the first degree, punishable
60 as provided in s. 775.082 or s. 775.083.
61 (4) ~~(2)~~ A ~~Any~~ person who is convicted of any violation of
62 this chapter is ~~shall~~ not ~~be~~ eligible for licensure for a period
63 of 5 years.
64 (5) ~~(3)~~ A ~~Any~~ person who violates or disregards a ~~any~~ cease
65 and desist order issued by the department commits a misdemeanor
66 of the first degree, punishable as provided in s. 775.082 or s.
67 775.083. In addition, the department may seek the imposition of
68 a civil penalty not to exceed $5,000.
69 (6) ~~(4)~~ A person who was an owner, officer, partner, or
70 manager of a licensed agency or a Class "DS" or "RS" school or
71 training facility at the time of any activity that is the basis
72 for revocation of the agency or branch office license or the
73 school or training facility license and who knew or should have
74 known of the activity~~,~~ shall have his or her personal licenses
75 or approval suspended for 3 years and may not have any financial
76 interest in or be employed in any capacity by a licensed agency
77 or a school or training facility during the period of
78 suspension.
79 Section 2. Section 493.631, Florida Statutes, is created to
80 read:
81 493.631 Temporary detention by a licensed security officer
82 or licensed security agency manager at critical infrastructure
83 facilities.—
84 (1) As used in this section, the term "critical
85 infrastructure facility" means any of the following, if it
86 employs measures such as fences, barriers, or guard posts that
87 are designed to exclude unauthorized persons:

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

88 (a) A chemical manufacturing facility.
89 (b) A refinery.
90 (c) An electrical power plant as defined in s. 403.031,
91 including a substation, switching station, electrical control
92 center, or electric transmission or distribution facility.
93 (d) A water intake structure, water treatment facility,
94 wastewater treatment plant, or pump station.
95 (e) A natural gas transmission compressor station.
96 (f) A liquid natural gas terminal or storage facility.
97 (g) A telecommunications central switching office.
98 (h) A deepwater port or railroad switching yard.
99 (i) A gas processing plant, including a plant used in the
100 processing, treatment, or fractionation of natural gas.
101 (2) As used in this section, the terms "security officer"
102 and "security agency manager" mean a security officer or
103 security agency manager who possesses a valid Class "D" or Class
104 "MB" license pursuant to s. 493.6301 and a valid Class "G"
105 license pursuant to s. 493.6115.
106 (3) A security officer or security agency manager who is on
107 duty, in uniform, and on the premises of a critical
108 infrastructure facility, and who has probable cause to believe
109 that a person has committed or is committing a crime against the
110 client operating the premises or the client's patron may
111 temporarily detain the person to ascertain his or her identity
112 and the circumstances of the person's activity.
113 (4) When temporarily detaining a person, the security
114 officer or security agency manager shall notify the appropriate
115 law enforcement agency of the detention as soon as reasonably
116 possible. A security officer or security agency manager may

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

117 temporarily detain a person only until a law enforcement officer
118 arrives at the premises of the client and is in the presence of
119 the detainee. Upon arrival of the law enforcement officer, the
120 security officer or security agency manager shall immediately
121 transfer custody of a person being temporarily detained to the
122 responding law enforcement officer.
123 (5) A security officer or security agency manager may not
124 detain a person under this section after the arrival of a law
125 enforcement officer unless the law enforcement officer requests
126 that the security officer or security agency manager continue
127 detaining the person. The authority of the security officer or
128 security agency manager to continue detaining a person after the
129 arrival of a law enforcement officer under this subsection does
130 not extend beyond the place where the person was first detained
131 or in the immediate vicinity of that place.
132 (6) A security officer or security agency manager may not
133 temporarily detain a person under this section longer than is
134 reasonably necessary to affect the purposes of this section.
135 (7) While detaining a person under this section, if a
136 security officer or security agency manager observes that the
137 person temporarily detained is armed with a firearm, concealed
138 weapon, or destructive device that poses a threat to the safety
139 of the security officer, the security agency manager, or any
140 person for whom the security officer or security agency manager
141 is responsible for providing protection, or if the detainee
142 admits to having a weapon in his or her possession, the security
143 officer or security agency manager may conduct a search of the
144 person and his or her belongings only to the extent necessary to
145 disclose the presence of a weapon. If the security officer or

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

146 security agency manager finds a weapon during the search, he or
147 she shall seize and transfer the weapon to the responding law
148 enforcement officer.
149 (8) A security officer or security agency manager who
150 possesses a valid Class "G" license shall perform duties
151 regulated under this section in a uniform with at least one
152 patch or emblem visible at all times clearly identifying the
153 agency employing the security officer or security agency
154 manager.
155 (9) A law enforcement officer, security officer, or
156 security agency manager is not criminally or civilly liable for
157 false arrest, false imprisonment, or unlawful detention due to
158 his or her custody and detention of a person if done in
159 compliance with this section.
160 Section 3. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

March 4, 2013

The Honorable Greg Evers
Senate Committee on Criminal Justice
404 S. Monroe St. 510 Knott Building
Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request that my bill, SB 1330/Licensed Security Officers, be placed on the agenda of the Senate Committee on Criminal Justice at the earliest possible time.

This bill will make it a crime to impersonate security officers ensuring that official uniforms and identification cards are not used to victimize the public. It will also allow security officers to detain individuals who trespass or commit crimes especially at critical infrastructure sites and facilities until law enforcement arrives.

Please contact me if you have any questions. I appreciate your consideration.

Sincerely,

Jack Latvala

Jack Latvala
State Senator
District 20

JL:tc

REPLY TO:
❒ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
❒ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18-13
Meeting Date

Topic: SB 1330

Bill Number: SB 1330 *(if applicable)*

Name: Burt Hodge

Amendment Barcode: *(if applicable)*

Job Title: Investigator

Address: 842 E. Park Av
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850.561.3990

E-mail:

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

Representing: Fl. Assn. Security Fl. Ass. Licensed Investigators & Companies

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic _____

Bill Number 1330 (if applicable)

Name Matt Puckett

Amendment Barcode _____ (if applicable)

Job Title Lobbyist

Address 300 East Brevard St.
Street

Tallahassee FL 32301
City State Zip

Phone _____

E-mail _____

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

Representing Florida Police Benevolent Association

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic _____

Bill Number 1330 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

TESTIFY LAST PLEASE

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

3/18/13
Date

SB-1330
Bill Number

Name MARION HAMMER

Phone 222-9518

Address P.O. BOX 1387
Street

E-mail

TALLAHASSEE FL 32302
City State Zip

Job Title

Speaking: ☑ For ☐ Against ☐ Information

Appearing at request of Chair ☐

Subject LICENSED SECURITY OFFICERS

Representing NRA & UNIFIED SPORTSMEN OF FLORIDA

Lobbyist registered with Legislature: ☑ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ ___.m. to _____ ___.m.

S-001 (08/2005)

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 Committee on Criminal Justice

BILL: CS/SB 1406

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Juvenile Justice Education Programs

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.			ED	
3.			AED	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1406 makes changes to the provisions of law governing the accountability, deliverance, and review of juvenile justice education programs that provide educational services to students within the Department of Juvenile Justice (DJJ).

The bill revises the accountability of juvenile justice education programs by:

- Requiring the Department of Education (DOE) in partnership with the DJJ to develop a comprehensive accountability and school improvement process.
- Requiring the DOE in consultation with the DJJ, district school boards, and providers to adopt rules for objective and measurable student performance measures and program performance ratings for the delivery of educational services by prevention, day treatment, and residential programs.
- Requiring the DJJ in consultation with DOE to publish by March 1 of each year a report on program costs and effectiveness, educational performance of students, and recommendations for modification or elimination of programs or program activities.

- Requiring the DOE in partnership with the DJJ, district school boards, and providers to develop and implement requirements for contracts and cooperative agreements regarding the delivery of appropriate education services to students in DJJ programs.

The bill revises provisions related to juvenile justice programs by:

- Requiring school districts and juvenile justice education providers, in collaboration with others to develop a transition plan during a student's stay in a program.
- Requiring the DOE and the DJJ to provide oversight and guidance on how to implement effective educational transition planning and services.
- Requiring prevention and day treatment programs to provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services.
- Requiring residential juvenile justice education programs with a contracted minimum length of stay of nine months to provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications.
- Allowing residential programs with contract lengths of stay of less than nine months to provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work related certifications.
- Requiring the multiagency plan for career education to eliminate barriers to education and address virtual education.

This bill substantially amends the following sections of the Florida Statutes: 985.622, 985.632, 1001.31, 1001.42, 1003.51, and 1003.52.

II. Present Situation:

Multiagency Plan for Career Education

Current law requires the DJJ and the DOE, in consultation with the statewide Workforce Development Youth Council, school districts, providers, and others, to develop a multiagency plan (plan) for vocational education in commitment facilities.[1] The plan must include:

- Provisions for maximizing appropriate state and federal funding sources, responsibilities of both departments and all other appropriate entities and detailed implementation schedules.[2]
- A definition of vocational programming that is appropriate based upon the age and assessed educational abilities and goals of the youth to be served and the typical length of stay and custody characteristics at the commitment program to which each youth is assigned.[3]
- A definition of vocational programming that includes the classifications of commitment facilities that will offer vocational programming by one of the following types:
  - Type A - Programs that teach personal accountability skills and behavior that is appropriate for youth in all age groups and ability levels and that lead to work habits that help maintain employment and living standards.

[1] Section 985.622(1), F.S.
[2] Section 985.622(1)(a)(c), F.S.
[3] Section 985.622(2), F.S.

- Type B - Programs that include Type A program content and an orientation to the broad scope of career choices, based upon personal abilities, aptitudes, and interest.
- Type C - Programs that include Type A program content and the vocational competencies or the prerequisites needed for entry into a specific occupation.[4]

In October 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a report that stated that the plan had several shortcomings. According to OPPAGA, the plan lacked goals and implementation strategies for increasing the percentage of youth receiving occupation-specific job training. Also, the plan did not address the barriers that juvenile justice students face in attaining a general educational development (GED) diploma.[5] The OPPAGA found that many juvenile justice programs emphasized academic instruction rather than GED preparation and job training. The OPPAGA recommended that the Legislature amend s. 985.622, F.S., to address the shortcomings found in the plan.

Educational Services in DJJ Programs

Current law sets forth how educational services must be provided in DJJ programs and establishes the educational expectations for DJJ youth in such programs.[6] The DOE is the lead agency for juvenile justice education programs, curriculum, support services, and resources; however, district school boards are responsible for actually providing educational services to youth in juvenile justice programs.[7] Educational services consist of basic academic, career, or exceptional curricula that support treatment goals and reentry, and that may lead to the completion of a high school diploma or its equivalent.[8] These services can be provided by the district school board itself or by a private provider through a contract with the district school board.[9] However, school districts remain responsible for the quality of education provided in residential and day treatment juvenile justice facilities regardless of whether the school district provides those services directly or through a contractor.[10]

Annually, the DJJ and the DOE must develop a cooperative agreement and plan for juvenile justice education service enhancement, which must be submitted to the Secretary of the DJJ and the Commissioner of Education.[11]

Each district school board must negotiate a cooperative agreement with the DJJ regarding the delivery of educational programming to DJJ youth. These agreements must include provisions that address certain issues, such as:

---

[4] Section 985.622(3), F.S.
[5] Office of Program Policy Analysis and Government Accountability, *Juvenile Justice Students Face Barriers to High School Graduation and Job Training*, Report No. 10-55, at 9 *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1055rpt.pdf
[6] Section 1003.52, F.S.
[7] Section 1003.52(1), (3), and (4), F.S.
[8] Section 1003.52(5), F.S.
[9] Section 1003.52(11), F.S.
[10] Office of Program Policy Analysis and Government Accountability, *Youth Entering the State's Juvenile Justice Programs Have Substantial Educational Deficits; Available Data Is Insufficient to Assess Leaning Gains of Students*, Report No. 10-07 (2010), *available at*, http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-07 (last visited March 13, 2013).
[11] Section 1003.52 (1), F.S.

- Curriculum and delivery of instruction;
- Classroom management procedures and attendance policies;
- Procedures for provision of qualified instructional personnel;
- Improving skills in teaching and working with juvenile delinquents;
- Transition plans for students moving into and out of juvenile facilities; and
- Strategies for correcting any deficiencies found through the quality assurance process.[12]

The DOE and the DJJ must each designate a coordinator to resolve issues not addressed by the district school boards and to provide each department's participation in:

- Training, collaborating, and coordinating with the DJJ, district school boards, educational contract providers, and juvenile justice providers, whether state-operated or contracted;
- Collecting and reporting information on the academic performance of students in juvenile justice programs;
- Developing academic and career protocols that provide guidance to district school boards and providers in educational programming; and
- Prescribing the roles of program personnel and school district or provider collaboration strategies.[13]

Accountability and Reporting

The DOE and the DJJ, after consulting with the district school boards and local providers, must report annually to the Legislature on the progress toward developing effective educational programs for youth in the juvenile justice system. This report must include the results of the quality assessment reviews, including recommendations for system improvement.[14] In its annual report to the Legislature, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs*, the DOE made several recommendations to address educational accountability and improvement such as:

- Continue to develop a juvenile justice education accountability system for programs and explore a process in which high-performing programs are recognized and low-performing programs receive assistance.
- Develop a customized school improvement plan template for programs.
- Continue to support improvement in transition services for youth in juvenile justice education through the maintenance of an accurate statewide transition contact list.
- Provide additional training and support to programs to improve their efforts with the Basic Achievement Skills Inventory administration, data reporting, and data interpretation.
- Continue to identify effective program practices and resources for students in need of academic remediation and credit recovery.
- Continue to identify academic curriculum, resources, and instructional practices related to high academic achievement for all students while incarcerated.

[12] Section 1003.52(13), F.S.
[13] Section 1003.52(1), F.S.
[14] Section 1003.52(19), F.S.

- Continue to collaborate efforts among the DOE, the DJJ, school districts, and private providers to ensure appropriate and effective education for youth in juvenile justice programs.[15]

The OPPAGA issued another report in 2010 examining educational services provided to youth in DJJ residential and day treatment programs. The OPPAGA found that most students entering juvenile justice programs were older, academically behind their peers, and were likely to have had attendance problems at school. The OPPAGA found that DOE had not collected sufficient information to assess the learning gains (or lack thereof) of students in juvenile justice programs. Only 48 of the 141 programs (34%) reported complete information for at least half of their students. For those programs that did report data, the nature of the assessment instrument made it difficult to determine whether students were making appropriate educational progress. The OPPAGA recommended that the Legislature amend s. 1003.52(3)(b), F.S., to require that the DOE make annual status reports to the Legislature on the learning gains of students in juvenile justice facilities and the steps it has taken to ensure the completeness and reliability of juvenile justice student performance data.[16]

The DJJ is required to annually collect and report cost data for every program state-operated or contracted by the department. The DJJ is responsible for accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility must be reported and included in the cost of a program. The cost-benefit analysis for each educational program will be developed and implemented in collaboration with the DOE, local providers, and local school districts. Cost data for the report must include data collected by the DOE for the purpose of preparing the annual report required pursuant to s. 1003.52(19), F.S., relating to developing effective educational progress for juvenile delinquents.[17]

The DOE, in consultation with the DJJ, district school boards, and providers must establish objective and measurable quality assurance standards for the educational components of residential and nonresidential juvenile justice facilities.[18] The quality assurance standards and indicators are revised annually for juvenile justice education programs, based on new statutory and regulatory requirements, best practices research, and input from school districts and educational providers.[19] These standards must rate the district school boards' performance both as a provider and contractor.[20]

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[15] Florida Department of Education, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs*, Annual Report 200-2010, at 13 (2011), *available at* http://www.fldoe.org/ese/pdf/jj_annual.pdf.
[16] Office of Program Policy Analysis and Government Accountability, *Youth Entering the State's Juvenile Justice Program Have Substantial Educational Deficits; Available Data is Insufficient to Assess Learning Gains of Students*, Report No. 10-07, at 8 (Jan. 2010), *available at* www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1007rpt.pdf.
[17] Section 985.632, F.S.
[18] Section 1003.52(15)(a), F.S.
[19] Florida Department of Education, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs*, Annual Report 2009-2010 (2011), *available at*, www.fldoe.org/ese/pdf/jj_annual.pdf.
[20] Section 1003.52(15)(a), F.S.

Transition Plan and Reentry Plan

Currently, an individual transition plan is developed for each student entering a DJJ commitment, day treatment, early delinquency intervention, or detention program.[21] The transition plan is based on the student's post-placement goals that are developed cooperatively with the student, his or her parents, school district and or contracted provider personnel, and the DJJ program staff. Re-entry counselors, probation officers, and personnel from the student's "home" school district are involved in the transition planning to the extent practicable.[22] The transition plan also includes a student's academic record, including each course completed by the student according to procedures in the State Course Code Directory, career re-entry goals maintained by the school district, and recommended educational placement. An exit plan is also conducted for each student. A copy of the academic records, student assessment, individual academic plan, work and project samples, and the transition plan is included in the discharge packet when the student exits a DJJ facility.[23]

Teachers in Juvenile Justice Programs

District school boards must recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs. Students in juvenile justice programs must be provided a wide range of educational programs and opportunities including textbooks, technology, instructional support, and other resources available to students in public schools. Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program must be selected by the district school board in consultation with the director of the juvenile justice facility. Educational programs in juvenile justice facilities must have access to the substitute teacher pool utilized by the district school board.[24]

III. Effect of Proposed Changes:

Multiagency Plan for Career Education

The bill expands the requirement of the plan to address all educational programs not just in commitment facilities. The plan must:

- Include provisions for eliminating barriers to increasing occupation-specific job training and high school equivalency examination preparation opportunities.
- Evaluate the effect that students' mobility between juvenile justice education programs and school districts has on the students' educational outcomes and whether the continuity of the students' education can be better addressed through virtual education.

The bill also revises implementation dates for the DOE and the DJJ to align respective agency reporting documents to the revised plan for career education.

[21] Section 1003.52(13)(i); Rule 6A-6.05281, F.A.C.
[22] Email, Florida Department of Education, Governmental Relation Office (Feb. 8, 2012).
[23] Florida Department of Education, Legislative Bill Analysis for SB 834 (2011).
[24] Section 1003.52(10), F.S.

Educational Services in DJJ Programs

The bill revises the responsibilities of the DOE and DJJ designated coordinators to include:

- Training, collaboration, and coordinating with local workforce boards and youth councils.
- Collecting information on the career education and transition performance of students in juvenile justice programs and reporting the results.
- Implementing a joint accountability, program performance, and school improvement system.

The bill also:

- Requires prevention and day treatment juvenile justice education programs, at a minimum, to provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services.
- Requires residential juvenile justice education programs with a contracted minimum length of stay of nine months to provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications.
- Allows residential programs with contract lengths of stay of less than nine months to provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work related certifications.

The bill defines the educational component of programs with a duration of less than 40 days to include:

- tutorial remediation activities,
- career employability skills,
- education counseling, and
- transition services that prepare students for a return to school, the community, and their home setting based on the students' needs.

The bill requires educational programs to provide instruction based on each student's transition plan, assessed educational needs, and the educational programs available in the school district in which the student will return. Depending on the student's needs, educational programming may consist of remedial courses, academic courses required for grade advancement, career education courses, and high school equivalency examination preparation, or exceptional student education curricula and related services which support the transition goals and reentry and which may lead to completion of the requirements for receipt of a high school diploma or its equivalent.

The bill requires that the DJJ and DOE annual cooperative agreement and plan for juvenile justice education service enhancement include each agency's role regarding educational program accountability, technical assistance, training, and coordination of service.

Accountability and Reporting

The bill requires the DOE to establish and operate, either directly or indirectly through a contract, a mechanism to provide accountability measures that annually assess and evaluate all juvenile justice education programs using student performance data and program performance ratings by type of program.

The DOE, in partnership with the DJJ, must develop a comprehensive accountability and program improvement process. The accountability and program improvement process must be based on student performance measures by type of program and must rate education program performance. The accountability system must identify and recognize high-performing education programs.

The DOE, in partnership with the DJJ, must identify low-performing programs. Low-performing education programs must receive an onsite program evaluation from the DJJ. Identification of education programs needing school improvement, technical assistance, or reassignment of the program must be based, in part on the results of the program evaluation. Through a corrective action process, low-performing programs must demonstrate improvement or the program must be reassigned to the district or another provider.

The DJJ must:

- Provide cost and effectiveness information on programs and program activities in order to compare, improve, or eliminate a program or program activity if necessary.
- Provide program and program activity cost and effectiveness data to the Legislature in order for resources to be allocated for achieving desired performance outcomes.
- Provide information to the public concerning program and program activity cost and effectiveness.
- Implement a system of accountability in order to provide the best and most appropriate program and activities to meet client needs.
- Continue to improve service delivery.

The DJJ, in consultation with the DOE, must publish by March 1 of each year a report on program costs and effectiveness. The report must include uniform cost data for each program operated by the DJJ and by providers under contract with the DJJ. The DOE is required to provide cost data on each education program operated by a school district or a provider under contract with a school district. The report must also include data on student learning gains, as provided by the DOE, for all juvenile justice education programs; educational performance information, developing effective education programs, cost-effectiveness, and recommendations for modification or elimination of programs or program activities.

The DOE, in consultation with the DJJ, district school boards, and providers must establish by rule:

- Objective and measurable student performance measures to evaluate a student's educational progress while participating in a prevention, day treatment, or residential program. The student performance measures must be based on appropriate outcomes for all students in

juvenile justice programs, taking into consideration the student's length of stay in the program. Performance measures must include outcomes that relate to student achievement of career education goals, acquisition of employability skills, receipt of a high school diploma, grade advancement, and learning gains.
- A performance rating system to be used by the DOE to evaluate the delivery of educational services within each of the juvenile justice education programs. The performance rating system must be primarily based upon data regarding student performance as described above.
- The timeframes, procedures, and resources to be used to improve a low-rated educational program or to terminate or reassign the program.

The bill requires that education program performance results, including the identification of high and low-performing programs and aggregated student performance results, be included in the DOE and DJJ annual report on the progress toward developing effective educational programs.

The DOE, in collaboration with the DJJ, must monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs. The report must include, at a minimum, the number and percentage of students:

- Returning to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs.
- Receiving a standard high school diploma or high school equivalency diploma.
- Receiving industry certification.
- Receiving occupational completion points.
- Enrolling in a postsecondary educational institution.
- Completing a juvenile justice education program without reoffending.
- Reoffending within one year after completing a day treatment or residential commitment program.
- Remaining employed one year after completion of a day treatment or residential commitment program.

The results of the educational performance report must be included in the program costs and effectiveness report.

Transition Plan and Reentry Plan

The bill requires a transition plan to include, at a minimum:

- Services and interventions that address the student's assessed educational needs and postrelease education plans.
- Services to be provided during the program stay and services to be implemented upon release, including but not limited to, continuing education in secondary, career and technical programs, postsecondary education, or employment, based on the student's needs.
- Specific monitoring responsibilities to determine whether the individualized transition plan is being implemented and the student is provided access to support services that will sustain the student's success, coordinated by individuals who are responsible for reintegration.

The DOE and the DJJ must provide oversight and guidance to school districts, education providers, and reentry personnel on how to implement effective educational transition planning and services. The bill also requires upon a student's return from a program, school districts to consider the individual needs and circumstances of the student and the transition plan recommendations when reenrolling a student in a public school. A local school district may not maintain a standardized policy for all students returning from a juvenile justice program, but place students based on their needs and their performance in the program.

The bill requires that representatives from the workforce and the one stop center where the student will return participate as members of the local DJJ reentry team.

Teachers in Juvenile Justice Programs

Under the bill, State Board of Education (SBE) rules for qualification of instructional staff must include career education instructors, standardized across the state, and be based on state certification, local school district approval, and industry recognized credentials or industry training. The bill also requires the establishment of procedures for the use of noncertified instructional personnel who possess expert knowledge or experience in their fields of instruction.

The bill also allows the Secretary of the DJJ or the director of a juvenile justice program to request that the performance of a teacher assigned by the district to a juvenile justice education program be reviewed by the district and that the teacher be reassigned based upon an evaluation conducted pursuant to s. 1012.34, F.S., for inappropriate behavior.

Public Educational Services – District School Boards

The bill clarifies the responsibilities of district school boards to include:

- Notifying students in juvenile justice education programs who reach the age of 16 years of the law regarding compulsory school attendance and make available the option of enrolling in a program to attain a high school diploma by taking the GED exam before release from the program.
- Responding to requests for student education records received from another district school board or a juvenile justice education program within 5 working days after receiving the request.
- Providing access to courses offered through Florida Virtual School, virtual instruction programs, and school district virtual courses. School districts and providers may enter into cooperative agreements for the provision of curriculum associated with school district virtual courses to enable providers to offer such courses.
- Prohibiting juvenile justice education programs from being charged FTE for virtual courses accessed through the school district which are for credit recovery or are offered to youth beyond the 300 minute daily requirement of instruction.
- Completing the assessment process.
- Monitoring compliance with contracts for education programs for students in juvenile justice prevention, day treatment, residential, and detention programs.

The bill requires the DOE in partnership with the DJJ, district school boards, and providers to:

- Develop and implement requirements for contracts and cooperative agreements regarding the delivery of appropriate education services to students in DJJ programs.
- Maintain standardized procedures for securing the student's records. The records must include, but not be limited to the student's progress monitoring plan and transition plan.

The bill also requires the DOE to assist juvenile justice programs with becoming high school equivalency examination centers.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 18, 2013:

- Deletes the funding provisions in the bill.
- Requires the DJJ, in consultation with DOE, to publish by March 1 of each year a report on program costs and effectiveness, educational performance of students, and recommendations for modification or elimination of programs or program activities.

B. Amendments:

None.

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

742608

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 985.622, Florida Statutes, is amended to read:

985.622 Multiagency plan for career ~~vocational~~ education.—

(1) The Department of Juvenile Justice and the Department of Education shall, in consultation with the statewide Workforce Development Youth Council, school districts, providers, and others, jointly develop a multiagency plan for career ~~vocational~~ education that establishes the curriculum, goals, and outcome

742608

13 measures for career ~~vocational~~ programs in juvenile justice
14 education programs ~~commitment facilities~~. The plan must include:
15 (a) Provisions for maximizing appropriate state and federal
16 funding sources, including funds under the Workforce Investment
17 Act and the Perkins Act.~~;~~
18 (b) Provisions for eliminating barriers to increasing
19 occupation-specific job training and high school equivalency
20 examination preparation opportunities.
21 (c)~~(b)~~ The responsibilities of both departments and all
22 other appropriate entities.~~; and~~
23 (d)~~(c)~~ A detailed implementation schedule.
24 (2) The plan must define career ~~vocational~~ programming that
25 is appropriate based upon:
26 (a) The age and assessed educational abilities and goals of
27 the student ~~youth~~ to be served; and
28 (b) The typical length of stay and custody characteristics
29 at the juvenile justice education ~~commitment~~ program to which
30 each student ~~youth~~ is assigned.
31 (3) The plan must include a definition of career ~~vocational~~
32 programming that includes the following classifications of
33 juvenile justice education programs ~~commitment facilities~~ that
34 will offer career ~~vocational~~ programming by one of the following
35 types:
36 (a) *Type A.*—Programs that teach personal accountability
37 skills and behaviors that are appropriate for students ~~youth~~ in
38 all age groups and ability levels and that lead to work habits
39 that help maintain employment and living standards.
40 (b) *Type B.*—Programs that include Type A program content
41 and an orientation to the broad scope of career choices, based

742608

42 upon personal abilities, aptitudes, and interests. Exploring and
43 gaining knowledge of occupation options and the level of effort
44 required to achieve them are essential prerequisites to skill
45 training.
46 (c) *Type C.*—Programs that include Type A program content
47 and the career ~~vocational~~ competencies or the prerequisites
48 needed for entry into a specific occupation.
49 (4) The plan must also address strategies to facilitate
50 involvement of business and industry in the design, delivery,
51 and evaluation of career ~~vocational~~ programming in juvenile
52 justice education ~~commitment facilities and conditional release~~
53 programs, including apprenticeship and work experience programs,
54 mentoring and job shadowing, and other strategies that lead to
55 postrelease employment. Incentives for business involvement,
56 such as tax breaks, bonding, and liability limits should be
57 investigated, implemented where appropriate, or recommended to
58 the Legislature for consideration.
59 (5) The plan must also evaluate the effect of students'
60 mobility between juvenile justice education programs and school
61 districts on the students' educational outcomes and whether the
62 continuity of the students' education can be better addressed
63 through virtual education.
64 (6) ~~(5)~~ The Department of Juvenile Justice and the
65 Department of Education shall each align its respective agency
66 policies, practices, technical manuals, contracts, quality-
67 assurance standards, performance-based-budgeting measures, and
68 outcome measures with the plan in juvenile justice education
69 programs ~~commitment facilities~~ by July 31, 2014 ~~2001~~. Each
70 agency shall provide a report on the implementation of this

742608

71 section to the Governor, the President of the Senate, and the
72 Speaker of the House of Representatives by August 31, 2014 ~~2001~~.
73 (7) ~~(6)~~ All provider contracts executed by the Department of
74 Juvenile Justice or the school districts after January 1, 2015
75 ~~2002~~, must be aligned with the plan.
76 (8) ~~(7)~~ The planning and execution of quality assurance
77 reviews conducted by the Department of Education or the
78 Department of Juvenile Justice after August 1, 2014 ~~2002~~, must
79 be aligned with the plan.
80 (9) ~~(8)~~ Outcome measures reported by the Department of
81 Juvenile Justice and the Department of Education for students
82 ~~youth~~ released on or after January 1, 2015 ~~2002~~, should include
83 outcome measures that conform to the plan.
84 Section 2. Subsections (1) and (3) of section 985.632,
85 Florida Statutes, are amended to read:
86 985.632 Quality assurance and cost-effectiveness.—
87 (1) The department shall:
88 (a) Provide cost and effectiveness information on programs
89 and program activities in order to compare, improve, or
90 eliminate a program or program activity if necessary.
91 (b) Provide program and program activity cost and
92 effectiveness data to the Legislature in order for resources to
93 be allocated for achieving desired performance outcomes.
94 (c) Provide information to the public concerning program
95 and program activity cost and effectiveness.
96 (d) Implement a system of accountability in order to
97 provide the best and most appropriate programs and activities to
98 meet client needs.
99 (e) Continue to improve service delivery. ~~It is the intent~~

742608

100 ~~of the Legislature that the department:~~
101 ~~(a) Ensure that information be provided to decisionmakers~~
102 ~~in a timely manner so that resources are allocated to programs~~
103 ~~of the department which achieve desired performance levels.~~
104 ~~(b) Provide information about the cost of such programs and~~
105 ~~their differential effectiveness so that the quality of such~~
106 ~~programs can be compared and improvements made continually.~~
107 ~~(c) Provide information to aid in developing related policy~~
108 ~~issues and concerns.~~
109 ~~(d) Provide information to the public about the~~
110 ~~effectiveness of such programs in meeting established goals and~~
111 ~~objectives.~~
112 ~~(e) Provide a basis for a system of accountability so that~~
113 ~~each client is afforded the best programs to meet his or her~~
114 ~~needs.~~
115 ~~(f) Improve service delivery to clients.~~
116 ~~(g) Modify or eliminate activities that are not effective.~~
117 (3) By March 1st of each year, the department, in
118 consultation with the Department of Education, shall publish a
119 report on program costs and effectiveness. The report shall
120 include uniform cost data for each program operated by the
121 department or by providers under contract with the department.
122 The Department of Education shall provide the cost data on each
123 education program operated by a school district or a provider
124 under contract with a school district. Cost data shall be
125 formatted and presented in a manner approved by the Legislature.
126 The report shall also include data on student learning gains, as
127 provided by the Department of Education, for all juvenile
128 justice education programs as required under s. 1003.52(3)(b),

742608

129 information required under s. 1003.52(17) and (21), the cost-
130 effectiveness of each program offered, and recommendations for
131 modification or elimination of programs or program activities
132 ~~The department shall annually collect and report cost data for~~
133 ~~every program operated or contracted by the department~~. ~~The cost~~
134 ~~data shall conform to a format approved by the department and~~
135 ~~the Legislature. Uniform cost data shall be reported and~~
136 ~~collected for state-operated and contracted programs so that~~
137 ~~comparisons can be made among programs. The department shall~~
138 ~~ensure that there is accurate cost accounting for state-operated~~
139 ~~services including market-equivalent rent and other shared cost.~~
140 ~~The cost of the educational program provided to a residential~~
141 ~~facility shall be reported and included in the cost of a~~
142 ~~program. The department shall submit an annual cost report to~~
143 ~~the President of the Senate, the Speaker of the House of~~
144 ~~Representatives, the Minority Leader of each house of the~~
145 ~~Legislature, the appropriate substantive and fiscal committees~~
146 ~~of each house of the Legislature, and the Governor, no later~~
147 ~~than December 1 of each year. Cost-benefit analysis for~~
148 ~~educational programs will be developed and implemented in~~
149 ~~collaboration with and in cooperation with the Department of~~
150 ~~Education, local providers, and local school districts. Cost~~
151 ~~data for the report shall include data collected by the~~
152 ~~Department of Education for the purposes of preparing the annual~~
153 ~~report required by s. 1003.52(19).~~
154 Section 3. Section 1001.31, Florida Statutes, is amended to
155 read:
156 1001.31 Scope of district system.—A district school system
157 shall include all public schools, classes, and courses of

742608

158 instruction and all services and activities directly related to
159 education in that district which are under the direction of the
160 district school officials. A district school system may also
161 include alternative site schools for disruptive or violent
162 students ~~youth~~. Such schools for disruptive or violent students
163 ~~youth~~ may be funded by each district or provided through
164 cooperative programs administered by a consortium of school
165 districts, private providers, state and local law enforcement
166 agencies, and the Department of Juvenile Justice. Pursuant to
167 cooperative agreement, a district school system shall provide
168 instructional personnel at juvenile justice facilities ~~of 50 or~~
169 ~~more beds or slots~~ with access to the district school system
170 database for the purpose of accessing student academic,
171 immunization, and registration records for students assigned to
172 the programs. Such access shall be in the same manner as
173 provided to other schools in the district.
174 Section 4. Section 1003.51, Florida Statutes, is amended to
175 read:
176 1003.51 Other public educational services.—
177 (1) The general control of other public educational
178 services shall be vested in the State Board of Education except
179 as provided in this section ~~herein~~. The State Board of Education
180 shall, at the request of the Department of Children and Families
181 ~~Family Services~~ and the Department of Juvenile Justice, advise
182 as to standards and requirements relating to education to be met
183 in all state schools or institutions under their control which
184 provide educational programs. The Department of Education shall
185 provide supervisory services for the educational programs of all
186 such schools or institutions. The direct control of any of these

742608

187 services provided as part of the district program of education
188 shall rest with the district school board. These services shall
189 be supported out of state, district, federal, or other ~~lawful~~
190 funds, depending on the requirements of the services being
191 supported.
192 (2) The State Board of Education shall adopt rules ~~and~~
193 ~~maintain an administrative rule~~ articulating expectations for
194 effective education programs for students ~~youth~~ in Department of
195 Juvenile Justice programs, including, but not limited to,
196 education programs in juvenile justice prevention, day
197 treatment, residential, ~~commitment~~ and detention facilities. The
198 rules ~~rule~~ shall establish ~~articulate~~ policies and standards for
199 education programs for students ~~youth~~ in Department of Juvenile
200 Justice programs and shall include the following:
201 (a) The interagency collaborative process needed to ensure
202 effective programs with measurable results.
203 (b) The responsibilities of the Department of Education,
204 the Department of Juvenile Justice, Workforce Florida, Inc.,
205 district school boards, and providers of education services to
206 students ~~youth~~ in Department of Juvenile Justice programs.
207 (c) Academic expectations.
208 (d) Career and technical expectations.
209 (e) Education transition planning and services.
210 (f) ~~(d)~~ Service delivery options available to district
211 school boards, including direct service and contracting.
212 (g) ~~(e)~~ Assessment procedures, which:
213 1. Include appropriate academic and career assessments
214 administered at program entry and exit that are selected by the
215 Department of Education in partnership with representatives from

742608

216 the Department of Juvenile Justice, district school boards, and
217 education providers.
218 ~~2. Require district school boards to be responsible for~~
219 ~~ensuring the completion of the assessment process.~~
220 ~~3. Require assessments for students in detention who will~~
221 ~~move on to commitment facilities, to be designed to create the~~
222 ~~foundation for developing the student's education program in the~~
223 ~~assigned commitment facility.~~
224 2.~~4.~~ Require assessments of students in programs ~~sent~~
225 ~~directly to commitment facilities~~ to be completed within the
226 first 10 school days after ~~of~~ the student's entry into the
227 program ~~commitment~~.
228
229 The results of these assessments, together with a portfolio
230 depicting the student's academic and career accomplishments,
231 shall be included in the discharge packet ~~package~~ assembled for
232 each student ~~youth~~.
233 (h)~~(f)~~ Recommended instructional programs, including, but
234 not limited to, secondary education, high school equivalency
235 examination preparation, postsecondary education, career
236 training, and job preparation.
237 (i)~~(g)~~ Funding requirements, which shall include the
238 requirement that at least 90 percent of the FEFP funds generated
239 by students in Department of Juvenile Justice programs or in an
240 education program for juveniles under s. 985.19 be spent on
241 instructional costs for those students. One hundred percent of
242 the formula-based categorical funds generated by students in
243 Department of Juvenile Justice programs must be spent on
244 appropriate categoricals such as instructional materials and

742608

245 public school technology for those students.
246 (j) ~~(h)~~ Qualifications of instructional staff, procedures
247 for the selection of instructional staff, and procedures for ~~to~~
248 ~~ensure~~ consistent instruction and qualified staff year round.
249 Qualifications shall include those for career education
250 instructors, standardized across the state, and shall be based
251 on state certification, local school district approval, and
252 industry-recognized credentials or industry training. Procedures
253 for the use of noncertified instructional personnel who possess
254 expert knowledge or experience in their fields of instruction
255 shall be established.
256 (k) ~~(i)~~ Transition services, including the roles and
257 responsibilities of appropriate personnel in the juvenile
258 justice education program, the school district where the student
259 will reenter ~~districts~~, provider organizations, and the
260 Department of Juvenile Justice.
261 (l) ~~(j)~~ Procedures and timeframe for transfer of education
262 records when a student ~~youth~~ enters and leaves a Department of
263 Juvenile Justice education program ~~facility~~.
264 (m) ~~(k)~~ The requirement that each district school board
265 maintain an academic transcript for each student enrolled in a
266 juvenile justice education program ~~facility~~ that delineates each
267 course completed by the student as provided by the State Course
268 Code Directory.
269 (n) ~~(l)~~ The requirement that each district school board make
270 available and transmit a copy of a student's transcript in the
271 discharge packet when the student exits a juvenile justice
272 education program ~~facility~~.
273 (o) ~~(m)~~ Contract requirements.

742608

274 (p) ~~(n)~~ Performance expectations for providers and district
275 school boards, including student performance measures by type of
276 program, education program performance ratings, school
277 improvement, and corrective action plans for low-performing
278 programs ~~the provision of a progress monitoring plan as required~~
279 ~~in s. 1008.25~~.
280 (q) ~~(o)~~ The role and responsibility of the district school
281 board in securing workforce development funds.
282 (r) ~~(p)~~ A series of graduated sanctions for district school
283 boards whose educational programs in Department of Juvenile
284 Justice programs ~~facilities~~ are considered to be unsatisfactory
285 and for instances in which district school boards fail to meet
286 standards prescribed by law, rule, or State Board of Education
287 policy. These sanctions shall include the option of requiring a
288 district school board to contract with a provider or another
289 district school board if the educational program at the
290 Department of Juvenile Justice program is performing below
291 minimum standards ~~facility has failed a quality assurance review~~
292 and, after 6 months, is still performing below minimum
293 standards.
294 (s) Curriculum, guidance counseling, transition, and
295 education services expectations, including curriculum
296 flexibility for detention centers operated by the Department of
297 Juvenile Justice.
298 (t) ~~(q)~~ Other aspects of program operations.
299 (3) The Department of Education in partnership with the
300 Department of Juvenile Justice, the district school boards, and
301 providers shall:
302 (a) Develop and implement requirements for contracts and

742608

303 cooperative agreements regarding ~~Maintain model contracts for~~
304 the delivery of appropriate education services to students ~~youth~~
305 in Department of Juvenile Justice programs ~~to be used for the~~
306 ~~development of future contracts~~. The minimum contract
307 requirements shall include, but are not limited to, payment
308 structure and amounts; access to district services; contract
309 management provisions; data reporting requirements, including
310 reporting of full-time equivalent student membership;
311 administration of federal programs such as Title I, exceptional
312 student education, and the Carl D. Perkins Career and Technical
313 Education Act of 2006; and ~~model contracts shall reflect~~ the
314 policy and standards included in subsection (2). ~~The Department~~
315 ~~of Education shall ensure that appropriate district school board~~
316 ~~personnel are trained and held accountable for the management~~
317 ~~and monitoring of contracts for education programs for youth in~~
318 ~~juvenile justice residential and nonresidential facilities.~~
319 (b) Develop and implement ~~Maintain model~~ procedures for
320 transitioning students ~~youth~~ into and out of Department of
321 Juvenile Justice education programs. These procedures shall
322 reflect the policy and standards adopted pursuant to subsection
323 (2).
324 (c) Maintain standardized required content of education
325 records to be included as part of a student's ~~youth's~~ commitment
326 record and procedures for securing the student's records. The
327 education records ~~These requirements shall reflect the policy~~
328 ~~and standards adopted pursuant to subsection (2) and~~ shall
329 include, but not be limited to, the following:
330 1. A copy of the student's individual educational plan.
331 2. A copy of the student's individualized progress

742608

332 monitoring plan.
333 3. A copy of the student's individualized transition plan.
334 4.~~2.~~ Assessment data, including grade level proficiency in
335 reading~~, writing,~~ and mathematics, and performance on tests
336 taken according to s. 1008.22.
337 5.~~3.~~ A copy of the student's permanent cumulative record.
338 6.~~4.~~ A copy of the student's academic transcript.
339 7.~~5.~~ A portfolio reflecting the student's ~~youth's~~ academic
340 and career and technical accomplishments, when age appropriate,
341 while in the Department of Juvenile Justice program.
342 (d) Establish ~~Maintain model procedures for securing the~~
343 ~~education record and~~ the roles and responsibilities of the
344 juvenile probation officer and others involved in the withdrawal
345 of the student from school and assignment to a juvenile justice
346 education program ~~commitment or detention facility~~. ~~District~~
347 ~~school boards shall respond to requests for student education~~
348 ~~records received from another district school board or a~~
349 ~~juvenile justice facility within 5 working days after receiving~~
350 ~~the request.~~
351 (4) Each ~~The Department of Education shall ensure that~~
352 district school board shall: ~~boards~~
353 (a) Notify students in juvenile justice education programs
354 ~~residential or nonresidential facilities~~ who attain the age of
355 16 years of the ~~provisions of~~ law regarding compulsory school
356 attendance and make available the option of enrolling in a
357 program to attain a Florida high school diploma by taking the
358 high school equivalency examination before ~~General Educational~~
359 ~~Development test prior to~~ release from the program ~~facility~~.
360 District school boards or Florida College System institutions,

742608

361 or both, shall ~~waive GED testing fees for youth in Department of~~
362 ~~Juvenile Justice residential programs and shall~~, upon request,
363 designate schools operating for the purpose of providing
364 educational services to students ~~youth~~ in Department of Juvenile
365 Justice programs. The Department of Education shall assist
366 juvenile justice education programs with becoming high school
367 equivalency examination centers ~~as GED testing centers, subject~~
368 ~~to GED testing center requirements. The administrative fees for~~
369 ~~the General Educational Development test required by the~~
370 ~~Department of Education are the responsibility of district~~
371 ~~school boards and may be required of providers by contractual~~
372 ~~agreement~~.
373 (b) Respond to requests for student education records
374 received from another district school board or a juvenile
375 justice education program within 5 working days after receiving
376 the request.
377 (c) Provide access to courses offered pursuant to ss.
378 1002.37, 1002.45, and 1003.498. School districts and providers
379 may enter into cooperative agreements for the provision of
380 curriculum associated with courses offered pursuant to s.
381 1003.498 to enable providers to offer such courses.
382 (d) Complete the assessment process required by subsection
383 (2).
384 (e) Monitor compliance with contracts for education
385 programs for students in juvenile justice prevention, day
386 treatment, residential, and detention programs.
387 (5) The Department of Education shall establish and
388 operate, either directly or indirectly through a contract, a
389 mechanism to provide accountability measures that annually

742608

390 assesses and evaluates all juvenile justice education programs
391 using student performance data and program performance ratings
392 by type of program ~~quality assurance reviews of all juvenile~~
393 ~~justice education programs~~ and shall provide technical
394 assistance and related research to district school boards and
395 juvenile justice education providers ~~on how to establish,~~
396 ~~develop, and operate educational programs that exceed the~~
397 ~~minimum quality assurance standards~~. The Department of
398 Education, with input from the Department of Juvenile Justice,
399 school districts, and education providers, shall develop annual
400 recommendations for system and school improvement.
401 Section 5. Section 1003.52, Florida Statutes, is amended to
402 read:
403 1003.52 Educational services in Department of Juvenile
404 Justice programs.—
405 (1) ~~The Legislature finds that education is the single most~~
406 ~~important factor in the rehabilitation of adjudicated delinquent~~
407 ~~youth in the custody of Department of Juvenile Justice programs.~~
408 ~~It is the goal of the Legislature that youth in the juvenile~~
409 ~~justice system continue to be allowed the opportunity to obtain~~
410 ~~a high quality education.~~ The Department of Education shall
411 serve as the lead agency for juvenile justice education
412 programs, curriculum, support services, and resources. To this
413 end, the Department of Education and the Department of Juvenile
414 Justice shall each designate a Coordinator for Juvenile Justice
415 Education Programs to serve as the point of contact for
416 resolving issues not addressed by district school boards and to
417 provide each department's participation in the following
418 activities:

742608

419 (a) Training, collaborating, and coordinating with ~~the~~
420 ~~Department of Juvenile Justice,~~ district school boards, local
421 workforce boards and youth councils, educational contract
422 providers, and juvenile justice providers, whether state
423 operated or contracted.
424 (b) Collecting information on the academic, career
425 education, and transition performance of students in juvenile
426 justice programs and reporting on the results.
427 (c) Developing academic and career education protocols that
428 provide guidance to district school boards and juvenile justice
429 education providers in all aspects of education programming,
430 including records transfer and transition.
431 (d) Implementing a joint accountability, program
432 performance, and program improvement process ~~Prescribing the~~
433 ~~roles of program personnel and interdepartmental district school~~
434 ~~board or provider collaboration strategies~~.
435
436 Annually, a cooperative agreement and plan for juvenile justice
437 education service enhancement shall be developed between the
438 Department of Juvenile Justice and the Department of Education
439 and submitted to the Secretary of Juvenile Justice and the
440 Commissioner of Education by June 30. The plan shall include, at
441 a minimum, each agency's role regarding educational program
442 accountability, technical assistance, training, and coordination
443 of services.
444 (2) Students participating in Department of Juvenile
445 Justice programs pursuant to chapter 985 which are sponsored by
446 a community-based agency or are operated or contracted for by
447 the Department of Juvenile Justice shall receive education

742608

448 ~~educational~~ programs according to rules of the State Board of
449 Education. These students shall be eligible for services
450 afforded to students enrolled in programs pursuant to s. 1003.53
451 and all corresponding State Board of Education rules.
452 (3) The district school board of the county in which the
453 juvenile justice education prevention, day treatment,
454 residential, or detention program ~~residential or nonresidential~~
455 ~~care facility or juvenile assessment facility~~ is located shall
456 provide or contract for appropriate educational assessments and
457 an appropriate program of instruction and special education
458 services.
459 (a) The district school board shall make provisions for
460 each student to participate in basic, career education, and
461 exceptional student programs as appropriate. Students served in
462 Department of Juvenile Justice programs shall have access to the
463 appropriate courses and instruction to prepare them for the high
464 school equivalency examination ~~GED test~~. Students participating
465 in high school equivalency examination ~~GED~~ preparation programs
466 shall be funded at the basic program cost factor for Department
467 of Juvenile Justice programs in the Florida Education Finance
468 Program. Each program shall be conducted according to applicable
469 law providing for the operation of public schools and rules of
470 the State Board of Education. School districts shall provide the
471 high school equivalency examination ~~GED~~ exit option for all
472 juvenile justice programs.
473 (b) ~~By October 1, 2004,~~ The Department of Education, with
474 the assistance of the school districts and juvenile justice
475 education providers, shall select a common student assessment
476 instrument and protocol for measuring student learning gains and

742608

477 student progression while a student is in a juvenile justice
478 education program. ~~The assessment instrument and protocol must~~
479 ~~be implemented in all juvenile justice education programs in~~
480 ~~this state by January 1, 2005.~~
481 (4) Educational services shall be provided at times of the
482 day most appropriate for the juvenile justice program. School
483 programming in juvenile justice detention, prevention, day
484 treatment, and residential ~~commitment, and rehabilitation~~
485 programs shall be made available by the local school district
486 during the juvenile justice school year, as provided ~~defined~~ in
487 s. 1003.01(11). In addition, students in juvenile justice
488 education programs shall have access to courses offered pursuant
489 to ss. 1002.37, 1002.45, and 1003.498 ~~Florida Virtual School~~
490 ~~courses~~. The Department of Education and the school districts
491 shall adopt policies necessary to provide ~~ensure~~ such access.
492 (5) The educational program shall provide instruction based
493 on each student's individualized transition plan, assessed
494 educational needs, and the education programs available in the
495 school district to which the student will return. Depending on
496 the student's needs, educational programming may consist of
497 remedial courses, ~~consist of appropriate basic~~ academic courses
498 required for grade advancement, career education courses, high
499 school equivalency examination preparation, or exceptional
500 student education curricula and related services which support
501 the transition ~~treatment~~ goals and reentry and which may lead to
502 completion of the requirements for receipt of a high school
503 diploma or its equivalent. Prevention and day treatment juvenile
504 justice education programs, at a minimum, shall provide career
505 readiness and exploration opportunities as well as truancy and

742608

506 dropout prevention intervention services. Residential juvenile
507 justice education programs with a contracted minimum length of
508 stay of 9 months shall provide career education courses that
509 lead to preapprentice certifications, industry certifications,
510 occupational completion points, or work-related certifications.
511 Residential programs with contracted lengths of stay of less
512 than 9 months may provide career education courses that lead to
513 preapprentice certifications, industry certifications,
514 occupational completion points, or work-related certifications.
515 If the duration of a program is less than 40 days, the
516 educational component may be limited to tutorial remediation
517 activities, ~~and~~ career employability skills instruction,
518 education counseling, and transition services that prepare
519 students for a return to school, the community, and their home
520 settings based on the students' needs.
521 (6) Participation in the program by students of compulsory
522 school-attendance age as provided for in s. 1003.21 shall be
523 mandatory. All students of noncompulsory school-attendance age
524 who have not received a high school diploma or its equivalent
525 shall participate in the educational program, unless the student
526 files a formal declaration of his or her intent to terminate
527 school enrollment as described in s. 1003.21 and is afforded the
528 opportunity to take the general educational development test and
529 attain a Florida high school diploma before ~~prior to~~ release
530 from a juvenile justice education program ~~facility~~. A student
531 ~~youth~~ who has received a high school diploma or its equivalent
532 and is not employed shall participate in workforce development
533 or other career ~~or technical~~ education or Florida College System
534 institution or university courses while in the program, subject

742608

535 to available funding.
536 (7) An individualized ~~A~~ progress monitoring plan shall be
537 developed for all students not classified as exceptional
538 education students upon entry into a juvenile justice education
539 program and upon reentry into the school district ~~who score~~
540 ~~below the level specified in district school board policy in~~
541 ~~reading, writing, and mathematics or below the level specified~~
542 ~~by the Commissioner of Education on statewide assessments as~~
543 ~~required by s. 1008.25~~. These plans shall address academic,
544 literacy, and career and technical ~~life~~ skills and shall include
545 provisions for intensive remedial instruction in the areas of
546 weakness.
547 (8) Each district school board shall maintain an academic
548 record for each student enrolled in a juvenile justice program
549 ~~facility~~ as prescribed by s. 1003.51. Such record shall
550 delineate each course completed by the student according to
551 procedures in the State Course Code Directory. The district
552 school board shall include a copy of a student's academic record
553 in the discharge packet when the student exits the program
554 ~~facility~~.
555 (9) Each ~~The Department of Education shall ensure that all~~
556 district school board shall ~~boards~~ make provisions for high
557 school level students ~~youth~~ to earn credits toward high school
558 graduation while in residential and nonresidential juvenile
559 justice programs ~~facilities~~. Provisions must be made for the
560 transfer of credits and partial credits earned.
561 (10) School districts and juvenile justice education
562 providers shall develop individualized transition plans during
563 the course of a student's stay in a juvenile justice education

742608

564 program to coordinate academic, career and technical, and
565 secondary and postsecondary services that assist the student in
566 successful community reintegration upon release. Development of
567 the transition plan shall be a collaboration of the personnel in
568 the juvenile justice education program, reentry personnel,
569 personnel from the school district to which the student will
570 return, the student, the student's family, and the Department of
571 Juvenile Justice personnel for committed students.
572 (a) Transition planning must begin upon a student's
573 placement in the program. The transition plan must include, at a
574 minimum:
575 1. Services and interventions that address the student's
576 assessed educational needs and postrelease education plans.
577 2. Services to be provided during the program stay and
578 services to be implemented upon release, including, but not
579 limited to, continuing education in secondary school, career and
580 technical programs, postsecondary education, or employment,
581 based on the student's needs.
582 3. Specific monitoring responsibilities of individuals who
583 are responsible for reintegration to determine whether the
584 individualized transition plan is being implemented and if the
585 student is being provided access to support services that will
586 sustain the student's success. Individuals who are responsible
587 for reintegration shall coordinate such activities.
588 (b) For the purpose of transition planning and reentry
589 services, representatives from the school district and the one
590 stop center where the student will return shall participate as
591 members of the local Department of Juvenile Justice reentry
592 teams. The school district, upon return of a student from a

742608

593 juvenile justice education program, must consider the individual
594 needs and circumstances of the student and the transition plan
595 recommendations when reenrolling a student in a public school. A
596 local school district may not maintain a standardized policy for
597 all students returning from a juvenile justice program but shall
598 place students based on their needs and their performance in the
599 program.
600 (c) The Department of Education and the Department of
601 Juvenile Justice shall provide oversight and guidance to school
602 districts, education providers, and reentry personnel on how to
603 implement effective educational transition planning and
604 services.
605 (11) ~~(10)~~ The district school board shall recruit and train
606 teachers who are interested, qualified, or experienced in
607 educating students in juvenile justice programs. Students in
608 juvenile justice programs shall be provided a wide range of
609 education ~~educational~~ programs and opportunities, including
610 textbooks, access to technology, instructional support, and
611 ~~other~~ resources commensurate with resources provided ~~available~~
612 to students in public schools If the district school board
613 operates a juvenile justice education program at a juvenile
614 justice facility, the district school board, in consultation
615 with the director of the juvenile justice facility, shall select
616 the instructional personnel assigned to that program. The
617 Secretary of Juvenile Justice or the director of a juvenile
618 justice program may request that the performance of a teacher
619 assigned by the district to a juvenile justice education program
620 be reviewed by the district and that the teacher be reassigned
621 based upon an evaluation conducted pursuant to s. 1012.34 or for

742608

622 inappropriate behavior ~~Teachers assigned to educational programs~~
623 ~~in juvenile justice settings in which the district school board~~
624 ~~operates the educational program shall be selected by the~~
625 ~~district school board in consultation with the director of the~~
626 ~~juvenile justice facility~~. ~~Educational programs in~~ Juvenile
627 justice education programs ~~facilities~~ shall have access to the
628 substitute teacher pool used ~~utilized~~ by the district school
629 board.
630 (12) ~~(11)~~ District school boards may contract with a private
631 provider for the provision of education ~~educational~~ programs to
632 students ~~youths~~ placed with the Department of Juvenile Justice
633 and shall generate local, state, and federal funding, including
634 funding through the Florida Education Finance Program for such
635 students. The district school board's planning and budgeting
636 process shall include the needs of Department of Juvenile
637 Justice programs in the district school board's plan for
638 expenditures for state categorical and federal funds.
639 (13) ~~(12)~~(a) Funding for eligible students enrolled in
640 juvenile justice education programs shall be provided through
641 the Florida Education Finance Program as provided in s. 1011.62
642 and the General Appropriations Act. Funding shall include, at a
643 minimum:
644 1. Weighted program funding or the basic amount for current
645 operation multiplied by the district cost differential as
646 provided in s. 1011.62(1)(s) ~~1011.62(1)(r)~~ and (2);
647 2. The supplemental allocation for juvenile justice
648 education as provided in s. 1011.62(10);
649 3. A proportionate share of the district's exceptional
650 student education guaranteed allocation, the supplemental

742608

651 academic instruction allocation, and the instructional materials
652 allocation;
653 4. An amount equivalent to the proportionate share of the
654 state average potential discretionary local effort for
655 operations, which shall be determined as follows:
656 a. If the district levies the maximum discretionary local
657 effort and the district’s discretionary local effort per FTE is
658 less than the state average potential discretionary local effort
659 per FTE, the proportionate share shall include both the
660 discretionary local effort and the compression supplement per
661 FTE. If the district’s discretionary local effort per FTE is
662 greater than the state average per FTE, the proportionate share
663 shall be equal to the state average; or
664 b. If the district does not levy the maximum discretionary
665 local effort and the district’s actual discretionary local
666 effort per FTE is less than the state average potential
667 discretionary local effort per FTE, the proportionate share
668 shall be equal to the district’s actual discretionary local
669 effort per FTE. If the district’s actual discretionary local
670 effort per FTE is greater than the state average per FTE, the
671 proportionate share shall be equal to the state average
672 potential local effort per FTE; and
673 5. A proportionate share of the district’s proration to
674 funds available, if necessary.
675 (b) Juvenile justice education ~~educational~~ programs to
676 receive the appropriate FEFP funding for Department of Juvenile
677 Justice programs shall include those operated through a contract
678 with the Department of Juvenile Justice ~~and which are under~~
679 ~~purview of the Department of Juvenile Justice quality assurance~~

742608

680 ~~standards for education~~.
681 (c) Consistent with the rules of the State Board of
682 Education, district school boards are required to request an
683 alternative FTE survey for Department of Juvenile Justice
684 programs experiencing fluctuations in student enrollment.
685 (d) FTE count periods shall be prescribed in rules of the
686 State Board of Education and shall be the same for programs of
687 the Department of Juvenile Justice as for other public school
688 programs. The summer school period for students in Department of
689 Juvenile Justice programs shall begin on the day immediately
690 following the end of the regular school year and end on the day
691 immediately preceding the subsequent regular school year.
692 Students shall be funded for no more than 25 hours per week of
693 direct instruction.
694 (e) Each juvenile justice education program must receive
695 all federal funds for which the program is eligible.
696 (14) ~~(13)~~ Each district school board shall negotiate a
697 cooperative agreement with the Department of Juvenile Justice on
698 the delivery of educational services to students ~~youths~~ under
699 the jurisdiction of the Department of Juvenile Justice. Such
700 agreement must include, but is not limited to:
701 (a) Roles and responsibilities of each agency, including
702 the roles and responsibilities of contract providers.
703 (b) Administrative issues including procedures for sharing
704 information.
705 (c) Allocation of resources including maximization of
706 local, state, and federal funding.
707 (d) Procedures for educational evaluation for educational
708 exceptionalities and special needs.

742608

709 (e) Curriculum and delivery of instruction.
710 (f) Classroom management procedures and attendance
711 policies.
712 (g) Procedures for provision of qualified instructional
713 personnel, whether supplied by the district school board or
714 provided under contract by the provider, and for performance of
715 duties while in a juvenile justice setting.
716 (h) Provisions for improving skills in teaching and working
717 with students referred to juvenile justice programs ~~delinquents~~.
718 (i) Transition plans for students moving into and out of
719 juvenile programs ~~facilities~~.
720 (j) Procedures and timelines for the timely documentation
721 of credits earned and transfer of student records.
722 (k) Methods and procedures for dispute resolution.
723 (l) Provisions for ensuring the safety of education
724 personnel and support for the agreed-upon education program.
725 (m) Strategies for correcting any deficiencies found
726 through the accountability and evaluation system and student
727 performance measures ~~quality assurance process~~.
728 (15) ~~(14)~~ Nothing in this section or in a cooperative
729 agreement requires ~~shall be construed to require~~ the district
730 school board to provide more services than can be supported by
731 the funds generated by students in the juvenile justice
732 programs.
733 (16) ~~(15)(a)~~ The Department of Education, in consultation
734 with the Department of Juvenile Justice, district school boards,
735 and providers, shall adopt rules establishing: ~~establish~~
736 (a) Objective ~~and measurable~~ student performance measures
737 to evaluate a student's educational progress while participating

742608

738 in a prevention, day treatment, or residential program. The
739 student performance measures must be based on appropriate
740 outcomes for all students in juvenile justice education
741 programs, taking into consideration the student's length of stay
742 in the program. Performance measures shall include outcomes that
743 relate to student achievement of career education goals,
744 acquisition of employability skills, receipt of a high school
745 diploma, and grade advancement.
746 (b) A performance rating system to be used by the
747 Department of Education to evaluate ~~quality assurance standards~~
748 ~~for~~ the delivery of educational services within each of the
749 juvenile justice programs. The performance rating shall be
750 primarily based on data regarding student performance as
751 described in paragraph (a) ~~component of residential and~~
752 ~~nonresidential juvenile justice facilities~~.
753 (c) The timeframes, procedures, and resources to be used to
754 improve a low-rated educational program or to terminate or
755 reassign the program ~~These standards shall rate the district~~
756 ~~school board's performance both as a provider and contractor.~~
757 ~~The quality assurance rating for the educational component shall~~
758 ~~be disaggregated from the overall quality assurance score and~~
759 ~~reported separately~~.
760 (d) ~~(b) The Department of Education shall develop~~ A
761 comprehensive accountability and program improvement ~~quality~~
762 ~~assurance review~~ process in partnership with the Department of
763 Juvenile Justice. The accountability and program improvement
764 process shall be based on student performance measures by type
765 of program and shall rate education program performance. The
766 accountability system shall identify and recognize high-

742608

767 performing education programs. The Department of Education, in
768 partnership with the Department of Juvenile Justice, shall also
769 identify low-performing programs. Low-performing education
770 programs shall receive an onsite program evaluation from the
771 Department of Juvenile Justice. School improvement, technical
772 assistance, or the reassignment of the program shall be based,
773 in part, on the results of the program evaluation. Through a
774 corrective action process, low-performing programs must
775 demonstrate improvement or reassign the program ~~and schedule for~~
776 ~~the evaluation of the educational component in juvenile justice~~
777 ~~programs. The Department of Juvenile Justice quality assurance~~
778 ~~site visit and the education quality assurance site visit shall~~
779 ~~be conducted during the same visit~~.
780 ~~(c) The Department of Education, in consultation with~~
781 ~~district school boards and providers, shall establish minimum~~
782 ~~thresholds for the standards and key indicators for educational~~
783 ~~programs in juvenile justice facilities. If a district school~~
784 ~~board fails to meet the established minimum standards, it will~~
785 ~~be given 6 months to achieve compliance with the standards. If~~
786 ~~after 6 months, the district school board's performance is still~~
787 ~~below minimum standards, the Department of Education shall~~
788 ~~exercise sanctions as prescribed by rules adopted by the State~~
789 ~~Board of Education. If a provider, under contract with the~~
790 ~~district school board, fails to meet minimum standards, such~~
791 ~~failure shall cause the district school board to cancel the~~
792 ~~provider's contract unless the provider achieves compliance~~
793 ~~within 6 months or unless there are documented extenuating~~
794 ~~circumstances.~~
795 ~~(d) The requirements in paragraphs (a), (b), and (c) shall~~

742608

796 ~~be implemented to the extent that funds are available.~~
797 (17) The department, in collaboration with the Department
798 of Juvenile Justice, shall monitor and report on the educational
799 performance of students in commitment, day treatment,
800 prevention, and detention programs. The report by the Department
801 of Education must include, at a minimum, the number and
802 percentage of students who:
803 (a) Return to an alternative school, middle school, or high
804 school upon release and the attendance rate of such students
805 before and after participation in juvenile justice education
806 programs.
807 (b) Receive a standard high school diploma or a high school
808 equivalency diploma.
809 (c) Receive industry certification.
810 (d) Receive occupational completion points.
811 (e) Enroll in a postsecondary educational institution.
812 (f) Complete a juvenile justice education program without
813 reoffending.
814 (g) Reoffend within 1 year after completion of a day
815 treatment or residential commitment program.
816 (h) Remain employed 1 year after completion of a day
817 treatment or residential commitment program.
818
819 The results of this report shall be included in the report
820 required by s. 985.632.
821 (18) ~~(16)~~ The district school board may ~~shall~~ not be charged
822 any rent, maintenance, utilities, or overhead on such
823 facilities. Maintenance, repairs, and remodeling of existing
824 facilities shall be provided by the Department of Juvenile

742608

825 Justice.
826 (19) ~~(17)~~ When additional facilities are required, the
827 district school board and the Department of Juvenile Justice
828 shall agree on the appropriate site based on the instructional
829 needs of the students. When the most appropriate site for
830 instruction is on district school board property, a special
831 capital outlay request shall be made by the commissioner in
832 accordance with s. 1013.60. When the most appropriate site is on
833 state property, state capital outlay funds shall be requested by
834 the Department of Juvenile Justice provided by s. 216.043 and
835 shall be submitted as specified by s. 216.023. Any instructional
836 facility to be built on state property shall have educational
837 specifications jointly developed by the district school board
838 and the Department of Juvenile Justice and approved by the
839 Department of Education. The size of space and occupant design
840 capacity criteria as provided by State Board of Education rules
841 shall be used for remodeling or new construction whether
842 facilities are provided on state property or district school
843 board property.
844 (20) ~~(18)~~ The parent of an exceptional student shall have
845 the due process rights provided for in this chapter.
846 (21) ~~(19)~~ The Department of Education and the Department of
847 Juvenile Justice, after consultation with and assistance from
848 local providers and district school boards, shall collect data
849 ~~report annually to the Legislature by February 1~~ on the progress
850 toward developing effective education ~~educational~~ programs for
851 juvenile delinquents, including the amount of funding provided
852 by district school boards to juvenile justice programs; ~~,~~ the
853 amount retained for administration, including documenting the

742608

854 purposes for such expenses;~~,~~ the status of the development of
855 cooperative agreements; education program performance~~, the~~
856 results, including the identification of high- and low-
857 performing programs and aggregate student performance results;
858 ~~of the quality assurance reviews including~~ recommendations for
859 system improvement;~~,~~ and information on the identification of,
860 and services provided to, exceptional students in juvenile
861 justice programs ~~commitment facilities~~ to determine whether
862 these students are properly reported for funding and are
863 appropriately served.
864 (22)~~(20)~~ The education ~~educational~~ programs at ~~the Arthur~~
865 ~~Dozier School for Boys in Jackson County and~~ the Florida School
866 for Boys in Okeechobee shall be operated by the Department of
867 Education, either directly or through grants or contractual
868 agreements with other public or duly accredited education
869 agencies approved by the Department of Education.
870 (23)~~(21)~~ The State Board of Education shall ~~may~~ adopt ~~any~~
871 rules necessary to implement ~~the provisions of~~ this section~~,~~
872 ~~including uniform curriculum, funding, and second chance~~
873 ~~schools~~. Such rules must require the minimum amount of paperwork
874 and reporting.
875 (24)~~(22)~~ The Department of Juvenile Justice and the
876 Department of Education, in consultation with Workforce Florida,
877 Inc., the statewide Workforce Development Youth Council,
878 district school boards, Florida College System institutions,
879 providers, and others, shall jointly develop a multiagency plan
880 for career education which describes the funding, curriculum,
881 transfer of credits, goals, and outcome measures for career
882 education programming in juvenile commitment facilities,

742608

883 pursuant to s. 985.622. The plan must be reviewed annually.
884 Section 6. Paragraph (b) of subsection (18) of section
885 1001.42, Florida Statutes, is amended to read:
886 1001.42 Powers and duties of district school board.—The
887 district school board, acting as a board, shall exercise all
888 powers and perform all duties listed below:
889 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
890 Maintain a state system of school improvement and education
891 accountability as provided by statute and State Board of
892 Education rule. This system of school improvement and education
893 accountability shall be consistent with, and implemented
894 through, the district's continuing system of planning and
895 budgeting required by this section and ss. 1008.385, 1010.01,
896 and 1011.01. This system of school improvement and education
897 accountability shall comply with the provisions of ss. 1008.33,
898 1008.34, 1008.345, and 1008.385 and include the following:
899 (b) *Public disclosure.*—The district school board shall
900 provide information regarding the performance of students and
901 educational programs as required pursuant to ss. 1008.22 and
902 1008.385 and implement a system of school reports as required by
903 statute and State Board of Education rule which shall include
904 schools operating for the purpose of providing educational
905 services to students ~~youth~~ in Department of Juvenile Justice
906 programs, and for those schools, report on the elements
907 specified in s. 1003.52(16) ~~1003.52(19)~~. Annual public
908 disclosure reports shall be in an easy-to-read report card
909 format and shall include the school's grade, high school
910 graduation rate calculated without high school equivalency
911 examinations ~~GED tests~~, disaggregated by student ethnicity, and

742608

912 performance data as specified in state board rule.
913 Section 7. The Division of Law Revision and Information is
914 requested to prepare a reviser's bill for introduction at the
915 next regular session of the Legislature to change the terms
916 "General Educational Development test" or "GED test" to "high
917 school equivalency examination" and the terms "general education
918 diploma," "graduate equivalency diploma," or "GED" to "high
919 school equivalency diploma" wherever those terms appear in the
920 Florida Statutes.
921 Section 8. This act shall take effect July 1, 2013.
922
923 ========== T I T L E A M E N D M E N T ==========
924 And the title is amended as follows:
925 Delete everything before the enacting clause
926 and insert:
927 A bill to be entitled
928 An act relating to juvenile justice education
929 programs; amending s. 985.622, F.S.; revising
930 provisions to be included in the multiagency education
931 plan for students in juvenile justice education
932 programs, including virtual education as an option;
933 amending s. 985.632, F.S.; requiring the Department of
934 Juvenile Justice to provide cost and effectiveness
935 information for program and program activities to the
936 Legislature and the public; deleting legislative
937 intent language; requiring implementation of an
938 accountability system to ensure client needs are met;
939 requiring the department and the Department of
940 Education to submit an annual report that includes

742608

941 data on program costs and effectiveness and student
942 achievement and recommendations for elimination or
943 modification of programs; amending s. 1001.31, F.S.;
944 authorizing instructional personnel at all juvenile
945 justice facilities to access specific student records
946 at the district; amending s. 1003.51, F.S.; revising
947 terminology; revising requirements for rules to be
948 maintained by the State Board of Education; providing
949 expectations for effective education programs for
950 students in Department of Juvenile Justice programs;
951 revising requirements for contract and cooperative
952 agreements for the delivery of appropriate education
953 services to students in Department of Juvenile Justice
954 programs; requiring the Department of Education to
955 ensure that juvenile justice students who are eligible
956 have access to high school equivalency testing;
957 requiring the Department of Education to assist
958 juvenile justice education programs with becoming high
959 school equivalency testing centers; revising
960 requirements for an accountability system that
961 assesses and evaluates all juvenile justice education
962 programs; revising requirements of district school
963 boards; amending s. 1003.52, F.S.; revising
964 requirements for activities to be coordinated by the
965 coordinators for juvenile justice education programs;
966 authorizing contracting for educational assessments;
967 revising requirements for assessments; authorizing
968 access to local virtual education courses; requiring
969 that an education program be based on each student’s

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970 transition plan and assessed educational needs;
971 providing requirements for prevention and day
972 treatment juvenile justice education programs;
973 requiring progress monitoring plans for all students
974 not classified as exceptional student education
975 students; revising requirements for such plans;
976 requiring that the Department of Education, in
977 partnership with the Department of Juvenile Justice,
978 ensure that school districts and juvenile justice
979 education providers develop individualized transition
980 plans; providing requirements for such plans;
981 providing that the Secretary of Juvenile Justice or
982 the director of a juvenile justice program may request
983 that a school district teacher’s performance be
984 reviewed by the district and that the teacher be
985 reassigned in certain circumstances; correcting a
986 cross-reference; requiring the Department of Education
987 to establish by rule objective and measurable student
988 performance measures and program performance ratings;
989 providing requirements for such ratings; requiring a
990 comprehensive accountability and program improvement
991 process; providing requirements for such a process;
992 deleting provisions for minimum thresholds for the
993 standards and key indicators for education programs in
994 juvenile justice facilities; deleting a requirement
995 for an annual report; requiring data collection;
996 deleting provisions concerning the Arthur Dozier
997 School for Boys; requiring rulemaking; amending s.
998 1001.42, F.S.; revising terminology; revising a cross-

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999 reference; providing a directive to the Division of
1000 Law Revision and Information; providing an effective
1001 date.

By Senator Bean

4-00522A-13 20131406__

A bill to be entitled

An act relating to juvenile justice education programs; amending s. 985.632, F.S.; conforming a cross-reference; amending s. 1001.42, F.S.; conforming a cross-reference; amending s. 1003.51, F.S.; revising the content of rules relating to expectations for education programs for youth in certain Department of Juvenile Justice programs; requiring that assessments of students in all juvenile justice programs be completed within a specified time period; specifying recommended instructional programs in juvenile justice education programs; increasing percentage of Florida Education Finance Program (FEFP) funds required to be spent on students in juvenile justice programs; requiring a certain percentage of specified federal funds to be spent on students in juvenile justice programs; requiring standardization of qualifications for juvenile justice education instructors across the state and procedures for use of non-certified instruction personnel; specifying minimum contract requirements for juvenile justice education programs; authorizing immediate sanctions for district school boards whose juvenile justice education programs are considered unsatisfactory; specifying minimum contract requirements for the delivery of education services to youth in juvenile justice programs; requiring the Department of Juvenile Justice to ensure that school district personnel are trained to manage and monitor contracts for juvenile justice education programs;

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requiring the Department of Juvenile Justice, district school boards, and education providers to maintain a student's education transition plan and career and technical accomplishments as part of a student's education record; funding a program to pay GED testing fees for youth in juvenile justice education programs and ensuring that eligible youth have access to GED testing; deleting provision requiring district school boards or Florida College system institutions to waive GED testing fees for youth in juvenile justice programs, designate schools as GED testing centers, or pay administrative fees for the GED test; requiring the Department of Education to establish an accountability system that annually evaluates all juvenile justice education programs using student performance measures; requiring the Department of Education to collaborate with certain entities to develop annual recommendations for system and school improvement; amending s. 1003.52, F.S.; providing legislative intent relating to educational services in juvenile justice programs; requiring the participation of the Department of Education and the Department of Juvenile Justice in certain activities related to juvenile justice education programs by each department's respective Coordinator of Juvenile Justice Programs; requiring that the annual cooperative agreement plan between the Department of Education and the Department of Juvenile Justice address each agency's role regarding educational

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59 program accountability, technical assistance,
60 training, and coordination of services; requiring
61 district schools in counties where juvenile justice
62 programs are located to provide or contract for
63 educational services and programs of instruction;
64 providing that students in juvenile justice education
65 programs that test for the GED remain enrolled in the
66 education program for the duration of the FTE period
67 in which they are tested; requiring juvenile justice
68 education providers to assist the Department of
69 Education in selecting student assessment instruments
70 for measuring student performance; requiring local
71 school districts to provide access to virtual
72 education courses for students in juvenile justice
73 education programs; prescribing fees chargeable to
74 juvenile justice education programs for virtual
75 courses accessed through local school districts;
76 prescribing the basis and content of a youth's
77 educational program within juvenile justice programs;
78 requiring minimum course offerings and services from
79 specified juvenile justice programs; requiring that a
80 progress monitoring plan be developed for certain
81 students; prescribing content of progress monitoring
82 plans; requiring that the Department of Education and
83 the Department of Juvenile Justice ensure the
84 development of education transition plans for youth in
85 juvenile justice programs; specifying criteria
86 regarding the development, content and implementation
87 of education transition plans; requiring local school

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88 districts to consider needs of students and education
89 transition plans when students reenter school
90 districts; prohibiting local school districts from
91 maintaining a general policy regarding youth returning
92 from juvenile justice programs; providing that the
93 Secretary of the Department of Juvenile Justice or the
94 director of a juvenile justice program can request
95 review of a teacher's performance or request teacher
96 reassignment for poor performance or inappropriate
97 behavior; specifying certain juvenile justice programs
98 to receive year-round FEFP funding; prescribing the
99 method and amount of funding for students in juvenile
100 justice programs; requiring the Department of
101 Education to fund students in juvenile justice
102 education programs who have graduated or received
103 their GEDs; requiring that the effectiveness of
104 juvenile justice education programs be determined by
105 information gathered through systematic data
106 collection, data analysis, evaluations, and
107 accountability system; requiring that the programs be
108 evaluated based on student performance outcomes;
109 specifying student performance outcomes; establishing
110 a program rating system based upon student performance
111 measures; deleting a provision allowing school
112 districts or education providers who fail to meet
113 minimum standards a 6-month period to achieve
114 compliance before being subject to sanctions adopted
115 by board rules; deleting provisions requiring the
116 Department of Education to operate an educational

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program at the Arthur Dozier School for Boys; requiring additional areas to be addressed in the Department of Juvenile Justice and the Department of Education annual report to the Legislature on effective educational programs for juvenile delinquents; requiring the State Board of Education to adopt rules; amending s. 1011.62, F.S.; revising calculation for the allocation of funds to juvenile justice education programs from the FEFP; providing an effective date.

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

Section 1. Subsection (3) of section 985.632, Florida Statutes, is amended to read:

985.632 Quality assurance and cost-effectiveness.—

(3) The department shall annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the

Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(20) ~~1003.52(19)~~.

Section 2. Paragraph (b) of subsection (18) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—Maintain a state system of school improvement and education accountability as provided by statute and State Board of Education rule. This system of school improvement and education accountability shall be consistent with, and implemented through, the district's continuing system of planning and budgeting required by this section and ss. 1008.385, 1010.01, and 1011.01. This system of school improvement and education accountability shall comply with the provisions of ss. 1008.33, 1008.34, 1008.345, and 1008.385 and include the following:

(b) *Public disclosure.*—The district school board shall provide information regarding the performance of students and educational programs as required pursuant to ss. 1008.22 and 1008.385 and implement a system of school reports as required by statute and State Board of Education rule which shall include

175 schools operating for the purpose of providing educational
176 services to youth in Department of Juvenile Justice programs,
177 and for those schools, report on the elements specified in s.
178 1003.52(20) ~~1003.52(19)~~. Annual public disclosure reports shall
179 be in an easy-to-read report card format and shall include the
180 school's grade, high school graduation rate calculated without
181 GED tests, disaggregated by student ethnicity, and performance
182 data as specified in state board rule.
183 Section 3. Subsections (2) through (5) of section 1003.51,
184 Florida Statutes, are amended to read:
185 1003.51 Other public educational services.—
186 (2) The State Board of Education shall adopt rules ~~and~~
187 ~~maintain an administrative rule~~ articulating expectations for
188 effective education programs for youth in Department of Juvenile
189 Justice programs, including, but not limited to, education
190 programs in juvenile justice prevention, day treatment,
191 residential, ~~commitment~~ and detention facilities. The rules must
192 ~~rule shall~~ articulate the following policies and standards for
193 education programs ~~for youth in Department of Juvenile Justice~~
194 ~~programs and shall include the following~~:
195 (a) The interagency collaborative process needed to ensure
196 effective programs with measurable results.
197 (b) The responsibilities of the Department of Education,
198 the Department of Juvenile Justice, Workforce Florida, Inc.,
199 district school boards, and providers of education services to
200 youth in Department of Juvenile Justice programs.
201 (c) Academic expectations.
202 (d) Career and technical expectations.
203 (e) Education transition planning and services.

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204 (f) ~~(d)~~ Service delivery options available to district
205 school boards, including direct service and contracting.
206 (g) ~~(e)~~ Assessment procedures, which:
207 1. Include appropriate academic and career assessments
208 administered at program entry and exit which ~~that~~ are selected
209 by the Department of Education in partnership with
210 representatives from the Department of Juvenile Justice,
211 district school boards, and education providers.
212 2. Require district school boards to be responsible for
213 ensuring the completion of the assessment process.
214 ~~3. Require assessments for students in detention who will~~
215 ~~move on to commitment facilities, to be designed to create the~~
216 ~~foundation for developing the student's education program in the~~
217 ~~assigned commitment facility.~~
218 3. ~~4.~~ Require assessments of students in juvenile justice
219 education programs ~~sent directly to commitment facilities~~ to be
220 completed within the first 10 school days after ~~of~~ the student's
221 entry into the program ~~commitment~~. The results of these
222 assessments, together with a portfolio depicting the student's
223 academic and career accomplishments, must ~~shall~~ be included in
224 the discharge package assembled for each youth.
225 (h) ~~(f)~~ Recommended instructional programs, including, but
226 not limited to, programs in secondary education, GED
227 preparation, postsecondary education, career training, and job
228 preparation.
229 (i) ~~(g)~~ Funding requirements, which must ~~shall~~ include the
230 requirement that:
231 1. At least 95 ~~90~~ percent of the FEFP funds generated by
232 students in Department of Juvenile Justice programs or in an

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233 education program for juveniles under s. 985.19 be spent on
234 instructional costs for those students;~~.~~
235 2. One hundred percent of the formula-based categorical
236 funds generated by students in Department of Juvenile Justice
237 programs ~~must~~ be spent on appropriate categoricals such as
238 instructional materials and public school technology for those
239 students; and~~.~~
240 3. Ninety percent of federal Title I, Part D funds
241 generated by students in Department of Juvenile Justice programs
242 be spent directly on educational and transition services for
243 those students.
244 (j)~~(h)~~ Qualifications of instructional staff, procedures
245 for the selection of instructional staff, and procedures to
246 ensure consistent instruction and qualified staff year round.
247 The qualifications for career and technical education
248 instructors must be standardized across the state and based on
249 state certification, local school district approval, industry-
250 recognized credentials or industry training, and procedures for
251 the use of noncertified instruction personnel who possess expert
252 knowledge or experience in their field of instruction.
253 (k)~~(i)~~ Transition services, including the roles and
254 responsibilities of appropriate personnel in the juvenile
255 justice education program, the school district in which the
256 youth will reenter ~~districts~~, provider organizations, and the
257 Department of Juvenile Justice.
258 (l)~~(j)~~ Procedures and timeframe for transfer of education
259 records when a youth enters and leaves a Department of Juvenile
260 Justice education program ~~facility~~.
261 (m)~~(k)~~ The requirement that each district school board

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262 maintain an academic transcript for each student enrolled in a
263 juvenile justice education program ~~facility~~ that delineates each
264 course completed by the student as provided by the State Course
265 Code Directory.
266 (n)~~(l)~~ The requirement that each district school board make
267 available and transmit a copy of a student's transcript in the
268 discharge packet when the student exits a juvenile justice
269 education program ~~facility~~.
270 (o)~~(m)~~ Minimum contract requirements, including, but not
271 limited to, payments, contract management, data reporting, FTE
272 reporting, and access to district services such as ESE, virtual
273 education and career technical education.
274 (p)~~(n)~~ Performance expectations for providers and district
275 school boards, including student performance measures that are
276 appropriate to the student population being served, educational
277 program performance ratings, school improvement plans, and
278 corrective action plans for low-performing programs ~~the~~
279 ~~provision of a progress monitoring plan as required in s.~~
280 ~~1008.25~~.
281 (q)~~(o)~~ The role and responsibility of the district school
282 board in securing workforce development funds.
283 (r)~~(p)~~ A series of graduated sanctions for district school
284 boards whose educational programs in Department of Juvenile
285 Justice programs ~~facilities~~ are considered to be unsatisfactory
286 and for instances in which district school boards fail to meet
287 standards prescribed by law, rule, or State Board of Education
288 policy. These sanctions must ~~shall~~ include the option of
289 requiring a district school board to contract with a provider or
290 another district school board to provide education programs in

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291 Department of Juvenile Justice programs ~~if the educational~~
292 ~~program at the Department of Juvenile Justice facility has~~
293 ~~failed a quality assurance review and, after 6 months, is still~~
294 ~~performing below minimum standards~~.
295 (s) ~~(q)~~ Curriculum, guidance counseling, transition, and
296 education services expectations, including curriculum
297 flexibility for detention centers operated by the Department of
298 Juvenile Justice ~~Other aspects of program operations~~.
299 (t) Other aspects of program operations.
300 (3) The Department of Education in partnership with the
301 Department of Juvenile Justice, the district school boards, and
302 providers shall:
303 (a) Develop and maintain contract and cooperative agreement
304 requirements ~~Maintain model contracts~~ for the delivery of
305 appropriate education services to youth in Department of
306 Juvenile Justice programs ~~to be used for the development of~~
307 ~~future contracts~~. The minimum contract requirements must include
308 payments, access to district services, contract management, data
309 reporting, FTE reporting, the administration of federal programs
310 such as Title I of the Elementary and Secondary Education Act of
311 1965, 20 U.S.C. s. 6301 et seq., exceptional student education,
312 and the Carl D. Perkins Career and Technical Education Act of
313 2006, 20 U.S.C. s. 2301 et seq., and ~~model contracts shall~~
314 ~~reflect~~ the policy and standards included in subsection (2). The
315 Department of Education, in partnership with the Department of
316 Juvenile Justice, shall ensure that appropriate district school
317 board personnel are trained and held accountable for the
318 management and monitoring of contracts for education programs
319 for youth in juvenile justice prevention, day treatment,

320 residential, and detention programs ~~nonresidential facilities~~.
321 (b) Maintain model procedures for transitioning youth into
322 and out of Department of Juvenile Justice education programs.
323 These procedures must ~~shall~~ reflect the policy and standards
324 adopted pursuant to subsection (2).
325 (c) Maintain standardized required content of education
326 records to be included as part of a youth's commitment record.
327 These requirements must ~~shall~~ reflect the policy and standards
328 adopted pursuant to subsection (2) and ~~shall~~ include, but not be
329 limited to~~, the following~~:
330 1. A copy of the student's education transition ~~individual~~
331 ~~educational~~ plan.
332 2. Assessment data, including grade level proficiency in
333 reading~~, writing,~~ and mathematics~~,~~ and performance on tests
334 taken pursuant ~~according~~ to s. 1008.22.
335 3. A copy of the student's permanent cumulative record.
336 4. A copy of the student's academic transcript.
337 5. A portfolio reflecting the youth's academic, career, and
338 technical accomplishments, if age appropriate, while in the
339 Department of Juvenile Justice program.
340 (d) Maintain model procedures for securing the education
341 record and the roles and responsibilities of the juvenile
342 probation officer and others involved in the withdrawal of the
343 student from school and assignment to a juvenile justice
344 education program ~~a commitment or detention facility~~. District
345 school boards shall respond to requests for student education
346 records received from another district school board or a
347 juvenile justice facility within 5 working days after receiving
348 the request.

349 (4) The Department of Education shall ensure that district
350 school boards notify students in juvenile justice education
351 programs ~~residential or nonresidential facilities~~ who attain ~~the~~
352 ~~age of~~ 16 years of age of the provisions of law regarding
353 compulsory school attendance and make available the option of
354 enrolling in a program to attain a Florida high school diploma
355 by taking the General Educational Development (GED) test as
356 authorized by s. 1003.435 before ~~prior to~~ release from the
357 program. Juvenile justice programs shall receive funds through
358 the FEFP to pay the ~~facility. District school boards or Florida~~
359 ~~College System institutions, or both, shall waive~~ GED testing
360 fees for youth who pass the GED in whole or in part while in a
361 Department of Juvenile Justice education program ~~residential~~
362 ~~programs and shall, upon request, designate schools operating~~
363 ~~for the purpose of providing educational services to youth in~~
364 ~~Department of Juvenile Justice programs as GED testing centers,~~
365 ~~subject to GED testing center requirements. The administrative~~
366 ~~fees for the General Educational Development test required by~~
367 ~~the Department of Education are the responsibility of district~~
368 ~~school boards and may be required of providers by contractual~~
369 ~~agreement~~.
370 (5) The Department of Education shall establish and
371 operate, ~~either~~ directly or indirectly through a contract, an
372 accountability system that annually assesses and evaluates all
373 juvenile justice education programs using student performance
374 measures that are appropriate for the student population served
375 and program performance ratings, ~~a mechanism to provide quality~~
376 ~~assurance reviews of all juvenile justice education programs~~ and
377 shall provide technical assistance, and related research to

378 district school boards and education providers. The Department
379 of Education, with input from the Department of Juvenile
380 Justice, school districts, and education providers, shall
381 develop annual recommendations for the accountability system and
382 the improvement of the education programs ~~on how to establish,~~
383 ~~develop, and operate educational programs that exceed the~~
384 ~~minimum quality assurance standards~~.
385 Section 4. Section 1003.52, Florida Statutes, is amended to
386 read:
387 1003.52 Educational services in Department of Juvenile
388 Justice programs.—
389 (1) The Legislature finds that education is the single most
390 important factor in the rehabilitation of adjudicated delinquent
391 youth in the custody of Department of Juvenile Justice programs.
392 It is the goal of the Legislature that youth in the juvenile
393 justice system continue to have ~~be allowed~~ the opportunity to
394 obtain a high quality education that includes academic, career,
395 and technical education and that results in educational gains
396 and outcomes leading to continuing education or meaningful
397 employment after release. The Department of Education shall
398 serve as the lead agency for juvenile justice education
399 programs, curriculum, support services, and resources. To this
400 end, the Department of Education and the Department of Juvenile
401 Justice shall each designate a Coordinator for Juvenile Justice
402 Education Programs to serve as the point of contact for
403 resolving issues not addressed by district school boards and to
404 provide each department's participation in the following
405 activities:
406 (a) Training, collaborating, and coordinating with ~~the~~

407 ~~Department of Juvenile Justice,~~ district school boards, local
408 work force boards, youth councils, educational contract
409 providers, and juvenile justice providers, whether state
410 operated or contracted.
411 (b) Collecting information on the academic, career and
412 technical education, and transition performance of students in
413 juvenile justice programs and reporting on the results.
414 (c) Developing academic, ~~and~~ career, and technical
415 education protocols that provide guidance to district school
416 boards and juvenile justice education providers in all aspects
417 of education programming, including records transfer and
418 transition.
419 (d) Implementing a joint accountability, program
420 performance and school improvement system. ~~Prescribing the roles~~
421 ~~of program personnel and interdepartmental district school board~~
422 ~~or provider collaboration strategies.~~
423
424 Annually, a cooperative agreement and plan for juvenile justice
425 education service enhancement shall be developed between the
426 Department of Juvenile Justice and the Department of Education
427 and submitted to the Secretary of Juvenile Justice and the
428 Commissioner of Education by June 30. The plan must, at a
429 minimum, include each agency's role regarding educational
430 program accountability, technical assistance, training, and
431 coordination of services.
432 (2) Students participating in Department of Juvenile
433 Justice programs pursuant to chapter 985 which are sponsored by
434 a community-based agency or are operated or contracted for by
435 the Department of Juvenile Justice shall receive educational

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436 programs according to rules of the State Board of Education.
437 These students are ~~shall be~~ eligible for services afforded to
438 students enrolled in programs pursuant to s. 1003.53 and all
439 corresponding State Board of Education rules.
440 (3) The district school board of the county in which the
441 juvenile justice education prevention, day treatment,
442 residential, or detention program ~~residential or nonresidential~~
443 ~~care facility or juvenile assessment facility~~ is located shall
444 provide, or contract for, appropriate educational assessments
445 and an appropriate program of instruction and special education
446 services.
447 (a) The district school board shall make provisions for
448 each student to participate in basic, career education, and
449 exceptional student programs as appropriate. Students served in
450 Department of Juvenile Justice programs must ~~shall~~ have access
451 to the appropriate courses and instruction to prepare them for
452 the GED test. Students participating in GED preparation programs
453 must ~~shall~~ be funded at the basic program cost factor for
454 Department of Juvenile Justice programs in the Florida Education
455 Finance Program. Students in juvenile justice education programs
456 who test for the GED shall remain eligible for FEFP funds for
457 the duration of the FTE period in which they are tested. Each
458 program must ~~shall~~ be conducted according to applicable law
459 providing for the operation of public schools and rules of the
460 State Board of Education. School districts shall provide the GED
461 exit option for all juvenile justice programs.
462 (b) The ~~By October 1, 2004, the~~ Department of Education,
463 with the assistance of the school districts and the juvenile
464 justice education providers, shall select a common student

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465 assessment instrument and protocol for measuring student
466 learning gains and student progression while a student is in a
467 juvenile justice education program. The assessment instrument
468 and protocol must be implemented in all state juvenile justice
469 education programs ~~in this state by January 1, 2005~~.
470 (4) Educational services must ~~shall~~ be provided at times of
471 the day most appropriate for the juvenile justice program.
472 School programming in juvenile justice detention, prevention,
473 day treatment, and residential ~~commitment, and rehabilitation~~
474 programs must ~~shall~~ be made available by the local school
475 district during the juvenile justice school year, as described
476 ~~defined~~ in s. 1003.01(11). In addition, students in juvenile
477 justice education programs must ~~shall~~ have access to Florida
478 Virtual School courses and local virtual education courses
479 offered through the virtual schools that are operated by the
480 school district or through providers of virtual education.
481 Juvenile justice education programs may not be charged FTE for
482 virtual courses accessed through the school district which are
483 for credit recovery or are offered to youth beyond the 300-
484 minute daily requirement of instruction. The Department of
485 Education and the school districts shall adopt policies
486 necessary to ensure such access.
487 (5) The educational program must be based on each youth's
488 reentry plan and assessed educational needs. Depending on the
489 youth's needs, educational programming must ~~shall~~ consist of
490 remediation courses, ~~appropriate basic~~ academic courses required
491 for grade advancement, career and technical education, GED
492 preparation, or exceptional curricula and related services that
493 ~~which~~ support the transition ~~treatment~~ goals and reentry and

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494 that ~~which~~ may lead to completion of the requirements for
495 receipt of a high school diploma or its equivalent. Prevention
496 and day treatment education programs, at a minimum, must provide
497 career readiness and exploration as well as truancy and dropout
498 prevention intervention services. Residential juvenile justice
499 education programs that have a contracted minimum length of stay
500 of 9 months must provide career and technical course offerings
501 that lead to preapprentice certifications, industry
502 certifications, occupational completion points, or work-related
503 certifications. Residential programs with contracted lengths of
504 stay of less than 9 months may provide career and technical
505 course offerings that lead to preapprentice certifications,
506 industry certifications, occupational completion points, or
507 work-related certifications. If the duration of a program is
508 less than 40 days, the educational component may be limited to
509 tutorial remediation activities, ~~and~~ career employability
510 skills, educational counseling, and transition services that
511 prepare youth for a return to school, the community, and home
512 settings based on the youth's needs.
513 (6) Participation in the program by students of compulsory
514 school-attendance age as provided ~~for~~ in s. 1003.21 is ~~shall be~~
515 mandatory. All students of noncompulsory school-attendance age
516 who have not received a high school diploma or its equivalent
517 shall participate in the educational program, unless the student
518 files a formal declaration of his or her intent to terminate
519 school enrollment as described in s. 1003.21 and is afforded the
520 opportunity to take the general educational development test and
521 attain a Florida high school diploma before ~~prior to~~ release
522 from a juvenile justice education program ~~facility~~. A youth who

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523 has received a high school diploma or its equivalent and is not
524 employed shall participate in workforce development, ~~or~~ other
525 career or technical education, or Florida College System
526 institution or university courses while in the program, subject
527 to the availability of ~~available~~ funding.
528 (7) A progress monitoring plan must ~~shall~~ be developed for
529 all students who are not exceptional students ~~who score below~~
530 ~~the level specified in district school board policy in reading,~~
531 ~~writing, and mathematics or below the level specified by the~~
532 ~~Commissioner of Education on statewide assessments as required~~
533 ~~by s. 1008.25~~. These plans must ~~shall~~ address academic,
534 literacy, and career and technical ~~life~~ skills and ~~shall~~ include
535 provisions for intensive remedial instruction in the areas of
536 weakness.
537 (8) Each district school board shall maintain an academic
538 record for each student enrolled in a juvenile justice program
539 ~~facility~~ as prescribed by s. 1003.51. Such record must ~~shall~~
540 delineate each course completed by the student according to
541 procedures in the State Course Code Directory. The district
542 school board shall include a copy of a student's academic record
543 in the discharge packet when the student exits the program
544 ~~facility~~.
545 (9) The Department of Education shall ensure that all
546 district school boards make provisions for high school level
547 youth to earn credits toward high school graduation while in
548 residential and nonresidential juvenile justice facilities.
549 Provisions must be made for the transfer of credits and partial
550 credits earned.
551 (10) The Department of Education, in partnership with the

552 Department of Juvenile Justice, shall ensure that school
553 districts and juvenile justice education providers develop
554 educational transition plans during the course of a youth's stay
555 in a juvenile justice education program in order to coordinate
556 academic, career, technical, secondary, and postsecondary
557 services that assist the youth in successful community
558 reintegration upon release.
559 (a) Transition planning must begin upon a youth's placement
560 in the program. The transition plan must, at a minimum, include:
561 1. Services and interventions that address the youth's
562 assessed educational needs and postrelease educational plans.
563 2. Services to be provided during the program stay and
564 services to be implemented upon release, including, but not
565 limited to, continuing education in secondary school, career and
566 technical programs, postsecondary education, or employment,
567 based on the youth's needs.
568 (b) Personnel in the juvenile justice education program,
569 reentry personnel, personnel from the school district where the
570 youth will return, the youth, the youth's family, and the
571 Department of Juvenile Justice personnel for committed youth, if
572 possible, shall collaborate to develop the transition plan.
573 (c) Individuals who are responsible for reintegration shall
574 coordinate activities to ensure that the transition plan is
575 implemented and the youth is provided access to support services
576 that sustain the youth's success.
577 (d) For the purpose of transition planning and reentry
578 services, local school district and workforce representatives
579 shall participate as members of the local Department of Juvenile
580 Justice reentry teams. A local school district must consider the

581 individual needs and circumstances of the youth and the
582 transition plan recommendations when enrolling a youth back into
583 the school district. A local school district may not maintain a
584 blanket policy for all youth returning from a juvenile justice
585 program.
586 (e) The Department of Education and the Department of
587 Juvenile Justice shall provide oversight and guidance to school
588 districts, educational providers, and reentry personnel on how
589 to implement effective educational transition planning and
590 services.
591 (11) ~~(10)~~ The district school board shall recruit and train
592 teachers who are interested, qualified, or experienced in
593 educating students in juvenile justice programs. Students in
594 juvenile justice programs must ~~shall~~ be provided a wide range of
595 educational programs and opportunities including textbooks,
596 technology, instructional support, and other resources available
597 to students in public schools. Teachers assigned to educational
598 programs in juvenile justice settings in which the district
599 school board operates the educational program must ~~shall~~ be
600 selected by the district school board in consultation with the
601 director of the juvenile justice program. The Secretary of the
602 Department of Juvenile Justice or the director of a juvenile
603 justice program may request that a school district teacher's
604 performance be reviewed by the district or that the teacher be
605 reassigned based on evidence of poor performance or
606 inappropriate behavior. Juvenile ~~facility. Educational programs~~
607 ~~in juvenile~~ justice education programs must ~~facilities shall~~
608 have access to the substitute teacher pool used ~~utilized~~ by the
609 district school board.

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610 (12) ~~(11)~~ District school boards may contract with a private
611 provider for the provision of educational programs to youths
612 placed with the Department of Juvenile Justice and shall
613 generate local, state, and federal funding, including funding
614 through the Florida Education Finance Program for such students.
615 The district school board's planning and budgeting process must
616 ~~shall~~ include the needs of Department of Juvenile Justice
617 programs in the district school board's plan for expenditures
618 for state categorical and federal funds.
619 (13) ~~(12)(a)~~ Funding for eligible students enrolled in
620 juvenile justice education programs shall be provided through
621 the Florida Education Finance Program as provided in s. 1011.62
622 and the General Appropriations Act.
623 (a) At ~~Funding shall include, at~~ a minimum, funding must
624 include:
625 1. Weighted program funding or the basic amount for current
626 operation multiplied by the district cost differential as
627 provided in s. 1011.62(1)(r) and (2);
628 2. The supplemental allocation for juvenile justice
629 education as provided in s. 1011.62(10);
630 3. A proportionate share of the district's exceptional
631 student education guaranteed allocation, the supplemental
632 academic instruction allocation, and the instructional materials
633 allocation;
634 4. An amount equivalent to the proportionate share of the
635 state average potential discretionary local effort for
636 operations, which shall be determined as follows:
637 a. If the district levies the maximum discretionary local
638 effort and the district's discretionary local effort per FTE is

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639 less than the state average potential discretionary local effort
640 per FTE, the proportionate share shall include both the
641 discretionary local effort and the compression supplement per
642 FTE. If the district's discretionary local effort per FTE is
643 greater than the state average per FTE, the proportionate share
644 shall be equal to the state average; or
645 b. If the district does not levy the maximum discretionary
646 local effort and the district's actual discretionary local
647 effort per FTE is less than the state average potential
648 discretionary local effort per FTE, the proportionate share
649 shall be equal to the district's actual discretionary local
650 effort per FTE. If the district's actual discretionary local
651 effort per FTE is greater than the state average per FTE, the
652 proportionate share shall be equal to the state average
653 potential local effort per FTE; and
654 5. A proportionate share of the district's proration to
655 funds available, if necessary.
656 (b) To ~~Juvenile justice educational programs to~~ receive the
657 appropriate and year-round FEFP funding for Department of
658 Juvenile Justice programs, juvenile justice education programs
659 must ~~shall~~ include those prevention, day treatment, residential,
660 and detention programs that operate their own education program
661 and are operated through a contract with the Department of
662 Juvenile Justice ~~and which are under purview of the Department~~
663 ~~of Juvenile Justice quality assurance standards for education~~.
664 (c) Consistent with the rules of the State Board of
665 Education, district school boards shall ~~are required to~~ request
666 an alternative FTE survey for Department of Juvenile Justice
667 programs experiencing fluctuations in student enrollment.

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668 (d) FTE count periods must ~~shall~~ be prescribed in rules of
669 the State Board of Education and must ~~shall~~ be the same for
670 programs of the Department of Juvenile Justice as for other
671 public school programs. The summer school period for students in
672 Department of Juvenile Justice programs must ~~shall~~ begin on the
673 day immediately following the end of the regular school year and
674 end on the day immediately preceding the subsequent regular
675 school year. Students must ~~shall~~ be funded for up to ~~no more~~
676 ~~than~~ 25 hours per week of direct instruction.
677 (e) Each juvenile justice education program must receive
678 all federal funds for which the program is eligible.
679 (f) Juvenile justice education programs shall receive
680 additional weighted funding equivalent to 0.1 FTE, as authorized
681 in s. 1011.62, to support equipment, specially designed
682 curricula, and industry credentialing testing fees for students
683 enrolled in career and technical courses that lead to
684 occupational completion points or industry-recognized
685 certifications.
686 (g) The Department of Education shall provide, directly or
687 through a program, funding that supports students in juvenile
688 justice education programs who have graduated high school or
689 received a GED. This funding must be made available for a youth
690 who enters a juvenile justice residential program and has
691 already received a high school diploma or its equivalent. For a
692 youth who earns a high school diploma or its equivalent while in
693 the residential program, the funding takes effect beginning with
694 the FTE period directly following the period in which the youth
695 earns a high school diploma or its equivalent. The rate of
696 funding per student must be equivalent to 0.5 of the base

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697 student allocation as authorized in s. 1011.62. Funding must be
698 used to support career and technical instruction offered by the
699 juvenile justice education program which leads to industry
700 certification, or tuition and fees for attending a postsecondary
701 or career and technical institution online while the youth
702 remains in the program. Youth who choose to pursue college
703 courses through the juvenile justice education program must
704 complete 10 volunteer hours per week while in the program. The
705 Department of Education may enter into an agreement with one or
706 more public postsecondary institutions in this state to offer
707 online courses to youth in juvenile justice education programs.
708 (14) ~~(13)~~ Each district school board shall negotiate a
709 cooperative agreement with the Department of Juvenile Justice on
710 the delivery of educational services to youths under the
711 jurisdiction of the Department of Juvenile Justice. Such
712 agreement must include, but is not limited to:
713 (a) Roles and responsibilities of each agency, including
714 the roles and responsibilities of contract providers.
715 (b) Administrative issues, including procedures for sharing
716 information.
717 (c) Allocation of resources, including maximization of
718 local, state, and federal funding.
719 (d) Procedures for educational evaluation for educational
720 exceptionalities and special needs.
721 (e) Curriculum and delivery of instruction.
722 (f) Classroom management procedures and attendance
723 policies.
724 (g) Procedures for providing ~~provision of~~ qualified
725 instructional personnel, whether supplied by the district school

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726 board or provided under contract by the provider, and for
727 performance of duties while in a juvenile justice setting.
728 (h) Provisions for improving skills in teaching and working
729 with youth referred to juvenile justice programs ~~delinquents~~.
730 (i) Transition plans for students moving into and out of
731 juvenile justice programs ~~facilities~~.
732 (j) Procedures and timelines for the ~~timely~~ documentation
733 of credits earned and transfer of student records.
734 (k) Methods and procedures for dispute resolution.
735 (l) Provisions for ensuring the safety of education
736 personnel and support for the agreed-upon education program.
737 (m) Strategies for correcting any deficiencies found
738 through the accountability and evaluation system and student
739 performance measures ~~quality assurance process~~.
740 (15) ~~(14)~~ This ~~Nothing in this~~ section, or ~~in~~ a cooperative
741 agreement, does not ~~shall be construed to~~ require the district
742 school board to provide more services than can be supported by
743 the funds generated by students in the juvenile justice
744 programs.
745 (16) ~~(15)~~ (a) The Department of Education in consultation
746 with the Department of Juvenile Justice, district school boards,
747 and providers shall establish by rule objective and measurable
748 student performance measures and program performance ratings
749 ~~quality assurance standards~~ for the educational component of
750 prevention, day treatment, and residential programs. Program
751 effectiveness shall be determined by information gathered
752 through systematic data collection and data analysis. Onsite
753 program evaluations must occur as necessary to verify data
754 accuracy and to diagnose program strengths and weaknesses ~~and~~

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755 ~~nonresidential juvenile justice facilities. These standards~~
756 ~~shall rate the district school board's performance both as a~~
757 ~~provider and contractor. The quality assurance rating for the~~
758 ~~educational component shall be disaggregated from the overall~~
759 ~~quality assurance score and reported separately~~.
760 1. The Department of Education shall collect data on
761 juvenile justice education programs for the purpose of measuring
762 student performance and monitoring juvenile justice education
763 program performance.
764 2. Student performance measures shall be based on
765 appropriate outcomes for all youth throughout the continuum of
766 educational services within juvenile justice programs.
767 3. Program performance ratings and program accountability
768 shall be based, in part, upon a program's student performance
769 measure results and must consider the average length of stay in
770 a juvenile justice education program.
771 4. At a minimum, student performance measures must include
772 outcomes that address career and technical education,
773 employability skills, high school diploma or its equivalent,
774 grade advancement, or learning gains.
775 5. Timeframes and procedures shall be established for
776 improving low-performing educational programs and, if necessary,
777 the reassignment of the educational provider or school district.
778 (b) The Department of Education, in partnership with the
779 Department of Juvenile Justice, shall develop a comprehensive
780 accountability and school improvement ~~quality assurance review~~
781 process. The accountability and school improvement process must
782 be based on student performance measures that are appropriate
783 for the student population being served and must rate

784 educational program performance. The accountability system must
785 identify and recognize high-performing educational programs.
786 Low-performing educational programs must receive an onsite
787 program evaluation. School improvement, technical assistance, or
788 the reassignment of the educational provider must be based, in
789 part, on the results of the program evaluation. Through a
790 corrective action process, low-performing programs shall
791 demonstrate improvement or reassign the educational provider ~~and~~
792 ~~schedule for the evaluation of the educational component in~~
793 ~~juvenile justice programs. The Department of Juvenile Justice~~
794 ~~quality assurance site visit and the education quality assurance~~
795 ~~site visit shall be conducted during the same visit.~~
796 ~~(c) The Department of Education, in consultation with~~
797 ~~district school boards and providers, shall establish minimum~~
798 ~~thresholds for the standards and key indicators for educational~~
799 ~~programs in juvenile justice facilities. If a district school~~
800 ~~board fails to meet the established minimum standards, it will~~
801 ~~be given 6 months to achieve compliance with the standards. If~~
802 ~~after 6 months, the district school board's performance is still~~
803 ~~below minimum standards, the Department of Education shall~~
804 ~~exercise sanctions as prescribed by rules adopted by the State~~
805 ~~Board of Education. If a provider, under contract with the~~
806 ~~district school board, fails to meet minimum standards, such~~
807 ~~failure shall cause the district school board to cancel the~~
808 ~~provider's contract unless the provider achieves compliance~~
809 ~~within 6 months or unless there are documented extenuating~~
810 ~~circumstances.~~
811 ~~(d) The requirements in paragraphs (a), (b), and (c) shall~~
812 ~~be implemented to the extent that funds are available.~~

813 (17)~~(16)~~ The district school board may ~~shall~~ not be charged
814 any rent, maintenance, utilities, or overhead on such
815 facilities. Maintenance, repairs, and remodeling of existing
816 facilities shall be provided by the Department of Juvenile
817 Justice.
818 (18)~~(17)~~ If ~~When~~ additional facilities are required, the
819 district school board and the Department of Juvenile Justice
820 shall agree on the appropriate site based on the instructional
821 needs of the students. If ~~When~~ the most appropriate site for
822 instruction is on district school board property, a special
823 capital outlay request shall be made by the commissioner in
824 accordance with s. 1013.60. If ~~When~~ the most appropriate site is
825 on state property, state capital outlay funds shall be requested
826 by the Department of Juvenile Justice required by provided by s.
827 216.043 and ~~shall be~~ submitted as specified by s. 216.023. Any
828 instructional facility to be built on state property shall have
829 educational specifications jointly developed by the district
830 school board and the Department of Juvenile Justice and approved
831 by the Department of Education. The size of space and occupant
832 design capacity criteria as provided by State Board of Education
833 rules shall be used for remodeling or new construction whether
834 facilities are provided on state property or district school
835 board property.
836 (19)~~(18)~~ The parent of an exceptional student shall have
837 the due process rights provided for in this chapter.
838 (20)~~(19)~~ The Department of Education and the Department of
839 Juvenile Justice, after consultation with and assistance from
840 local providers and district school boards, shall report
841 annually to the Legislature by February 1 on the progress toward

842 developing effective educational programs for juvenile
843 delinquents, including the amount of funding provided by
844 district school boards to juvenile justice programs ;~~,~~ the
845 amount retained for administration including documenting the
846 purposes for such expenses;~~,~~ the status of the development of
847 cooperative agreements;~~,~~ educational program performance ~~the~~
848 results, including the identification of high- and low-
849 performing programs; aggregate student performance results; ~~of~~
850 ~~the quality assurance reviews including~~ recommendations for
851 system improvement;~~,~~ and information on the identification of,
852 and services provided to, exceptional students in juvenile
853 justice programs ~~commitment facilities~~ to determine whether
854 these students are properly reported for funding and are
855 appropriately served.
856 (21)~~(20)~~ ~~The educational programs at the Arthur Dozier~~
857 ~~School for Boys in Jackson County and~~ The Florida School for
858 Boys in Okeechobee shall be operated by the Department of
859 Education, either directly or through grants or contractual
860 agreements with other public or duly accredited education
861 agencies approved by the Department of Education.
862 (22)~~(21)~~ The State Board of Education shall ~~may~~ adopt ~~any~~
863 rules necessary to implement the provisions of this section~~,~~
864 ~~including uniform curriculum, funding, and second chance~~
865 ~~schools~~. Such rules must require the minimum amount of paperwork
866 and reporting.
867 (23)~~(22)~~ The Department of Juvenile Justice and the
868 Department of Education, in consultation with Workforce Florida,
869 Inc., the statewide Workforce Development Youth Council,
870 district school boards, Florida College System institutions,

871 providers, and others, shall jointly develop a multiagency plan
872 for career education which describes the funding, curriculum,
873 transfer of credits, goals, and outcome measures for career
874 education programming in juvenile commitment facilities,
875 pursuant to s. 985.622. The plan must be reviewed annually.
876 Section 5. Subsection (10) of section 1011.62, Florida
877 Statutes, is amended to read:
878 1011.62 Funds for operation of schools.—If the annual
879 allocation from the Florida Education Finance Program to each
880 district for operation of schools is not determined in the
881 annual appropriations act or the substantive bill implementing
882 the annual appropriations act, it shall be determined as
883 follows:
884 (10) CALCULATION OF SUPPLEMENTAL ALLOCATION FOR JUVENILE
885 JUSTICE EDUCATION PROGRAMS.—An amount equal to the sum of the
886 following calculations shall be allocated in the FEFP to each
887 school district to supplement other sources of funding for
888 students in juvenile justice education programs:
889 (a) The total K-12 weighted full-time equivalent student
890 membership in juvenile justice education programs in each school
891 district ~~shall be~~ multiplied by the amount of the state average
892 class-size-reduction factor multiplied by the district's cost
893 differential;
894 (b) Pursuant to s. 1003.51(4), the total of the GED testing
895 fees for youth who pass the GED in whole or in part while in a
896 Department of Juvenile Justice education program;
897 (c) An additional weighted funding equivalent to 0.1 FTE to
898 support equipment, specially designed curricula, and industry
899 credentialing testing fees for students enrolled in career and

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900 technical courses that lead to occupational completion points or
901 industry-recognized certifications; and
902 (d) An additional 0.5 of the base student allocation per
903 student for students in juvenile justice residential education
904 programs who have graduated high school or received a GED. ~~An~~
905 ~~amount equal to the sum of this calculation shall be allocated~~
906 ~~in the FEFP to each school district to supplement other sources~~
907 ~~of funding for students in juvenile justice education programs.~~
908 Section 6. This act shall take effect upon becoming a law.

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The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 7, 2013

I respectfully request that **Senate Bill #1406**, relating to Juvenile Justice Education Programs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 / 18 /2013
Meeting Date

Topic _____ Bill Number 1406 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

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

Representing JUSTICE-2-JESUS

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic: Jur. Justice Education

Bill Number: SB 1406 *(if applicable)*

Name: Ana Sanchez

Amendment Barcode: _____ *(if applicable)*

Job Title: Legislative Assairs Dir

Address: 2737 Centerview Dr.
Street

Tallahassee, Fl 32399
City *State* *Zip*

Phone: 850-410-1097

E-mail: _____

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

Representing: DJJ

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3182013
Meeting Date

Topic: Juvenile Justice Education

Bill Number: SB 1406 *(if applicable)*

Name: Cathy Craig-Myers

Amendment Barcode: _____ *(if applicable)*

Job Title: Executive Director

Address: 1201 Hays Street, Suite 107
Street

Tallahassee — fl — 32301
City — *State* — *Zip*

Phone: 850-671-3442

E-mail: cathy@fjja.org

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

Representing: Florida Juvenile Justice Association

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2013
Meeting Date

Topic: Juvenile Justice Education Programs

Bill Number: 1406 *(if applicable)*

Name: Erin Daly

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 110 E. College Ave
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850 681 1065

E-mail: erinday@paconsultants.com

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

Representing: Outward Bound

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Juvenile Justice Education

Bill Number: SB1406 (if applicable)

Name: ADRIANNA SEKUCA

Amendment Barcode: (if applicable)

Job Title: Assoc. Dir. Gov't Affairs

Address: Street

City State Zip

Phone: 904 553 7850

E-mail:

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

Representing: PACE Center for Girls, Inc.

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/19/13
Meeting Date

Topic: Juvenile Justice Education Programs

Bill Number: 1406 (if applicable)

Name: KRISTOPHER BROWNING

Amendment Barcode: (if applicable)

Job Title: Associate

Address: 204 South Monroe Street Suite 201
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-207-3436

E-mail: KRISTOPHER@barneybishop.com

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

Representing: Florida Smart Justice ~~App~~ Alliance

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1434

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Department of Law Enforcement

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.			CA	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1434 amends numerous statutes relating to the operations and duties of, services provided by, and other matters involving the Florida Department of Law Enforcement (FDLE), and also relating to those who use or are impacted by those services.

The majority of the changes to law made by the bill are technical in nature: correcting grammar; replacing antiquated or obsolete terminology or tasks; repealing implementation or adoption dates that have passed; and correcting statutory citations. However, the bill does make some substantive changes to the law, including, but not limited to:

- Authorizing counties and cities to require, by ordinance, employment screening of private contractors and other positions noted in the statutes who are subject to licensing or regulation by the county or city or who have contact with members of the public or access to any public facility or publicly operated facility in such a manner that the county or city finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.
- Revising duties concerning missing person reporting.
- Specifying additional items to be reported by persons required to register as sexual offenders.

- Requiring states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's identifying information through the national sexual offender public website.
- Redesignating the statewide automated fingerprint identification system as the statewide automated biometric identification system.
- Revising matters relating to the Florida Violent Crime and Drug Control Council and its committees.
- Requiring the collection of additional information from persons charged with or convicted of specified offenses.
- Requiring the Domestic and Repeat Violence Injunction Statewide Verification System maintained by the FDLE to include injunctions to prevent child abuse issued under chapter 39, F.S.
- Increasing the period in which a minor may seek expunction of a nonjudicial arrest record following diversion, and conditioning eligibility on the qualifications of the applicant rather than on those of the diversion program in which he or she participates.
- Clarifying that a person may only seal or expunge a record if the person has never before sealed or expunged a record (except in specified instances), and removing references to having received an expunction or sealing "from any jurisdiction outside the state" as a disqualifier for seeking expunction or sealing in Florida.
- Providing for accreditation of correctional facilities, public agency offices of inspectors general, and pretrial diversion programs.
- Revising language relating to testing services provided by a state-operated analysis laboratories to defendants.
- Adding the following property to the list of regulated metal property which secondary metals recyclers may only purchase if certain conditions are met: more than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

This bill substantially amends the following sections of the Florida Statutes: 125.5801; 166.0442; 285.18; 406.145; 414.40; 447.045; 455.213; 468.453; 475.615; 493.6105; 493.6108; 494.00312; 494.00321; 494.00611; 517.12; 538.09; 538.25; 538.26, 548.024; 550.105; 550.908; 551.107; 560.141; 628.906; 633.34; 744.3135; 775.21; 775.261; 790.06; 937.021; 937.024; 937.025; 937.028; 943.03; 943.031; 943.0435; 943.04351; 943.0438; 943.045; 943.05; 943.051; 943.052; 943.053; 943.054; 943.0542; 943.0544; 943.055; 943.056; 943.0582; 943.0585; 943.059; 943.125; 943.13; 943.132; 943.1395; 943.1755; 943.1757; 943.25; 943.325; 943.33; 943.68; 944.607; 944.608; 985.11; 985.644; 985.4815; 1002.395; 1002.421; 1012.32; and 1012.467.

II. Present Situation:

See the "Effect of Proposed Changes" section of this analysis for a discussion of the statutes amended by the bill and the relevant background regarding and explanation of changes to the law made by the bill.

III. Effect of Proposed Changes:

The bill amends numerous statutes relating to the operations and duties of, services provided by, and other matters involving the Florida Department of Law Enforcement (FDLE), and also relating to those who use or are impacted by those services.

The majority of the changes to law made by the bill are technical in nature: correcting grammar; replacing antiquated or obsolete terminology or tasks; repealing implementation or adoption dates that have passed; and correcting statutory citations. However, the bill does make some substantive changes to the law. Provided is a section-by-section analysis of the bill.

Sections 1 and 2 (City and county criminal history screenings)

Sections 1 and 2 of the bill, respectively, amend s. 125.5801, F.S. (applicable to counties), and s. 166.0422, F.S. (applicable to municipalities).

Sections 125.5801 and 166.0442, F.S., respectively, authorize counties and cities, by ordinance, to require employment screening for:

- Any position of county/city employment or appointment which the governing body of the county/city finds is critical to security or public safety; and
- Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility that the governing body of the county/city finds is critical to security or public safety.

The statutes do not currently permit a county or city to conduct criminal history checks on persons such as taxi drivers, tow truck operators, and other individuals who likely have close contact with persons in vulnerable situations, because such contact could not be construed as "ha[ving] access to any public facility or publicly operated facility that the governing body of the municipality finds is critical to security or public safety."[1]

The bill amends ss. 125.5801 and 166.0442, F.S., to specify that counties and cities are authorized to require state and national criminal history screening for:

- Any position of county/city employment or appointment, whether paid, unpaid, or contractual, which the governing body of the county/city finds is critical to security or public safety;
- Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who is subject to licensing or regulation by the county; and
- Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing

[1] Analyses of SB 1434 (dated March 13 and 14, 2013), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). These analyses are further cited as "FDLE Analyses." All background information in the "Effect of Proposed Changes" section of this analysis is from the FDLE Analyses, unless otherwise indicated.

body of the county/city finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

Section 3 (Unidentified deceased persons)

Section 3 of the bill amends s. 406.145, F.S., which requires a law enforcement officer investigating the death of an unidentified person to immediately identify the body. If not immediately identified, the investigating law enforcement agency (LEA) must complete an Unidentified Person Report and enter the data, through the Florida Crime Information Center (FCIC), into the Unidentified Person File of the National Crime Information Center (NCIC).[2]

An Unidentified Person Report is the form identified by the FDLE that LEAs use to compile information entered into the Unidentified Person File.[3]

According to the FDLE, while the Unidentified Person Report continues to exist, the form is unnecessary to complete an unidentified entry into the FCIC/NCIC, and many LEAs prefer electronic or automated methods of exchanging information that are more accurate, timely, and efficient than the form.

The bill amends s. 406.145, F.S., to delete the requirement that a LEA investigating the death of an unidentified person complete an Unidentified Person Report when submitting information for entry into the Unidentified Person File of the NCIC. LEAs are still required to enter data concerning the unidentified body into the Unidentified Person File of the NCIC.

Section 4 (Prohibiting secondary metals recyclers from purchasing specified regulated metals property unless certain conditions are met)

Section 4 amends s. 538.26(5), F.S., which prohibits secondary metals recyclers from purchasing specified regulated metals property (e.g., manhole covers) unless certain conditions are met (e.g., reasonable proof of ownership).

Local law enforcement, the Florida Department of Revenue, the Florida Department of Highway Safety and Motor Vehicles, and the FDLE have statutory obligations regarding secondary metals recyclers. The FDLE approves transaction forms that document the sale/purchase of secondary metals. Secondary metals recyclers must complete and maintain these forms for specified time periods.[4]

The bill adds to the list of regulated metal property more than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

Sections 5-8 (Missing persons)

Sections 5-8 of the bill, respectively, amend ss. 937.021, 937.024, 937.025, and 937.028, F.S.

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[2] Section 406.145, F.S.
[3] *Id.*
[4] *See* http://www.fdle.state.fl.us/Content/getdoc/eb04fafb-039b-468b-a839-6c1e50a773d7/Secondary-Metal-Information-Home.aspx

The Missing Endangered Persons Information Clearinghouse (MEPIC) is the central repository of information regarding missing endangered persons in Florida.[5] The MEPIC assists LEAs and Florida's citizens in finding missing persons by providing analytical services and engaging the public in the search. As part of these services, the MEPIC has worked with partner agencies to develop the Florida AMBER Plan[6] and Florida Silver Alert Plan.[7] Under these plans, the MEPIC is responsible for issuing all AMBER Alerts, Missing Child Alerts[8] and State Silver Alerts in Florida. The MEPIC also provides assistance to law enforcement in cases involving unidentified deceased and crimes against children.[9]

Section 937.021(5)(b), F.S., grants specified entities immunity from civil liability when responding to a request from a LEA to release information or photographs pertaining to a missing adult (similar immunity is given to entities responding to requests to release information pertain to Amber Alerts and Silver Alerts). Currently, there is no such immunity for those responding to requests to release information relating to missing children.

Section 937.024, F.S., requires the Office of Vital Statistics, to collect, on a monthly basis, a list of missing children provided by the FDLE and:

- Flag the birth certificate of each identified missing child in order to make its employees aware that a birth certificate is that of a child reported as missing; and
- Recall each missing child's birth certificate or birth record from the local registrar of vital statistics in the county of the missing child's birth.

The state and local registrar are prohibited from providing a copy of the birth certificate or information concerning the birth record of a child whose record has been flagged unless the flag has been removed.[10]

Section 937.025, F.S., requires schools to take certain actions and report information about missing children who are students at the school. Section 937.025(7), F.S., makes it a first degree misdemeanor for a person to knowingly provide false information concerning a missing child or the efforts to locate and return a missing child to a parent, family member, or guardian of a child who has been reported missing. The FDLE states that it is unclear whether the crime, as presently worded, involves providing false information to a law enforcement officer, or to the parents of the missing child.

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[5] *See* http://www.fdle.state.fl.us/MCICSearch/

[6] The Florida AMBER Plan was established in 2000, making Florida the second state in the nation to develop a statewide AMBER Alert. The purpose of the plan is to broadcast critical information of an abducted child as quickly as possible to the media and general public. See http://www.fdle.state.fl.us/MCICSearch/Amber.asp

[7] The statewide Silver Alert is a plan to aid local law enforcement in the rescue or recovery of a missing elderly person who suffers from irreversible deterioration of intellectual faculties. *See* http://www.dot.state.fl.us/trafficoperations/ITS/Projects_Deploy/SilverAlert/Silver%20Alert%20Final.pdf

[8] To aid in the recovery of missing children who are in danger where there is no evidence of an abduction, the FDLE established the Missing Child Alert in 2003. *See* http://www.fdle.state.fl.us/MCICSearch/Amber.asp

[9] *Id.*

[10] Section 937.024(2)(a), F.S. The Office of Vital Statistics must also collect from the FCIC a list of missing children who have been located, identify which of the located children were born in Florida; and remove its flags from the birth certificates or birth records of such children. Section 937.024(1), F.S.

Section 937.028, F.S., requires fingerprints taken and retained by any state agency, public or private organization, or other person, excluding the parent or guardian of the child, for the purpose of identifying a child, be destroyed when the child reaches 18 years of age. According to the FDLE, this provision was designed in response to a concern that private fingerprinting companies might keep children's fingerprints on file after they had reached adulthood.

The bill amends s. 937.021, F.S., to grant specified entities immunity from civil liability when responding to a request from a LEA to release information or photographs pertaining to a missing child.

The bill amends s. 937.024, F.S., to remove the requirement that the Office of Vital Statistics recall each missing child's birth certificate or birth record from the local registrar of vital statistics in the county of the missing child's birth. The Office of Vital Statistics is still required to flag the record and the state and local registrar are still prohibited from releasing the record unless the flag is removed. However, the bill adds language authorizing the state and local registrar to remove a flag from a record upon the MEPIC's official request. According to the FDLE, this will allow parents of missing children to obtain vital statistics records through a request from the MEPIC.

The bill amends s. 937.025(7), F.S., to provide that it is a first degree misdemeanor for a person to knowingly provide false information concerning a missing child or the efforts to locate and return a missing child whose parent, family member, or guardian reported the child missing. This language clarifies that the crime requires providing false information to a law enforcement officer, and not the parents of a missing child.

The bill amends s. 937.028, F.S., to allow the FDLE to retain the fingerprints of any missing person, including children, until the FDLE is notified that the missing person has been recovered. The Office of Vital Statistics must also collect from the FCIC a list of missing children who have been located, identify which of the located children were born in Florida, and remove its flags from the birth certificates or birth records of such children.

Section 9 (FDLE duties)

Section 9 of the bill amends s. 943.03, F.S., which, in part, authorizes the FDLE to enter into contracts with other state agencies to make "photostats" and transmit information by "teletype"; maintain a "statewide, integrated violent crime information system"; and serve as custodial manager of the "statewide telecommunications and data network" maintained by the FDLE. This terminology no longer reflects current operations, services, and responsibilities.

The FDLE is the central repository of criminal justice information for Florida and operates under the authority of s. 943.05, F.S., and chapter 11C, F.A.C. The FDLE maintains the central repository of criminal history records, as well as "hot files" that provide data such as wanted and missing persons, stolen vehicles, guns and property, and domestic violence injunctions. These databases are made accessible to all criminal justice agencies statewide through the FCIC, which links agencies to the FBI's NCIC. The FDLE's Automated Fingerprint Identification System provides immediate positive identification of fingerprints of arrested persons and an automatic

update of the criminal history files. The Criminal Justice Network (CJNet) provides a secure network for LEAs to access key intelligence databases, relevant publications, and other related information-sharing links.

The bill amends s. 943.03, F.S., to delete obsolete provisions and makes other clarifying and technical changes, including but not limited to, updating certain terms due to advancements in technology.

Section 10 (Violent Crime and Drug Control Council)

Section 10 of the bill amends s. 943.031, F.S., which addresses the composition and responsibilities of, and other matters pertaining to, the Florida Violent Crime and Drug Control Council and its committees.

In 1993, the Florida Violent Crime Council was established to financially assist local law enforcement agencies in extraordinary violent crime cases.[11] After Florida's crime trend slightly shifted from violent crime to drug crimes, the 2001 Legislative Session approved the expansion of the council to include funding for drug investigations. Renamed the Violent Crime and Drug Control Council, the council now has the ability to provide supplemental funding to local and state law enforcement agencies working violent crime, major drug and money laundering investigations, and victim/witness protection and relocation efforts.[12] The council is currently required to conduct at least two meetings a year, but may meet more often when determined by the chair that extraordinary circumstances require it.[13]

The Legislature supports the funding of the council on a year-to-year basis. However, as a result of budget reductions, the violent crime and drug funding has not been appropriated since FY 2007-2008, and the victim/witness protection funding was reduced to $100,000.[14]

The bill requires the council to meet annually instead of semiannually, and specifies that additional meetings may take place when determined by the FDLE and the chair. The bill authorizes council meetings to take place via conference call, teleconference, or other similar technology. The bill also specifies that the duties of the council must be carried out subject to available funding, and requires recipients of the council's funding to return unexpended funds to the council.

Section 11 (Sexual offender registration information)

Section 11 of the bill amends s. 943.0435, F.S., which, in part, requires qualifying sexual offenders to provide specified identifying information. The FDLE maintains Florida's sexual offender registry which contains this identifying information.

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[11] *See* http://www.fdle.state.fl.us/Content/getdoc/5bcffc57-b3f4-4190-833b-0236a4608d1e/Home.aspx
[12] *Id*.
[13] Section 943.031(4), F.S.
[14] According to information provided by FDLE staff via e-mail communication, the reduction was in the 2007 2C special appropriations bill. The FDLE received $500,000 and the bill reduced the funding by $400,000 to give the FDLE what it currently receives: $100,000.

The bill amends the statute to conform to current requirements and practices in all sexual registration chapters by adding fingerprints and photographs to information that must be provided as part of the sexual offender registration process.

Section 12 (Search of registration information regarding sexual predators and sexual offenders prior to certain appointment or employment)

Section 12 of the bill amends s. 943.04351, F.S., which requires a state agency or governmental subdivision to search the sexual offender registration records prior to appointing or hiring someone to work or volunteer at a park, playground, day care center, or other place where children regularly congregate. The search is done using the applicant's name or other identifying information and is conducted via the Internet site maintained by the FDLE.

The bill expands requirements for state agencies employing persons who work or volunteer at parks, playgrounds, and day care centers to include a search of the Dru Sjodin National Sex Offender Public Website maintained by the U.S. Department of Justice. The current law requiring a search of Florida's sexual offender registry was enacted in 2004, prior to the availability of the national public search. The FDLE believes that this revision ensures that state agencies and governmental subdivisions have the most complete information available about sexual offenders from other states who may either fail to register or identify themselves as such when applying for employment. The entire Florida sexual offender registry is submitted to the national registry daily. As such, results from a search of the national registry will include any Florida registry matches as well as any publicly available matches from other state registries.

Section 13 (Background screening of athletic coaches)

Section 13 of the bill amends s. 943.0438, F.S., which requires that independent sanctioning authorities conduct a search of an athletic coach's identifying information against the state and national sexual predator and sexual offender registries. The bill makes a technical change to delete an obsolete date.

Section 14 (Definitions)

Section 14 of the bill amends s. 943.045, F.S., which defines words and phrases used in ss. 943.045-943.08, F.S., which govern the administration of the Criminal Justice Information Program within the FDLE.

The bill defines the term "biometric" to mean impressions, reproductions or representations of human physical characteristics, such as DNA fingerprints, palm prints and foot prints, eye retinas and irises, voice patterns and facial images, such as booking and drivers' license photographs, which when measured and analyzed can be used for identification purposes. The FBI is incorporating systems that can identify palm prints and facial features. The FDLE states that this definition accommodates other modalities for identifying people at the state and national level. The FDLE recommends these changes in order to specify methods used for identification purposes for biometric identification for the Criminal Justice Information Services (CJIS).

The bill also adds "offender registration information" to the definition of the term "criminal justice information" and replaces obsolete language in the definition of the term "criminal history information."

Section 15 (Criminal Justice Information Program)

Section 15 of the bill amends s. 943.05, F.S., which sets forth duties of the Criminal Justice Information Program. Currently, domestic violence and repeat violence injunction information is electronically transmitted to and between criminal justice agencies via the FCIC. Court orders of protection issued under chapter 39, F.S., are often orders directing an abusing parent to have no contact with a child, not to visit the child's school, etc.

The bill adds injunctions to prevent child abuse issued under chapter 39, F.S., to the Domestic and Repeat Violence Injunction Statewide Verification System. The FDLE states that this change allows for law enforcement officers to be made aware of these injunctions through the same methods currently used for warrants and domestic violence injunctions.

Section 16 (Criminal justice information; collection and storage; fingerprinting)

Section 16 of the bill amends s. 943.051, F.S., which requires fingerprinting of adults and minors charged with or convicted of felonies or misdemeanors, as specified in the statute. The statute also states that a minor shall be fingerprinted and the fingerprints shall be sent to the FDLE for specific misdemeanor crimes. When this occurs, the submission of fingerprints to the FDLE results in the creation of a criminal history record for the juvenile.

The bill requires submission of palm prints and photographs in addition to fingerprints for those currently required to be fingerprinted. The bill also provides an exception to the fingerprinting requirement for a minor issued a civil citation pursuant to s. 985.12, F.S. The FDLE states that this exception will ensure that the civil citation process works to allow diversion from the criminal justice system and avoidance of a criminal history record for a juvenile in one of these programs.

Section 17 (Disposition reporting)

Section 17 of the bill amends s. 943.052, F.S., which requires arresting agencies to include on the arrest fingerprint card the offender-based transaction system number. The FDLE states that over 90 percent of these submissions are electronic using Livescan machines at booking facilities. A required field in these automated submissions (and for entry into the Computerized Criminal History file) is the offender based transaction system number. This number is recorded on the arrest affidavit and provided to the Clerk of Court. The number is used to help link the reported arrest to the subsequent court disposition.

Additionally, all 67 Clerks of Court submit electronic files of prosecutor and court disposition information to the FDLE. These files are in an established format that allows the FDLE to receive and process them automatically. The Department of Corrections (DOC) submits fingerprints and palm prints electronically for each inmate being processed into prison through one of their reception centers and the Department of Juvenile Justice (DJJ) has Livescan

fingerprint capability (booking devices) at their juvenile assessment facilities and submits fingerprints and palm prints of juvenile offenders.

The bill changes the reference from fingerprint cards to fingerprint submissions in recognition of the fact that over 90 percent of incoming arrests are electronic. The bill also updates the court disposition provision of the statute to reflect current practice. All 67 Clerks report electronically at least monthly, and they have to use a format that the FDLE can receive and process electronically.

The bill also removes the requirement to submit information to the FDLE upon a person being released from a state correctional institution, since there is currently no fingerprint Type of Transaction for a release and there is no automated way to enter release information into the computerized criminal history file.

The bill also removes the requirement to submit information to the FDLE upon a person being released from DJJ custody since currently the FDLE does not get release information from the DJJ.

Section 18 (Dissemination of criminal justice information)

Section 18 of the bill amends s. 943.053, F.S., which provides that criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

The National Crime Prevention and Privacy Compact Act of 1998 established an infrastructure by which states can exchange criminal history records for noncriminal justice purposes according to the laws of the requesting state. The act also provides for reciprocity among the states to share records without charging each other for the information. The Compact establishes a council to promulgate rules and procedures for the effective use of the Interstate Identification Index (III) System for noncriminal justice purposes.

The bill provides that criminal justice information derived from federal criminal justice information systems or systems of other states shall not be disseminated in a manner inconsistent with the rules instituted by the National Crime Prevention and Privacy Compact or with other applicable laws or rules.

Section 19 (Exchange of federal criminal history records and information)

Section 19 of the bill amends s. 943.054, F.S., which, in part, provides that criminal history information derived from any U.S. Department of Justice criminal justice information system is available to certain entities, including criminal justice agencies for criminal justice purposes and, pursuant to applicable federal laws and regulations, for use in connection with licensing or local or state employment.

The bill provides that this information is available pursuant to applicable federal laws and regulations, including those instituted by the National Crime Prevention and Privacy Compact, for use in connection with licensing or local or state employment.

Section 20 (Access to criminal history information provided by the FDLE to qualified entities)

Section 20 of the bill amends s. 943.0542, F.S., which provides for access to criminal history information by certain qualified entities. A qualified entity must submit to the FDLE a request for screening an employee or volunteer "on a completed fingerprint card" or the request may be submitted electronically. Each such request must be accompanied by a fee for a statewide criminal history check as established in s. 943.053, F.S., plus the amount charged by the FBI for the national criminal history check.

The bill updates language to remove the reference to hard fingerprint cards and only reference electronic fingerprint submissions. The FBI stopped accepting fingerprint cards in April 2011. It also provides that payments made for criminal history checks must be made in the manner prescribed by the FDLE by rule. These fees are set in law but the timing of payments is established in administrative rule. The FDLE states that last year the Legislature authorized invoicing of these entities and the bill clarifies that this option may be set in rule in the future.

Section 21 (Criminal justice information network and information management)

Section 21 of the bill amends s. 943.0544, F.S., which provides that the FDLE manages and operates the Criminal Justice Network which allows for information and data sharing by criminal justice agencies across the state.

The bill specifies the name of the statewide telecommunications and data network as the "Criminal Justice Network" and corrects a reference relating to the Criminal Justice Network (changing the term "intraagency" to "intrastate").

Section 22 (Records and audits)

Section 22 amends s. 943.055, F.S., which addresses audits conducted by the Criminal Justice Information Program. This program audits state and local criminal justice agencies to assure compliance with federal and state laws and regulations pertaining to the operation of criminal justice information systems. The program also audits noncriminal justice agencies, including state agencies that receive state and national criminal history record checks and public and private organizations that submit record check requests under the National Child Protection Act (1993), as amended, and s. 943.0542, F.S. The FBI Criminal Justice Information Services Security Policy, v. 5.1 Appendix J, offers guidelines for auditing noncriminal justice agencies.

The bill conforms the statute to current practice by expanding audit requirements for the Criminal Justice Information Program to apply to noncriminal justice agencies.

Section 23 (Access to, and review and challenge of, criminal history records)

Section 23 amends s. 943.056, F.S., which provides a mechanism for an individual to verify the accuracy and completeness of a criminal history record. Upon determining what the record should contain in order to be complete and accurate, the Criminal Justice Information Program must conform state and federal records to reflect corrected criminal history information.

The bill clarifies that the FDLE will request that federal records be corrected by notifying the FBI of the need for correction of records. The FDLE cannot make corrections directly to federal records.

Section 24 (Prearrest, postarrest, or teen court diversion program expunction)

Section 24 of the bill amends s. 943.0582, F.S. The FDLE processes expunction applications for minors who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor under s. 943.0582, F.S. Applications for prearrest or postarrest diversion expunction must be submitted no later than 6 months after completion of the diversion program. In compliance with the statute, the FDLE must reject juvenile diversion applications that are received after the 6-month application deadline, even though an applicant has completed the diversion program and met all local criteria.

The FDLE believes that current s. 943.0582(3)(c), F.S., is unworkable in practice, as it conditions eligibility for this form of expunction on the admission criteria of the particular diversion program in which the juvenile defendant participated. The FDLE believes that eligibility should not (and was not intended) to vary according to the way different diversion programs are organized and administered from county to county, and should be based on criteria (first-time, non-violent misdemeanor, as defined) applied to the juvenile applicant as an individual, not to the diversion program in which he or she participates.

The bill extends the time limit for applying for a juvenile diversion expunction after completion of the diversion program from 6 to 12 months, and conditions eligibility on the qualifications of the applicant rather than on those of the diversion program in which he or she participates.

Sections 25 and 26 (Court-ordered expunction of criminal history records; court-ordered sealing of criminal history records)

Sections 25 and 26 of the bill amend ss. 943.0585 and 943.059, F.S., which, respectively, address court-ordered expunction of criminal history records and court-ordered sealing of criminal history records. These statutes set forth the criteria that must be met in order to be eligible to have a criminal history record expunged or sealed. In addition, these statutes also provide that in order to have a criminal history record expunged or sealed within Florida, an individual must first apply to the FDLE for a Certificate of Eligibility.

Currently, the FDLE understands the law to mean that a person can only get one court-ordered expunction (s. 943.0585, F.S.) or one court-ordered seal (s. 943.059, F.S.) in a lifetime. The exception is that a person can apply to have a record expunged after it has been sealed for 10

years. The juvenile diversion expunction (s. 943.0582, F.S.) and the automatic juvenile "purge" expunction (s. 943.0515, F.S.) do not count against this once-in-a-lifetime limitation.

Current law provides that a subject of an expunged or sealed record may lawfully deny or fail to acknowledge the arrest covered by the expunged or sealed record except when the subject of the record meets any of a number of exceptions to this general authorization. One of those exceptions is that the subject of record is seeking authorization from a seaport for employment within or access to one or more seaports.

The FDLE believes that a very close reading of the current statutes could potentially open to dispute this once-in-a-lifetime limitation. The FDLE states that, for example, under current law a person must state, when applying for a seal under s. 943.059, F.S., that he or she "has never secured a prior sealing or expunction of a criminal history record under this section." However, s. 943.059, F.S., relates to sealing only, so a person could argue that he or she does have an expunction under s. 943.059, F.S. (though the person may actually have received an expunction under the appropriate expunction statute, s. 943.0585, F.S.). This same glitch appears in s. 943.0585, F.S.

The statutes make receipt of an expunction or seal from another jurisdiction a disqualification, without elaboration. The FDLE states that the laws of other states vary widely with regard to sealing and expunging criminal history records. In order to make a determination of whether an action taken on a record from another state should disqualify a person from applying for a court-ordered expunction or seal in Florida, FDLE attorneys must conduct extensive research to determine if the action more closely resembles Florida's court-ordered expunction or seal (limited to once in a lifetime) or one of the other kinds of expunction that would not disqualify an application if it occurred in Florida, e.g., juvenile diversion expunction, automatic juvenile "purge" expunction, or administrative expunction.

The bill replaces the phrase "under this section" in both seal and expunge statutes with a clarification that the subject cannot have secured either a court-ordered expunction or a court-ordered seal under s. 943.0585 or s. 943.059, F.S., as applicable.

The bill also removes references to having received an expunction or sealing "from any jurisdiction outside the state" as a disqualifier for seeking expunction or sealing in Florida.

The bill removes an exception from the general authorization for a subject of an expunged or sealed record to lawfully deny or fail to acknowledge the arrest covered by the expunged or sealed record: when the subject of the record is seeking authorization from a seaport for employment within or access to one or more seaports.

Section 27 (Law enforcement agency accreditation)

Section 27 of the bill amends s. 943.125, F.S., which provides for a law enforcement accreditation program to address certain aspects of law enforcement, including, but not limited to: law enforcement disciplinary procedures and rights; collection and preservation of evidence; use of force; use of criminal investigative funds; seizure and forfeiture of contraband articles; vehicle pursuits; recording and processing citizens' complaints; and handling natural and

manmade disasters. The Commission for Florida Law Enforcement Accreditation (CFA) was created in 1995 and is staffed by the FDLE.

In 1996, the Legislature repealed the Department of Corrections' oversight authority of county correctional facilities. As a result, county correctional professionals determined that a state accreditation process should be established. The Florida Corrections Accreditation Commission (FCAC) was formed in 1998 to create a process for correctional facilities to incorporate uniform standards for county jails.

In 2005, the Association of Pretrial Professionals (APPF) approached the FCAC and requested an accreditation program for agencies with pretrial responsibilities. Two years later, Florida's Chief Inspector General asked for the development of an accreditation program for the Inspectors General investigation function. As a result of requests by county correctional, pretrial diversion, and inspectors general professionals for accreditation programs, accreditation duties were expanded beyond law enforcement. FDLE staff currently supports the Commission for Florida Law Enforcement Accreditation and the Florida Corrections Accreditation Commission.

The bill provides for accreditation of state and local LEAs, correctional facilities, public agency offices of inspectors general, and the pretrial diversion operations within offices of the state attorneys, county government, or sheriffs' offices. The bill further provides that, subject to available funding, the FDLE will employ support staff to the Commission for Florida Law Enforcement Accreditation and the Florida Corrections Accreditation Commission.

The bill clarifies that the state accreditation process is voluntary. The bill also makes technical changes to correct the name of the Corrections Accreditation Commission.

Section 28 (Officers' minimum qualifications for employment or appointment)

Section 28 of the bill amends s. 943.13, F.S., which provides the minimum qualifications for employment as a law enforcement officer or correctional officer. Under this statute, in the case of administrative delays in processing fingerprints, a person may be employed for a period not to exceed 1 year while the fingerprint check is pending if he or she meets other hiring criteria. Previously when the FBI received paper-inked fingerprint cards, the delay in processing was often 6 weeks, and at times up to 3 months. Because of these delays, there was a need to hire an applicant before the state and national criminal history results were available to the employing agency.

The bill deletes the provision allowing an individual to be employed up to 1 year while a fingerprint check is pending. Technology has improved response times to the point that response times are measured in hours rather than months. All submissions to the FDLE and the FBI are electronic so mailing time is eliminated. In addition, the FDLE has committed to a 3 business day turn around on these submissions. The FDLE packages the state and national responses into a single response and provides it to the employing agency via secure email or secure file transfer. The FDLE states that since response delays no longer exist, this provision is not needed.

Section 29 (Implementation of federal Law Enforcement Officers Safety Act of 2004)

Section 29 of the bill amends s. 943.132, F.S., which requires the Criminal Justice Standards and Training Commission (CJSTC) to authorize a uniform firearms proficiency verification card to facilitate implementation of the federal Law Enforcement Officers Safety Act of 2004. The federal act relates to the carrying of concealed firearms by qualified law enforcement officers and qualified retired law enforcement officers.

The bill deletes references to the "Law Enforcement Officers Safety Act of 2004." References to the underlying U.S. Code are retained. By not referring to a particular Congressional Act but rather to the underlying U.S. Code, the statute will not have to be amended each time Congress makes changes to the federal law as each such change is made by a bill with a particular "common name."

Section 30 (Revocation of employment; investigation)

Section 30 of the bill amends s. 943.1395, F.S., which, in part, authorizes the CJSTC to revoke the certification of an officer who is not in compliance with specified provisions. Section 943.1395(6)(a), F.S., provides that the CJSTC shall cause to be investigated any ground for revocation from the employing agency or from the Governor, and the commission may investigate verifiable complaints against an officer.

The FDLE states that the CJSTC is a politically appointed body that does not have the authority to investigate verifiable complaints against an officer. The bill clarifies that the CJSTC may cause verifiable complaints to be investigated.

Sections 31 and 32 (Florida Criminal Justice Executive Institute)

Sections 30 and 31 of the bill, respectively, amend s. 943.1755, F.S, and s. 943.1757, F.S.

Section 943.1755, F.S., provides that the Florida Criminal Justice Executive Institute (FCJEI) is housed within the FDLE. Through the FCJEI, the FDLE delivers educational programs for Florida criminal justice executives. The FCJEI provides external training for high-level criminal justice executives, as well as law enforcement officers and officials. The FCJEI is a CJSTC-certified training center subject to specific rules and audits.

Section 943.1757, F.S., requires the FCJEI Policy Board to identify the needs of criminal justice executives regarding issues related to diverse populations to ensure that appropriate training is provided. Beginning January 1, 1995, and every 5 years thereafter, the policy board is required to submit a report to the appropriate substantive committees of the Legislature describing executive training needs. The board must also prepare a biennial report to the appropriate substantive committees describing how the training needs are being met.

The bill amends s. 943.1755, F.S., to clarify that the FDLE maintains responsibility for delivering and facilitating all FCJEI training.

The bill amends s. 943.1757, F.S., to allow for the appointment of designees to the FCJEI Policy Board to act on behalf of the Secretary of the DOC, the Secretary of the DJJ, and the Executive Director of the FDLE. This change allows these individual agency heads to appoint designees from within their agency that have background and experience in leadership and management training. As designee members of the FCJEI Policy Board they will represent their respective agency interests in the development and delivery of leadership programs offered through and sponsored by the FCJEI. This provision is already allowed for the Commissioner of Education.

The bill corrects the number of members that constitute a quorum of the FCJEI Policy Board. Seven members are needed to obtain a quorum for the 12-person board.

In order to eliminate redundant reporting requirements, the bill deletes the requirement to report to substantive committees of the Legislature every 5 years. The FDLE will continue to submit the required biennial report describing how these training needs are being met. Additionally, the FDLE prepares an annual report for the policy board that addresses these training requirements and is available upon request.

Section 33 (Regional Training Councils)

Section 33 of the bill amends s. 943.25, F.S., which, in part, addresses regional training councils. These councils advise and assist the CJSTC in assessing regional criminal justice training needs and act as extensions of the CJSTC in planning, programming, and budgeting for expenditures of moneys in the Criminal Justice Standards and Training Trust Fund. The CJSTC is required to annually forward to each regional training council a list of its specific recommended priority issues or items to be funded. According to the FDLE, the CJSTC defers to each regional training council to make their own determination of priorities for their jurisdictions, as this is a specific duty for each council.

The bill authorizes, rather than requires, the CJSTC to annually forward to each regional training council a list of specific recommended priority issues or items for funding.

Section 34 (DNA database)

Section 34 of the bill amends s. 943.325, F.S., relating to the DNA database, which, in part, provides that the results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies, at the request of the agency. The term “criminal justice agencies” is defined by reference to a statutory provision which has changed as a result of other changes in the bill. The bill corrects the statutory citation (conforming change).

Section 35 (State-operated criminal analysis laboratories)

Section 35 of the bill amends s. 943.33, F.S., which, in part, provides that testing services of state-operated criminal analysis laboratories shall be available to any defendant in a criminal case upon showing of good cause and upon order of the court with jurisdiction in the case. The term “good cause” is defined as a finding by the court that the laboratory service being sought by the defendant is anticipated to produce evidence that is relevant and material to the defense, that the service sought is one which is reasonably within the capacity of the state-operated laboratory

and will not be unduly burdensome upon the laboratory, and that the service cannot be obtained from any qualified private or nonstate operated laboratory within the state or otherwise reasonably available to the defense. The court shall assess the costs of such service ordered by the court to the defendant or the local public defender's office.

The FDLE states that it has recently encountered a spate of orders seeking to allow defense experts access to the FDLE labs for purposes of testing evidence relevant to the defendant's defense in an ongoing prosecution. The FDLE further states that the presence of any non-FDLE personnel in the FDLE labs causes significant concern regarding contamination, misuse of equipment, and other recognized lab protocol concerns. The FDLE has always considered s. 943.33, F.S., to allow court-ordered testing on behalf of a defendant to be conducted by FDLE personnel, not defense experts or others acting on behalf of the defense.

The bill amends the definition of "good cause" to add that the service sought is one that will not impede normal daily laboratory operations, negatively impact the laboratory's certifications or equipment calibration, and violate the laboratory's national certification or accreditation standards.

The bill also provides that s. 943.33, F.S., does not authorize the presence of defense experts or others representing the defense inside a state-operated laboratory facility where actual testing or analysis is occurring, and does not authorize the use of state-operated laboratory equipment or facilities by defense experts or other persons not employed by or acting on behalf of the FDLE.

The bill also requires the FDLE to assess the costs of all testing, equipment operation, personnel costs, and any other costs directly attributable to the court-ordered testing to the defendant or the defendant's counsel, whether public, private, or pro bono, who obtained the testing order.

Section 36 (Transportation and protective services)

Section 36 of the bill amends s. 943.68, F.S., which, in part, provides that the FDLE shall submit a report each July 15 to the Governor, the Legislature, and the Cabinet, detailing all transportation and protective services provided under specified subsections of the statute within the preceding fiscal year.

The FDLE is charged with providing protective services to the Governor, the Governor's immediate family, and the Governor's office and mansion. The FDLE also provides protective or transportation services to other individuals in certain circumstances when requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the President of the Senate, the Speaker of the House, or the Chief Justice of the Supreme Court.

The FDLE special agents are assigned to two different pay cycles (160 hours) in which they document their hours of service in the FDLE's Automated Investigative Management System (AIM). Therefore, some agents may be at the beginning or middle of a pay cycle on June 30th (the end of the fiscal year) when the transportation and protective services costs are obtained from the AIM.

The bill changes the due date of the annual Transportation and Protective Services Report from July 15th to August 15th. The FDLE states this change will allow for a more accurate reflection of costs associated with protective services provided during a fiscal year. This change will allow all agents who worked protective operations during the fiscal year but whose pay cycle has not ended by June 30th to submit their hours at the end of their cycle.

Section 37 (Tribal council as governing body; powers and duties)

Section 37 of the bill amends s. 285.18, F.S., which provides that the law enforcement agencies of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are "criminal justice agencies." The term "criminal justice agencies" is defined by reference to a statutory provision which has changed as a result of other changes in the bill. The bill corrects the statutory citation (conforming change).

Section 38 (Stop Inmate Fraud Program)

Section 38 of the bill amends s. 414.40, F.S., which addresses the Stop Inmate Fraud Program in the Department of Financial Services. The terms "record" and "criminal justice agencies" are defined by reference to statutory provisions which have changed as a result of other changes in the bill. The bill corrects the statutory citations (conforming changes).

Sections 39-70 (Technical changes to remove outdated or obsolete fingerprinting terminology and tasks from licensing statutes and other statutes)

Various statutes, including, but not limited to, licensing statutes and sexual predator/offender statutes contain outdated, obsolete, or inapplicable terms and tasks relating to fingerprinting. The bill modifies terminology in these statutes relating to fingerprinting and makes other minor, technical wording corrections (unrelated to fingerprinting) as follows:

- **Section 39** of the bill amends s. 447.045, F.S., which relates to confidential information of business agent license applicants held by the Department of Business and Professional Regulation, to replace a reference to "fingerprint cards" with the term "fingerprints."
- **Section 40** of the bill amends s. 455.213, F.S., which relates to general licensing provisions under chapter 455, F.S. (Business and Professional Regulation), to replace references to "fingerprint card" with the term "fingerprints."
- **Section 41** of the bill amends s. 468.453, F.S., which relates to licensure of athletic agents, to replace references to "fingerprint card" with the term "fingerprints."
- **Section 42** of the bill amends s. 476.615, F.S., which relates to qualifications for registration and certification of real estate appraisers, to replace references to "fingerprint card" with the term "fingerprints."
- **Section 43** of the bill amends s. 493.6105, F.S., which relates to initial application for licensure for private investigators and others, to replace references to "fingerprint card" with the term "fingerprints."
- **Section 44** of the bill amends s. 493.6108, F.S., which relates to investigation of private investigator applicants and other applicants, to replace a reference to "fingerprint card" with the term "fingerprints."

- **Section 45** of the bill amends s. 494.00312, F.S., which relates to loan originator licenses, to delete a reference to "in lieu of a paper finger print card" and replace a reference to "fingerprint" with the term "biometric."
- **Section 46** of the bill amends s. 494.00321, F.S., which relates to mortgage broker licenses, to delete references to "in lieu of a paper finger print card" and replace references to "fingerprint" with the term "biometric."
- **Section 47** of the bill amends s. 494.00611, F.S., which relates to mortgage lender licenses, to delete a reference to "in lieu of a paper finger print card" and replace a reference to "fingerprint" with the term "biometric."
- **Section 48** of the bill amends s. 517.12, F.S., which relates to registration of securities dealers and others, to replace references to "fingerprint card" with the term "fingerprints."
- **Section 49** of the bill amends s. 538.09, F.S., which relates to registration of secondhand dealers, to replace a reference to "fingerprint cards" with the term "fingerprints."
- **Section 50** of the bill amends s. 538.25, F.S., which relates to registration of secondary metal recyclers, to replace a reference to "fingerprint cards" with the term "fingerprints."
- **Section 51** of the bill amends s. 548.024, F.S., which relates to pugilistic match promoters, to replace references to "fingerprint card" with the term "fingerprints."
- **Section 52** of the bill amends s. 550.105, F.S., which relates to occupational licenses of racetrack employees, to replace a reference to "fingerprint cards" with the term "fingerprints" and to replace references to "fingerprint" with the term "biometric."
- **Section 53** of the bill amends s. 550.908, F.S., which relates to powers and duties of the Compact Committee (pari-mutuel wagering), to delete a reference to "fingerprint card" (where a substituted term is not required).
- **Section 54** of the bill amends s. 551.107, F.S., which relates to slot machine occupational licenses, to replace a reference to "fingerprint" with the term "fingerprints" and to replace references to "fingerprint" and "fingerprint card" with the term "biometric."
- **Section 55** of the bill amends s. 560.141, F.S., which relates to license applications for money service businesses, to replace a reference to "fingerprint card" with the term "set of fingerprints."
- **Section 56** of the bill amends s. 628.906, F.S., which relates to application requirements for captive insurance (and reinsurance) companies, to replace a reference to "fingerprint cards" with the term "fingerprints" and replace "fingerprint card" with the term "set of fingerprints."
- **Section 57** of the bill amends s. 633.34, F.S., which relates to qualification for employment as a firefighter, to replace a reference to "fingerprint card" with the term "set of fingerprints."
- **Section 58** of the bill amends s. 744.3135, F.S., which relates to credit and criminal investigations of nonprofessional guardian applicants, to replace reference to "fingerprint card" with the term "fingerprints," delete a reference to "completed fingerprint card," delete language relating to tasks required by the clerk of court and guardian relating to fingerprint cards, and replace reference to "fingerprint" with the term "biometric."
- **Section 59** of the bill amends s. 775.21, F.S., relating to sexual predator registration, to replace a reference to "fingerprint card" with the term "fingerprints" and delete the word "Card" in reference to "Sexual Predator Registration Card."
- **Section 60** of the bill amends s. 775.261, F.S., which relates to career offender registration, to replace a reference to "fingerprint card" with the term "fingerprints" and delete the word "Card" in reference to "Career Offender Registration Card."

- **Section 61** of the bill amends s. 790.06, F.S., which relates to a license to carry a concealed weapon or firearm, to replace references to "completed fingerprint card" with the term "complete set of fingerprints" or "fingerprints" (as applicable).
- **Section 62** of the bill amends s. 944.607, F.S., which relates to notification to the FDLE of information on sexual offenders, to replace a reference to "fingerprint card" with the term "fingerprints" and delete the word "Card" in reference to "Sexual Offender Registration Card."
- **Section 63** of the bill amends s. 944.608, F.S., which relates to notification to the FDLE of information on career offenders, to replace a reference to "fingerprint card" with the term "fingerprints" and delete the word "Card" in reference to "Career Offender Registration Card."
- **Section 64** of the bill amends s. 985.11, F.S., which relates to fingerprinting and photographing of a child charged with or found to have committed any of a number of specified offenses, to correct the description of and citation regarding one of those offenses.
- **Section 65** of the bill amends s. 985.644, F.S., which relates to background screenings of DJJ employees and contracted providers, to replace reference to "fingerprint" with the term "biometric" or "biometric identification" (as applicable).
- **Section 66** of the bill amends s. 985.4815, F.S., which relates to notification to the FDLE of information on juvenile sexual offenders, to replace a reference to "fingerprint card" with the term "fingerprints" and delete the word "Card" in reference to "Sexual Offender Registration Card."
- **Section 67** of the bill amends s. 1002.395, F.S., which relates to the Florida Tax Credit Scholarship Program, to delete 2007 dates in regard to fingerprint submissions and searches, replace references to "fingerprint" with the term "biometric" and replace references to "fingerprint cards" with the term "fingerprints."
- **Section 68** of the bill amends s. 1002.421, F.S., which relates to accountability of private schools participating in state school choice scholarship programs, to delete 2007 and 2004 dates in regard to fingerprint submissions and searches, replace references to "fingerprint" with the term "biometric," and replace references to "fingerprint cards" with the term "fingerprints."
- **Section 69** of the bill amends s. 1012.32, F.S., which, in part, relates to background screenings of instructional personnel, to delete 2004 dates in regard to fingerprint submissions and searches, replace references to "fingerprint" with the term "biometric," and replace references to "fingerprint cards" with the term "fingerprints."
- **Section 70** of the bill amends s. 1012.467, F.S., which, in part, relates to background screenings of noninstructional contractors permitted access to school grounds when students are present, to replace references to "fingerprint" with the term "biometric" and replace references to "fingerprint cards" with the term "fingerprints."

Section 71 (Effective date)

Section 71 of the bill provides that the bill takes effect on July 1, 2013.

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:

It is unknown at this time if changes relating to court-ordered costs of laboratory services provided by the FDLE will substantially impact defendants and private defense counsel (relative to the current law on court-ordered costs for these services).

C. Government Sector Impact:

It is unknown at this time if changes relating to court-ordered costs of laboratory services provided by the FDLE will substantially impact public defenders (relative to the current law on court-ordered costs for these services).

The bill does not have a fiscal impact on the FDLE.[15]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[15] FDLE Analyses.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 18, 3013:

- Amends various statutes, including, but not limited to, licensing statutes and sexual predator/offender statutes, to modify or remove outdated, obsolete, or inapplicable terms and tasks relating to fingerprinting, and to make other minor, technical wording corrections (unrelated to fingerprinting).
- Adds the following property to the list of regulated metal property which secondary metals recyclers may only purchase if certain conditions are met: more than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

B. Amendments:

None.

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

544712

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 125.5801, Florida Statutes, is amended
6 to read:
7 125.5801 Criminal history record checks for certain county
8 employees and appointees.—
9 (1) Notwithstanding chapter 435, a county may require, by
10 ordinance, state and national criminal history ~~employment~~
11 screening for:
12 (a) Any position of county employment or appointment,

544712

13 whether paid, unpaid, or contractual, which the governing body
14 of the county finds is critical to security or public safety;~~,~~
15 ~~or for~~
16 (b) Any private contractor, employee of a private
17 contractor, vendor, repair person, or delivery person who is
18 subject to licensing or regulation by the county; or
19 (c) Any private contractor, employee of a private
20 contractor, vendor, repair person, or delivery person who has
21 direct contact with individual members of the public or access
22 to any public facility or publicly operated facility in such a
23 manner or to such an extent that the governing body of the
24 county finds that preventing unsuitable persons from having such
25 contact or access is critical to security or public safety.
26 (2) The ordinance must require each person applying for, or
27 continuing employment or appointment in, any such position,
28 applying for initial or continuing licensing or regulation, or
29 having such contact or access ~~to any such facility~~ to be
30 fingerprinted. The fingerprints shall be submitted to the
31 Department of Law Enforcement for a state criminal history
32 record check and to the Federal Bureau of Investigation for a
33 national criminal history record check. The information obtained
34 from the criminal history record checks conducted pursuant to
35 the ordinance may be used by the county to determine a person's
36 ~~an applicant's~~ eligibility for such employment or appointment
37 and to determine a person's ~~an employee's~~ eligibility for
38 continued employment or appointment. This section is not
39 intended to preempt or prevent any other background screening,
40 including, but not limited to, criminal history record checks,
41 which a county may lawfully undertake.

544712

42 Section 2. Section 166.0442, Florida Statutes, is amended
43 to read:
44 166.0442 Criminal history record checks for certain
45 municipal employees and appointees.—
46 (1) Notwithstanding chapter 435, a municipality may
47 require, by ordinance, state and national criminal history
48 ~~employment~~ screening for:
49 (a) Any position of municipal employment or appointment,
50 whether paid, unpaid, or contractual, which the governing body
51 of the municipality finds is critical to security or public
52 safety;~~, or for~~
53 (b) Any private contractor, employee of a private
54 contractor, vendor, repair person, or delivery person who is
55 subject to licensing or regulation by the municipality; or
56 (c) Any private contractor, employee of a private
57 contractor, vendor, repair person, or delivery person who has
58 direct contact with individual members of the public or access
59 to any public facility or publicly operated facility in such a
60 manner or to such an extent that the governing body of the
61 municipality finds that preventing unsuitable persons from
62 having such contact or access is critical to security or public
63 safety.
64 (2) The ordinance must require each person applying for, or
65 continuing employment or appointment in, any such position,
66 applying for initial or continuing licensing or regulation, or
67 having such contact or access ~~to any such facility~~ to be
68 fingerprinted. The fingerprints shall be submitted to the
69 Department of Law Enforcement for a state criminal history
70 record check and to the Federal Bureau of Investigation for a

544712

71 national criminal history record check. The information obtained
72 from the criminal history record checks conducted pursuant to
73 the ordinance may be used by the municipality to determine a
74 person's ~~an applicant's~~ eligibility for such employment or
75 appointment and to determine a person's ~~an employee's~~
76 eligibility for continued employment or appointment. This
77 section is not intended to preempt or prevent any other
78 background screening, including, but not limited to, criminal
79 history background checks, that a municipality may lawfully
80 undertake.
81 Section 3. Section 406.145, Florida Statutes, is amended to
82 read:
83 406.145 Unidentified persons; reporting requirements.—When
84 an unidentified body is transported to a district medical
85 examiner pursuant to this chapter, the medical examiner shall
86 immediately report receipt of such body to the appropriate law
87 enforcement agency, provided such law enforcement agency was not
88 responsible for transportation of the body to the medical
89 examiner. If the medical examiner cannot determine the law
90 enforcement agency having jurisdiction, he or she shall notify
91 the sheriff of the county in which the medical examiner is
92 located, who shall determine the law enforcement agency
93 responsible for the identification. It is the duty of the law
94 enforcement officer assigned to and investigating the death to
95 immediately establish the identity of the body. If the body is
96 not immediately identified, the law enforcement agency
97 responsible for investigating the death shall ~~complete an~~
98 ~~Unidentified Person Report and~~ enter ~~the~~ data concerning the
99 body, through the Florida Crime Information Center, into the

544712

100 Unidentified Person File of the National Crime Information
101 Center. ~~An Unidentified Person Report is that form identified by~~
102 ~~the Florida Department of Law Enforcement for use by law~~
103 ~~enforcement agencies in compiling information for entrance into~~
104 ~~the Unidentified Person File.~~
105 Section 4. Paragraph (b) of subsection (5) of section
106 538.26, Florida Statutes, is amended to read:
107 538.26 Certain acts and practices prohibited.—It is
108 unlawful for a secondary metals recycler to do or allow any of
109 the following acts:
110 (5)
111 (b) The purchase of any of the following regulated metals
112 property is subject to the restrictions provided in paragraph
113 (a):
114 1. A manhole cover.
115 2. An electric light pole or other utility structure and
116 its fixtures, wires, and hardware that are readily identifiable
117 as connected to the utility structure.
118 3. A guard rail.
119 4. A street sign, traffic sign, or traffic signal and its
120 fixtures and hardware.
121 5. Communication, transmission, distribution, and service
122 wire from a utility, including copper or aluminum bus bars,
123 connectors, grounding plates, or grounding wire.
124 6. A funeral marker or funeral vase.
125 7. A historical marker.
126 8. Railroad equipment, including, but not limited to, a tie
127 plate, signal house, control box, switch plate, E clip, or rail
128 tie junction.

544712

129 9. Any metal item that is observably marked upon reasonable
130 inspection with any form of the name, initials, or logo of a
131 governmental entity, utility company, cemetery, or railroad.
132 10. A copper, aluminum, or aluminum-copper condensing or
133 evaporator coil, including its tubing or rods, from an air-
134 conditioning or heating unit, excluding coils from window air-
135 conditioning or heating units and motor vehicle air-conditioning
136 or heating units.
137 11. An aluminum or stainless steel container or bottle
138 designed to hold propane for fueling forklifts.
139 12. A stainless steel beer keg.
140 13. A catalytic converter or any nonferrous part of a
141 catalytic converter unless purchased as part of a motor vehicle.
142 14. Metallic wire that has been burned in whole or in part
143 to remove insulation.
144 15. A brass or bronze commercial valve or fitting, referred
145 to as a “fire department connection and control valve” or an
146 “FDC valve,” that is commonly used on structures for access to
147 water for the purpose of extinguishing fires.
148 16. A brass or bronze commercial potable water backflow
149 preventer valve that is commonly used to prevent backflow of
150 potable water from commercial structures into municipal domestic
151 water service systems.
152 17. A shopping cart.
153 18. A brass water meter.
154 19. A storm grate.
155 20. A brass sprinkler head used in commercial agriculture.
156 <u>21. More than two lead-acid batteries, or any part or</u>
157 <u>component thereof, in a single purchase or from the same</u>

544712

158 individual in a single day.
159 Section 5. Paragraphs (b), (d), and (e) of subsection (5)
160 of section 937.021, Florida Statutes, are amended to read:
161 937.021 Missing child and missing adult reports.—
162 (5)
163 (b) Upon receiving a request to record, report, transmit,
164 display, or release information and photographs pertaining to a
165 missing adult or missing child from the law enforcement agency
166 having jurisdiction over the missing adult or missing child, the
167 department, a state or local law enforcement agency, and the
168 personnel of these agencies; any radio or television network,
169 broadcaster, or other media representative; any dealer of
170 communications services as defined in s. 202.11; or any agency,
171 employee, individual, or person is immune from civil liability
172 for damages for complying in good faith with the request to
173 provide information and is presumed to have acted in good faith
174 in recording, reporting, transmitting, displaying, or releasing
175 information or photographs pertaining to the missing adult or
176 missing child.
177 (d) The presumption of good faith is not overcome if a
178 technical or clerical error is made by any agency, employee,
179 individual, or entity acting at the request of the local law
180 enforcement agency having jurisdiction, or if the Amber Alert,
181 Missing Child Alert, missing child information, missing adult
182 information, or Silver Alert information is incomplete or
183 incorrect because the information received from the local law
184 enforcement agency was incomplete or incorrect.
185 (e) Neither this subsection nor any other provision of law
186 creates a duty of the agency, employee, individual, or entity to

544712

187 record, report, transmit, display, or release the Amber Alert,
188 Missing Child Alert, missing child information, missing adult
189 information, or Silver Alert information received from the local
190 law enforcement agency having jurisdiction. The decision to
191 record, report, transmit, display, or release information is
192 discretionary with the agency, employee, individual, or entity
193 receiving the information.
194 Section 6. Paragraphs (d) and (e) of subsection (1) and
195 paragraph (a) of subsection (2) of section 937.024, Florida
196 Statutes, are amended to read:
197 937.024 Birth records of missing children; registrars'
198 duties.—
199 (1) The Office of Vital Statistics shall:
200 ~~(d) Recall each missing child's birth certificate or birth~~
201 ~~record from the local registrar of vital statistics in the~~
202 ~~county of the missing child's birth.~~
203 (d) ~~(e)~~ Collect each month a list of missing children who
204 have been located, as provided by the Department of Law
205 Enforcement's Florida Crime Information Center; identify which,
206 if any, of the located children were born in this state; and
207 remove its flags from the birth certificates or birth records of
208 such children accordingly.
209 (2)(a) A copy of the birth certificate or information
210 concerning the birth record of any child whose record has been
211 flagged ~~or recalled~~ pursuant to paragraph (1)(c) ~~or paragraph~~
212 ~~(1)(d)~~ may not be provided by the State Registrar or any local
213 registrar in response to any inquiry, unless the flag has been
214 removed pursuant to paragraph (1)(d) or upon the official
215 request of the Department of Law Enforcement's Missing

544712

216 Endangered Persons Information Clearinghouse ~~(1)(e)~~.
217 Section 7. Subsection (7) of section 937.025, Florida
218 Statutes, is amended to read:
219 937.025 Missing children; student records; reporting
220 requirements; penalties.—
221 (7) A person who knowingly provides false information
222 concerning a missing child or the efforts to locate and return a
223 missing child whose ~~to a~~ parent, family member, or guardian ~~of a~~
224 ~~child who has been~~ reported the child missing commits a
225 misdemeanor of the first degree, punishable as provided in s.
226 775.082 or s. 775.083.
227 Section 8. Section 937.028, Florida Statutes, is amended to
228 read:
229 937.028 Fingerprints; missing persons ~~children~~.—
230 (1) If fingerprints have been taken for the purpose of
231 identifying a child, in the event that child becomes missing,
232 the state agency, public or private organization, or other
233 person who took such fingerprints shall not release the
234 fingerprints to any law enforcement agency or other person for
235 any purpose other than the identification of a missing child.
236 Such records and data are exempt from ~~the provisions of~~ s.
237 119.07(1).
238 (2) Fingerprints of children taken and retained by any
239 state agency other than the Department of Law Enforcement, any
240 public or private organization, or other person, excluding the
241 parent or legal custodian of the child, shall be destroyed when
242 the child attains ~~becomes~~ 18 years of age. Fingerprints of
243 persons, including children, who are reported missing that have
244 been entered into the automated biometric identification system

544712

245 maintained by the Department of Law Enforcement may be retained
246 until the department is notified that the missing person has
247 been recovered.
248 Section 9. Paragraph (a) of subsection (6) and subsections
249 (12), (13), and (15) of section 943.03, Florida Statutes, are
250 amended to read:
251 943.03 Department of Law Enforcement.—
252 (6)(a) The department shall be governed by all laws
253 regulating the purchase of supplies and equipment as other state
254 agencies and may enter into contracts with other state agencies
255 to make photographs and photocopies ~~photostats~~, to transmit
256 information electronically ~~by teletype~~, and to perform all those
257 services consonant with the purpose of this chapter.
258 (12) The department may establish, implement, and maintain
259 a statewide, integrated ~~violent~~ crime information system capable
260 of transmitting criminal justice information relating to ~~violent~~
261 criminal offenses to and between criminal justice agencies
262 throughout the state.
263 (13) Subject to sufficient annual appropriations, the
264 department shall develop and maintain, in consultation with the
265 Criminal and Juvenile Justice Information Systems Council under
266 s. 943.08, an information system that supports the
267 administration of the state's criminal and juvenile justice
268 information sharing ~~system~~ in compliance with this chapter and
269 other provisions of law. The department shall serve as custodial
270 manager of the Criminal Justice ~~statewide telecommunications and~~
271 ~~data~~ Network developed and maintained as part of the information
272 system authorized by this subsection.
273 (15) The Department of Law Enforcement, in consultation

544712

274 with the Criminal and Juvenile Justice Information Systems
275 Council established in s. 943.06, shall modify the existing
276 statewide uniform statute table in its criminal history system
277 to meet the business requirements of state and local criminal
278 justice and law enforcement agencies. In order to accomplish
279 this objective, the department shall:
280 (a) Define the minimum business requirements necessary for
281 successful implementation.
282 (b) Consider the charging and booking requirements of
283 sheriffs' offices and police departments and the business
284 requirements of state attorneys, public defenders, criminal
285 conflict and civil regional counsel, clerks of court, judges,
286 and state law enforcement agencies.
287 (c) Adopt rules establishing the necessary technical and
288 business process standards required to implement, operate, and
289 ensure uniform system use and compliance.
290
291 ~~The required system modifications and adopted rules shall be~~
292 ~~implemented by December 31, 2012.~~
293 Section 10. Paragraph (c) of subsection (2), subsections
294 (4) and (5), paragraphs (b) and (c) of subsection (6), and
295 paragraphs (a), (b), and (e) of subsection (8) of section
296 943.031, Florida Statutes, are amended to read:
297 943.031 Florida Violent Crime and Drug Control Council.—
298 (2) MEMBERSHIP.—The council shall consist of 14 members, as
299 follows:
300 (c) The Secretary of ~~the Department of~~ Corrections or a
301 designate.
302

544712

303 The Governor, when making appointments under this subsection,
304 must take into consideration representation by geography,
305 population, ethnicity, and other relevant factors to ensure that
306 the membership of the council is representative of the state at
307 large. Designates appearing on behalf of a council member who is
308 unable to attend a meeting of the council are empowered to vote
309 on issues before the council to the same extent the designating
310 council member is so empowered.
311 (4) MEETINGS.—The council must meet at least annually
312 ~~semiannually~~. Additional meetings may be held when ~~it is~~
313 determined by the department and the chair ~~that extraordinary~~
314 ~~circumstances require an additional meeting of the council~~. A
315 majority of the members of the council constitutes a quorum.
316 Council meetings may be conducted by conference call,
317 teleconferencing, or similar technology.
318 (5) DUTIES OF COUNCIL.—Subject to funding provided to the
319 department by the Legislature, the council shall provide advice
320 and make recommendations, as necessary, to the executive
321 director of the department.
322 (a) The council may advise the executive director on the
323 feasibility of undertaking initiatives which include, but are
324 not limited to, the following:
325 1. Establishing a program that provides grants to criminal
326 justice agencies that develop and implement effective violent
327 crime prevention and investigative programs and which provides
328 grants to law enforcement agencies for the purpose of drug
329 control, criminal gang, and illicit money laundering
330 investigative efforts or task force efforts that are determined
331 by the council to significantly contribute to achieving the

544712

332 state's goal of reducing drug-related crime, that represent
333 significant criminal gang investigative efforts, that represent
334 a significant illicit money laundering investigative effort, or
335 that otherwise significantly support statewide strategies
336 developed by the Statewide Drug Policy Advisory Council
337 established under s. 397.333, subject to the limitations
338 provided in this section. The grant program may include an
339 innovations grant program to provide startup funding for new
340 initiatives by local and state law enforcement agencies to
341 combat violent crime or to implement drug control, criminal
342 gang, or illicit money laundering investigative efforts or task
343 force efforts by law enforcement agencies, including, but not
344 limited to, initiatives such as:
345 a. Providing enhanced community-oriented policing.
346 b. Providing additional undercover officers and other
347 investigative officers to assist with violent crime
348 investigations in emergency situations.
349 c. Providing funding for multiagency or statewide drug
350 control, criminal gang, or illicit money laundering
351 investigative efforts or task force efforts that cannot be
352 reasonably funded completely by alternative sources and that
353 significantly contribute to achieving the state's goal of
354 reducing drug-related crime, that represent significant criminal
355 gang investigative efforts, that represent a significant illicit
356 money laundering investigative effort, or that otherwise
357 significantly support statewide strategies developed by the
358 Statewide Drug Policy Advisory Council established under s.
359 397.333.
360 2. Expanding the use of automated biometric ~~fingerprint~~

544712

361 identification systems at the state and local levels ~~level~~.
362 3. Identifying methods to prevent violent crime.
363 4. Identifying methods to enhance multiagency or statewide
364 drug control, criminal gang, or illicit money laundering
365 investigative efforts or task force efforts that significantly
366 contribute to achieving the state's goal of reducing drug-
367 related crime, that represent significant criminal gang
368 investigative efforts, that represent a significant illicit
369 money laundering investigative effort, or that otherwise
370 significantly support statewide strategies developed by the
371 Statewide Drug Policy Advisory Council established under s.
372 397.333.
373 5. Enhancing criminal justice training programs that
374 address violent crime, drug control, illicit money laundering
375 investigative techniques, or efforts to control and eliminate
376 criminal gangs.
377 6. Developing and promoting crime prevention services and
378 educational programs that serve the public, including, but not
379 limited to:
380 a. Enhanced victim and witness counseling services that
381 also provide crisis intervention, information referral,
382 transportation, and emergency financial assistance.
383 b. A well-publicized rewards program for the apprehension
384 and conviction of criminals who perpetrate violent crimes.
385 7. Enhancing information sharing and assistance in the
386 criminal justice community by expanding the use of community
387 partnerships and community policing programs. Such expansion may
388 include the use of civilian employees or volunteers to relieve
389 law enforcement officers of clerical work in order to enable the

544712

390 officers to concentrate on street visibility within the
391 community.
392 (b) The full council shall:
393 1. Receive periodic reports from regional violent crime
394 investigation and statewide drug control strategy implementation
395 coordinating teams which relate to violent crime trends or the
396 investigative needs or successes in the regions, including
397 discussions regarding the activity of significant criminal gangs
398 in the region, factors, and trends relevant to the
399 implementation of the statewide drug strategy, and the results
400 of drug control and illicit money laundering investigative
401 efforts funded in part by the council.
402 2. Maintain and use criteria for the disbursement of funds
403 from the Violent Crime Investigative Emergency and Drug Control
404 Strategy Implementation Account or any other account from which
405 the council may disburse proactive investigative funds as may be
406 established within the Department of Law Enforcement Operating
407 Trust Fund or other appropriations provided to the Department of
408 Law Enforcement by the Legislature in the General Appropriations
409 Act. The criteria shall allow for the advancement of funds to
410 reimburse agencies regarding violent crime investigations as
411 approved by the full council and the advancement of funds to
412 implement proactive drug control strategies or significant
413 criminal gang investigative efforts as authorized by the Drug
414 Control Strategy and Criminal Gang Committee or the Victim and
415 Witness Protection Review Committee. Regarding violent crime
416 investigation reimbursement, an expedited approval procedure
417 shall be established for rapid disbursement of funds in violent
418 crime emergency situations.

544712

419 (c) As used in this section, “significant criminal gang
420 investigative efforts” eligible for proactive funding must
421 involve at a minimum an effort against a known criminal gang
422 that:
423 1. Involves multiple law enforcement agencies.
424 2. Reflects a dedicated significant investigative effort on
425 the part of each participating agency in personnel, time devoted
426 to the investigation, and agency resources dedicated to the
427 effort.
428 3. Reflects a dedicated commitment by a prosecuting
429 authority to ensure that cases developed by the investigation
430 will be timely and effectively prosecuted.
431 4. Demonstrates a strategy and commitment to dismantling
432 the criminal gang via seizures of assets, significant money
433 laundering and organized crime investigations and prosecutions,
434 or similar efforts.
435
436 The council may require satisfaction of additional elements, to
437 include reporting criminal investigative and criminal
438 intelligence information related to criminal gang activity and
439 members in a manner required by the department, as a
440 prerequisite for receiving proactive criminal gang funding.
441 (6) DRUG CONTROL STRATEGY AND CRIMINAL GANG COMMITTEE.—
442 (b) Subject to funding provided to the department by the
443 Legislature, the committee shall review and approve all requests
444 for disbursement of funds from the Violent Crime Investigative
445 Emergency and Drug Control Strategy Implementation Account
446 within the Department of Law Enforcement Operating Trust Fund
447 and from other appropriations provided to the department by the

544712

448 Legislature in the General Appropriations Act. An expedited
449 approval procedure shall be established for rapid disbursement
450 of funds in violent crime emergency situations. Committee
451 meetings may be conducted by conference call, teleconferencing,
452 or similar technology.
453 (c) Those receiving any proactive funding provided by the
454 council through the committee shall ~~be required to~~ report the
455 results of the investigations to the council once the
456 investigation has been completed. The committee shall also
457 require ongoing status reports on ongoing investigations using
458 such findings in its closed sessions and may require a recipient
459 to return all or any portion of unexpended proactive funds to
460 the council.
461 (8) VICTIM AND WITNESS PROTECTION REVIEW COMMITTEE.—
462 (a) The Victim and Witness Protection Review Committee is
463 created within the Florida Violent Crime and Drug Control
464 Council, consisting of the statewide prosecutor or a state
465 attorney, a sheriff, a chief of police, and the designee of the
466 executive director of the Department of Law Enforcement. The
467 committee shall be appointed from the membership of the council
468 by the chair of the council after the chair has consulted with
469 the executive director of the Department of Law Enforcement.
470 Committee members shall meet in conjunction with the meetings of
471 the council or at other times as required by the department and
472 the chair. The committee meetings may be conducted by conference
473 call, teleconferencing, or similar technology.
474 (b) Subject to funding provided to the department by the
475 Legislature, the committee shall:
476 1. Maintain and use criteria for disbursing funds to

544712

477 reimburse law enforcement agencies for costs associated with
478 providing victim and witness temporary protective or temporary
479 relocation services.
480 2. Review and approve or deny, in whole or in part, all
481 reimbursement requests submitted by law enforcement agencies.
482 ~~(c) The committee may conduct its meeting by teleconference~~
483 ~~or conference phone calls when the chair of the committee finds~~
484 ~~that the need for reimbursement is such that delaying until the~~
485 ~~next scheduled council meeting will adversely affect the~~
486 ~~requesting agency's ability to provide the protection services.~~
487 Section 11. Paragraph (b) of subsection (2) and paragraph
488 (d) of subsection (4) of section 943.0435, Florida Statutes, are
489 amended to read:
490 943.0435 Sexual offenders required to register with the
491 department; penalty.—
492 (2) A sexual offender shall:
493 (b) Provide his or her name; date of birth; social security
494 number; race; sex; height; weight; hair and eye color; tattoos
495 or other identifying marks; fingerprints; photograph; occupation
496 and place of employment; address of permanent or legal residence
497 or address of any current temporary residence, within the state
498 or out of state, including a rural route address and a post
499 office box; if no permanent or temporary address, any transient
500 residence within the state, address, location or description,
501 and dates of any current or known future temporary residence
502 within the state or out of state; home telephone number and any
503 cellular telephone number; any electronic mail address and any
504 instant message name required to be provided pursuant to
505 paragraph (4)(d); date and place of each conviction; and a brief

544712

506 description of the crime or crimes committed by the offender. A
507 post office box shall not be provided in lieu of a physical
508 residential address.
509 1. If the sexual offender’s place of residence is a motor
510 vehicle, trailer, mobile home, or manufactured home, as defined
511 in chapter 320, the sexual offender shall also provide to the
512 department through the sheriff’s office written notice of the
513 vehicle identification number; the license tag number; the
514 registration number; and a description, including color scheme,
515 of the motor vehicle, trailer, mobile home, or manufactured
516 home. If the sexual offender’s place of residence is a vessel,
517 live-aboard vessel, or houseboat, as defined in chapter 327, the
518 sexual offender shall also provide to the department written
519 notice of the hull identification number; the manufacturer’s
520 serial number; the name of the vessel, live-aboard vessel, or
521 houseboat; the registration number; and a description, including
522 color scheme, of the vessel, live-aboard vessel, or houseboat.
523 2. If the sexual offender is enrolled, employed, or
524 carrying on a vocation at an institution of higher education in
525 this state, the sexual offender shall also provide to the
526 department through the sheriff’s office the name, address, and
527 county of each institution, including each campus attended, and
528 the sexual offender’s enrollment or employment status. Each
529 change in enrollment or employment status shall be reported in
530 person at the sheriff’s office, within 48 hours after any change
531 in status. The sheriff shall promptly notify each institution of
532 the sexual offender’s presence and any change in the sexual
533 offender’s enrollment or employment status.
534

544712

535 When a sexual offender reports at the sheriff's office, the
536 sheriff shall take a photograph and a set of fingerprints of the
537 offender and forward the photographs and fingerprints to the
538 department, along with the information provided by the sexual
539 offender. The sheriff shall promptly provide to the department
540 the information received from the sexual offender.
541 (4)
542 (d) A sexual offender must register any electronic mail
543 address or instant message name with the department before ~~prior~~
544 ~~to~~ using such electronic mail address or instant message name ~~on~~
545 ~~or after October 1, 2007~~. The department shall establish an
546 online system through which sexual offenders may securely access
547 and update all electronic mail address and instant message name
548 information.
549 Section 12. Section 943.04351, Florida Statutes, is amended
550 to read:
551 943.04351 Search of registration information regarding
552 sexual predators and sexual offenders required before ~~prior to~~
553 appointment or employment.—A state agency or governmental
554 subdivision, before ~~prior to~~ making any decision to appoint or
555 employ a person to work, whether for compensation or as a
556 volunteer, at any park, playground, day care center, or other
557 place where children regularly congregate, must conduct a search
558 of that person's name or other identifying information against
559 the registration information regarding sexual predators and
560 sexual offenders through the Dru Sjodin National Sexual Offender
561 Public Website maintained by the United States Department of
562 Justice. If for any reason that site is not available, a search
563 of the registration information regarding sexual predators and

544712

564 sexual offenders maintained by the Department of Law Enforcement
565 under s. 943.043 shall be performed. ~~The agency or governmental~~
566 ~~subdivision may conduct the search using the Internet site~~
567 ~~maintained by the Department of Law Enforcement.~~ This section
568 does not apply to those positions or appointments within a state
569 agency or governmental subdivision for which a state and
570 national criminal history background check is conducted.
571 Section 13. Paragraph (a) of subsection (2) of section
572 943.0438, Florida Statutes, is amended to read:
573 943.0438 Athletic coaches for independent sanctioning
574 authorities.—
575 (2) An independent sanctioning authority shall:
576 (a)1. Conduct a background screening of each current and
577 prospective athletic coach. No person shall be authorized by the
578 independent sanctioning authority to act as an athletic coach
579 ~~after July 1, 2010,~~ unless a background screening has been
580 conducted and did not result in disqualification under paragraph
581 (b). Background screenings shall be conducted annually for each
582 athletic coach. For purposes of this section, a background
583 screening shall be conducted with a search of the athletic
584 coach’s name or other identifying information against state and
585 federal registries of sexual predators and sexual offenders,
586 which are available to the public on Internet sites provided by:
587 a. The Department of Law Enforcement under s. 943.043; and
588 b. The Attorney General of the United States under 42
589 U.S.C. s. 16920.
590 2. For purposes of this section, a background screening
591 conducted by a commercial consumer reporting agency in
592 compliance with the federal Fair Credit Reporting Act using the

544712

593 identifying information referenced in subparagraph 1. and that
594 includes searching that information against the sexual predator
595 and sexual offender Internet sites listed in sub-subparagraphs
596 1.a. and b. shall be deemed in compliance with the requirements
597 of this section.
598 Section 14. Section 943.045, Florida Statutes, is amended
599 to read:
600 943.045 Definitions; ss. 943.045-943.08.—The following
601 words and phrases as used in ss. 943.045-943.08 shall have the
602 following meanings:
603 (13) ~~(1)~~ "Criminal justice information system" means a
604 system, including the equipment, facilities, procedures,
605 agreements, and organizations thereof, for the collection,
606 processing, preservation, or dissemination of criminal justice
607 information.
608 (2) "Administration of criminal justice" means performing
609 functions of detection, apprehension, detention, pretrial
610 release, posttrial release, prosecution, adjudication,
611 correctional supervision, or rehabilitation of accused persons
612 or criminal offenders by governmental agencies. The
613 administration of criminal justice includes criminal
614 identification activities and the collection, processing,
615 storage, and dissemination of criminal justice information by
616 governmental agencies.
617 (3) "Biometric" refers to impressions, reproductions, or
618 representations of human physical characteristics, such as DNA,
619 fingerprints, palm prints, footprints, retina and iris images,
620 voice patterns, and facial images, such as booking and driver
621 license photographs, that, when measured and analyzed, can be

544712

622 used for identification purposes.
623 (12) ~~(3)~~ "Criminal justice information" means information on
624 individuals collected or disseminated as a result of arrest,
625 detention, or the initiation of a criminal proceeding by
626 criminal justice agencies, including arrest record information,
627 correctional and release information, criminal history record
628 information, conviction record information, offender
629 registration information, identification record information, and
630 wanted persons record information. The term does ~~shall~~ not
631 include statistical or analytical records or reports in which
632 individuals are not identified and from which their identities
633 are not ascertainable. The term does ~~shall~~ not include criminal
634 intelligence information or criminal investigative information.
635 (5) ~~(4)~~ "Criminal history information" means information
636 collected by criminal justice agencies on persons, which
637 information consists of identifiable descriptions and notations
638 of arrests, detentions, indictments, informations, or other
639 formal criminal charges and the disposition thereof. The term
640 does not include identification information, such as biometric
641 ~~fingerprint~~ records, if the information does not indicate
642 involvement of the person in the criminal justice system.
643 (7) ~~(5)~~ "Criminal intelligence information" means
644 information collected by a criminal justice agency with respect
645 to an identifiable person or group in an effort to anticipate,
646 prevent, or monitor possible criminal activity.
647 (9) ~~(6)~~ "Criminal investigative information" means
648 information about an identifiable person or group~~,~~ compiled by a
649 criminal justice agency in the course of conducting a criminal
650 investigation of a specific criminal act or omission, including,

544712

651 but not limited to, information derived from laboratory tests,
652 reports of investigators, informants, or any type of
653 surveillance.
654 (17) ~~(7)~~ "Record" means any and all documents, writings,
655 computer memory, and microfilm, and any other form in which
656 facts are memorialized, irrespective of whether such record is
657 an official record, public record, or admissible record or is
658 merely a copy thereof.
659 (4) ~~(8)~~ "Comparable ordinance violation" means a violation
660 of an ordinance having all the essential elements of a statutory
661 misdemeanor or felony.
662 (14) ~~(9)~~ "Disposition" means details relating to the
663 termination of an individual criminal defendant's relationship
664 with a criminal justice agency, including information disclosing
665 that the law enforcement agency has elected not to refer a
666 matter to a prosecutor or that a prosecutor has elected not to
667 commence criminal proceedings, that a court has dealt with the
668 individual, or that the individual has been incarcerated,
669 paroled, pardoned, released, or granted clemency. Dispositions
670 include, but are not limited to, acquittals, dismissals, pleas,
671 convictions, adjudications, youthful offender determinations,
672 determinations of mental capacity, placements in intervention
673 programs, pardons, probations, paroles, and releases from
674 correctional institutions.
675 (11) ~~(10)~~ "Criminal justice agency" means:
676 (a) A court.
677 (b) The department.
678 (c) The Department of Juvenile Justice.
679 (d) The protective investigations component of the

544712

680 Department of Children and Families ~~Family Services~~, which
681 investigates the crimes of abuse and neglect.
682 (e) Any other governmental agency or subunit thereof that
683 ~~which~~ performs the administration of criminal justice pursuant
684 to a statute or rule of court and that ~~which~~ allocates a
685 substantial part of its annual budget to the administration of
686 criminal justice.
687 (15) ~~(11)~~ "Disseminate ~~Dissemination~~" means to transmit ~~the~~
688 ~~transmission of~~ information, whether orally or in writing.
689 (18) ~~(12)~~ "Research or statistical project" means any
690 program, project, or component the purpose of which is to
691 develop, measure, evaluate, or otherwise advance the state of
692 knowledge in a particular area. The term does not include
693 intelligence, investigative, or other information-gathering
694 activities in which information is obtained for purposes
695 directly related to enforcement of the criminal laws.
696 (16) ~~(13)~~ "Expunction of a criminal history record" means
697 the court-ordered physical destruction or obliteration of a
698 record or portion of a record by any criminal justice agency
699 having custody thereof, or as prescribed by the court issuing
700 the order, except that criminal history records in the custody
701 of the department must be retained in all cases for purposes of
702 evaluating subsequent requests by the subject of the record for
703 sealing or expunction, or for purposes of recreating the record
704 in the event an order to expunge is vacated by a court of
705 competent jurisdiction.
706 (19) ~~(14)~~ "Sealing of a criminal history record" means the
707 preservation of a record under such circumstances that it is
708 secure and inaccessible to any person not having a legal right

544712

709 of access to the record or the information contained and
710 preserved therein.
711 (1) ~~(15)~~ "Adjudicated guilty" means that a person has been
712 found guilty and that the court has not withheld an adjudication
713 of guilt.
714 (8) ~~(16)~~ "Criminal intelligence information system" means a
715 system, including the equipment, facilities, procedures,
716 agreements ~~agreement~~, and organizations thereof, for the
717 collection, processing, preservation, or dissemination of
718 criminal intelligence information.
719 (10) ~~(17)~~ "Criminal investigative information system" means
720 a system, including the equipment, facilities, procedures,
721 agreements, and organizations thereof, for the collection,
722 processing, preservation, or dissemination of criminal
723 investigative information.
724 (6) ~~(18)~~ "Criminal history record" means any nonjudicial
725 record maintained by a criminal justice agency containing
726 criminal history information.
727 Section 15. Paragraphs (b), (c), (d), (e), (g), and (h) of
728 subsection (2) and subsection (3) of section 943.05, Florida
729 Statutes, are amended, and subsection (4) of that section is
730 reenacted, to read:
731 943.05 Criminal Justice Information Program; duties; crime
732 reports.—
733 (2) The program shall:
734 (b) Establish, implement, and maintain a statewide
735 automated biometric ~~fingerprint~~ identification system capable
736 of, but not limited to, reading, classifying, matching, and
737 storing fingerprints, rolled fingerprints, ~~and~~ latent

544712

738 fingerprints, palm prints, and facial images. Information
739 contained within the system shall be available to every criminal
740 justice agency that is responsible for the administration of
741 criminal justice.
742 (c) Initiate a crime information system that shall be
743 responsible for:
744 1. Preparing and disseminating semiannual reports to the
745 Governor, the Legislature, all criminal justice agencies, and,
746 upon request, the public. Each report shall include, but not be
747 limited to, types of crime reported, offenders, arrests, and
748 victims.
749 2. Upon request, providing other states and federal
750 criminal justice agencies with Florida crime data. ~~Where~~
751 ~~convenient, such data shall conform to definitions established~~
752 ~~by the requesting agencies.~~
753 3. In cooperation with other criminal justice agencies,
754 developing and maintaining an offender-based transaction system.
755 (d) Adopt rules to effectively and efficiently implement,
756 administer, manage, maintain, and use the automated biometric
757 ~~fingerprint~~ identification system and uniform offense reports
758 and arrest reports. The rules shall be considered minimum
759 requirements and shall not preclude a criminal justice agency
760 from implementing its own enhancements. However, rules and forms
761 prescribing uniform arrest or probable cause affidavits and
762 alcohol influence reports to be used by all law enforcement
763 agencies in making DUI arrests under s. 316.193 shall be
764 adopted~~,~~ and ~~shall be~~ used by all law enforcement agencies in
765 this state. ~~The rules and forms prescribing such uniform~~
766 ~~affidavits and reports shall be adopted and implemented by July~~

544712

767 ~~1, 2004.~~ Failure to use these uniform affidavits and reports,
768 however, shall not prohibit prosecution under s. 316.193.
769 (e) Establish, implement, and maintain a Domestic and
770 Repeat Violence Injunction Statewide Verification System capable
771 of electronically transmitting information to and between
772 criminal justice agencies relating to domestic violence
773 injunctions, injunctions to prevent child abuse issued under
774 chapter 39, and repeat violence injunctions issued by the courts
775 throughout the state. Such information must include, but is not
776 limited to, information as to the existence and status of any
777 such injunction for verification purposes.
778 (g) Upon official written request, and subject to the
779 department having sufficient funds and equipment to participate
780 in such a request, from the agency executive director or
781 secretary or from his or her designee, or from qualified
782 entities participating in the volunteer and employee criminal
783 history screening system under s. 943.0542, or as otherwise
784 required by law, retain fingerprints submitted by criminal and
785 noncriminal justice agencies to the department for a criminal
786 history background screening as provided by rule and enter the
787 fingerprints in the statewide automated biometric ~~fingerprint~~
788 identification system authorized by paragraph (b). Such
789 fingerprints shall thereafter be available for all purposes and
790 uses authorized for arrest fingerprint submissions entered into
791 the statewide automated biometric ~~fingerprint~~ identification
792 system pursuant to s. 943.051.
793 (h) For each agency or qualified entity that officially
794 requests retention of fingerprints or for which retention is
795 otherwise required by law, search all arrest fingerprint

544712

796 submissions received under s. 943.051 against the fingerprints
797 retained in the statewide automated biometric ~~fingerprint~~
798 identification system under paragraph (g).
799 1. Any arrest record that is identified with the retained
800 fingerprints of a person subject to background screening as
801 provided in paragraph (g) shall be reported to the appropriate
802 agency or qualified entity.
803 2. To participate in this search process, agencies or
804 qualified entities must notify each person fingerprinted that
805 his or her fingerprints will be retained, pay an annual fee to
806 the department unless otherwise provided by law, and inform the
807 department of any change in the affiliation, employment, or
808 contractual status of each person whose fingerprints are
809 retained under paragraph (g) if such change removes or
810 eliminates the agency or qualified entity's basis or need for
811 receiving reports of any arrest of that person, so that the
812 agency or qualified entity is not obligated to pay the upcoming
813 annual fee for the retention and searching of that person's
814 fingerprints to the department. The department shall adopt a
815 rule setting the amount of the annual fee to be imposed upon
816 each participating agency or qualified entity for performing
817 these searches and establishing the procedures for the retention
818 of fingerprints and the dissemination of search results. The fee
819 may be borne by the agency, qualified entity, or person subject
820 to fingerprint retention or as otherwise provided by law.
821 Consistent with the recognition of criminal justice agencies
822 expressed in s. 943.053(3), these services shall be provided to
823 criminal justice agencies for criminal justice purposes free of
824 charge. Qualified entities that elect to participate in the

544712

825 fingerprint retention and search process are required to timely
826 remit the fee to the department by a payment mechanism approved
827 by the department. If requested by the qualified entity, and
828 with the approval of the department, such fees may be timely
829 remitted to the department by a qualified entity upon receipt of
830 an invoice for such fees from the department. Failure of a
831 qualified entity to pay the amount due on a timely basis or as
832 invoiced by the department may result in the refusal by the
833 department to permit the qualified entity to continue to
834 participate in the fingerprint retention and search process
835 until all fees due and owing are paid.
836 3. Agencies that participate in the fingerprint retention
837 and search process may adopt rules pursuant to ss. 120.536(1)
838 and 120.54 to require employers to keep the agency informed of
839 any change in the affiliation, employment, or contractual status
840 of each person whose fingerprints are retained under paragraph
841 (g) if such change removes or eliminates the agency's basis or
842 need for receiving reports of any arrest of that person, so that
843 the agency is not obligated to pay the upcoming annual fee for
844 the retention and searching of that person's fingerprints to the
845 department.
846 (3) If fingerprints submitted to the department for
847 background screening, whether retained or not retained, are
848 identified with the fingerprints of a person having a criminal
849 history record, such fingerprints may thereafter be available
850 for all purposes and uses authorized for arrest fingerprints
851 ~~fingerprint cards~~, including, but not limited to, entry into the
852 statewide automated biometric ~~fingerprint~~ identification system
853 to augment or replace the fingerprints that identify the

544712

854 criminal history record.
855 (4) Upon notification that a federal fingerprint retention
856 program is in effect, and subject to the department being funded
857 and equipped to participate in such a program, the department
858 shall, if state and national criminal history records checks and
859 retention of submitted prints are authorized or required by law,
860 retain the fingerprints as provided in paragraphs (2)(g) and (h)
861 and advise the Federal Bureau of Investigation to retain the
862 fingerprints at the national level for searching against arrest
863 fingerprint submissions received at the national level.
864 Section 16. Subsections (2) and (3) of section 943.051,
865 Florida Statutes, are amended to read:
866 943.051 Criminal justice information; collection and
867 storage; fingerprinting.—
868 (2) The fingerprints, palm prints, and facial images of
869 each adult person charged with or convicted of a felony,
870 misdemeanor, or violation of a comparable ordinance by a state,
871 county, municipal, or other law enforcement agency shall be
872 captured ~~fingerprinted,~~ and electronically ~~such fingerprints~~
873 ~~shall be~~ submitted to the department in the manner prescribed by
874 rule. Exceptions to this requirement for specified misdemeanors
875 or comparable ordinance violations may be made by the department
876 by rule.
877 (3)(a) The fingerprints, palm prints, and facial images of
878 a minor who is charged with or found to have committed an
879 offense that would be a felony if committed by an adult shall be
880 captured ~~fingerprinted~~ and ~~the fingerprints shall be~~
881 electronically submitted to the department in the manner
882 prescribed by rule.

544712

883 (b) A minor who is charged with or found to have committed
884 the following offenses shall be fingerprinted and the
885 fingerprints shall be submitted electronically to the
886 department, unless the minor is issued a civil citation pursuant
887 to s. 985.12:
888 1. Assault, as defined in s. 784.011.
889 2. Battery, as defined in s. 784.03.
890 3. Carrying a concealed weapon, as defined in s. 790.01(1).
891 4. Unlawful use of destructive devices or bombs, as defined
892 in s. 790.1615(1).
893 5. Neglect ~~Negligent treatment~~ of a child ~~children~~, as
894 defined in s. 827.03(1)(e) ~~former s. 827.05~~.
895 6. Assault or battery on a law enforcement officer, a
896 firefighter, or other specified officers, as defined in s.
897 784.07(2)(a) and (b).
898 7. Open carrying of a weapon, as defined in s. 790.053.
899 8. Exposure of sexual organs, as defined in s. 800.03.
900 9. Unlawful possession of a firearm, as defined in s.
901 790.22(5).
902 10. Petit theft, as defined in s. 812.014(3).
903 11. Cruelty to animals, as defined in s. 828.12(1).
904 12. Arson, as defined in s. 806.031(1).
905 13. Unlawful possession or discharge of a weapon or firearm
906 at a school-sponsored event or on school property, as provided
907 ~~defined~~ in s. 790.115.
908 Section 17. Section 943.052, Florida Statutes, is amended
909 to read:
910 943.052 Disposition reporting.—The Criminal Justice
911 Information Program shall, by rule, establish procedures and a

544712

912 format for each criminal justice agency to monitor its records
913 and submit reports, as provided by this section, to the program.
914 The disposition report shall be developed by the program and
915 shall include the offender-based transaction system number.
916 (1) Each law enforcement officer or booking officer shall
917 include with submitted arrest information and fingerprints ~~on~~
918 ~~the arrest fingerprint card~~ the offender-based transaction
919 system number.
920 (2) Each clerk of the court shall submit the uniform
921 dispositions to the program or in a manner acceptable to the
922 program. The report must ~~shall~~ be submitted at least once a
923 month ~~and, when acceptable by the program, may be submitted~~ in
924 an automated format acceptable to the program. The disposition
925 report is mandatory for each disposition ~~dispositions~~ relating
926 to an adult offender and, ~~offenders only.~~ beginning July 1,
927 2008, ~~a disposition report~~ for dispositions ~~each disposition~~
928 relating to ~~a~~ minor offenders ~~offender is mandatory~~.
929 (3)(a) The Department of Corrections shall submit
930 fingerprints, palm prints, and facial images ~~information~~ to the
931 program relating to the receipt ~~or discharge~~ of any person who
932 is sentenced to a state correctional institution.
933 (b) The Department of Juvenile Justice shall submit
934 fingerprints, palm prints, and facial images ~~information~~ to the
935 program relating to the receipt ~~or discharge~~ of any minor who is
936 found to have committed an offense that would be a felony if
937 committed by an adult, or is found to have committed a
938 misdemeanor specified in s. 943.051(3), and is committed to the
939 custody of the Department of Juvenile Justice.
940 Section 18. Subsection (2), paragraph (a) of subsection

544712

941 (3), subsection (11), and paragraphs (a) and (c) of subsection
942 (13) of section 943.053, Florida Statutes, are amended to read:
943 943.053 Dissemination of criminal justice information;
944 fees.—
945 (2) Criminal justice information derived from federal
946 criminal justice information systems or criminal justice
947 information systems of other states shall not be disseminated in
948 a manner inconsistent with the rules instituted by the National
949 Crime Prevention and Privacy Compact, as approved and ratified
950 in s. 943.0543, or with other applicable laws~~, regulations,~~ or
951 rules ~~of the originating agency~~.
952 (3)(a) Criminal history information, including information
953 relating to minors, compiled by the Criminal Justice Information
954 Program from intrastate sources shall be available on a priority
955 basis to criminal justice agencies for criminal justice purposes
956 free of charge. After providing the program with all known
957 personal identifying information, persons in the private sector
958 and noncriminal justice agencies may be provided criminal
959 history information upon tender of fees as established in this
960 subsection and in the manner prescribed by rule of the
961 Department of Law Enforcement. Any access to criminal history
962 information by the private sector or noncriminal justice
963 agencies as provided in this subsection shall be assessed
964 without regard to the quantity or category of criminal history
965 record information requested.
966 (11) A criminal justice agency that is authorized under
967 federal rules or law to conduct a criminal history background
968 check on an agency employee who is not certified by the Criminal
969 Justice Standards and Training Commission under s. 943.12 may

544712

970 submit to the department the fingerprints of the noncertified
971 employee to obtain state and national criminal history
972 information. The fingerprints shall be retained and entered in
973 the statewide automated biometric ~~fingerprint~~ identification
974 system authorized by s. 943.05 and shall be available for all
975 purposes and uses authorized for arrest fingerprint submissions
976 entered in the statewide automated biometric ~~fingerprint~~
977 identification system pursuant to s. 943.051. The department
978 shall search all arrest fingerprint submissions received
979 pursuant to s. 943.051 against the fingerprints retained in the
980 statewide automated biometric ~~fingerprint~~ identification system
981 pursuant to this section. In addition to all purposes and uses
982 authorized for arrest fingerprint submissions for which
983 submitted fingerprints may be used, any arrest record that is
984 identified with the retained employee fingerprints must be
985 reported to the submitting employing agency.
986 (13)(a) For the department to accept an electronic
987 fingerprint submission from:
988 1. A private vendor engaged in the business of providing
989 electronic fingerprint submission; or
990 2. A private entity or public agency that submits the
991 fingerprints of its own employees, volunteers, contractors,
992 associates, or applicants for the purpose of conducting a
993 required or permitted criminal history background check,
994
995 the vendor, entity, or agency submitting the fingerprints must
996 enter into an agreement with the department that, at a minimum,
997 obligates the vendor, entity, or agency to comply with certain
998 specified standards to ensure that all persons having direct or

544712

999 indirect responsibility for verifying identification, taking
1000 fingerprints, ~~identifying,~~ and electronically submitting
1001 fingerprints are qualified to do so and will ensure the
1002 integrity and security of all personal information gathered from
1003 the persons whose fingerprints are submitted.
1004 (c) The requirement for entering into an agreement with the
1005 department for this purpose does not apply to criminal justice
1006 agencies ~~as defined at s. 943.045(10)~~.
1007 Section 19. Paragraph (b) of subsection (1) of section
1008 943.054, Florida Statutes, is amended to read:
1009 943.054 Exchange of federal criminal history records and
1010 information.—
1011 (1) Criminal history information derived from any United
1012 States Department of Justice criminal justice information system
1013 is available:
1014 (b) Pursuant to applicable federal laws and regulations,
1015 including those instituted by the National Crime Prevention and
1016 Privacy Compact, for use in connection with licensing or local
1017 or state employment or for such other uses only as authorized by
1018 federal or state laws which have been approved by the United
1019 States Attorney General or the Attorney General's designee. ~~When~~
1020 ~~no active prosecution of the charge is known to be pending,~~
1021 ~~arrest data more than 1 year old is not disseminated unless~~
1022 ~~accompanied by information relating to the disposition of that~~
1023 ~~arrest.~~
1024 Section 20. Paragraphs (b) and (c) of subsection (2) of
1025 section 943.0542, Florida Statutes, are amended to read:
1026 943.0542 Access to criminal history information provided by
1027 the department to qualified entities.—

544712

1028 (2)
1029 (b) A qualified entity shall submit to the department a
1030 request for screening an employee or volunteer or person
1031 applying to be an employee or volunteer by submitting
1032 fingerprints ~~on a completed fingerprint card~~, or the request may
1033 be submitted electronically. The qualified entity must maintain
1034 a signed waiver allowing the release of the state and national
1035 criminal history record information to the qualified entity.
1036 (c) Each such request must be accompanied by payment of a
1037 fee for a statewide criminal history check by the department
1038 established by s. 943.053, plus the amount currently prescribed
1039 by the Federal Bureau of Investigation for the national criminal
1040 history check in compliance with the National Child Protection
1041 Act of 1993, as amended. Payments must be made in the manner
1042 prescribed by the department by rule.
1043 Section 21. Subsection (2) of section 943.0544, Florida
1044 Statutes, is amended to read:
1045 943.0544 Criminal justice information network and
1046 information management.—
1047 (2) The department may develop, implement, maintain,
1048 manage, and operate the Criminal Justice Network, which shall be
1049 an intrastate network for agency ~~intraagency~~ information and
1050 data sharing ~~data-sharing network~~ for use by the state's
1051 criminal justice agencies. The department, in consultation with
1052 the Criminal and Juvenile Justice Information Systems Council,
1053 shall determine and regulate access to the Criminal Justice
1054 Network by the state's criminal justice agencies.
1055 Section 22. Section 943.055, Florida Statutes, is amended
1056 to read:

544712

1057 943.055 Records and audit.—
1058 (1) Criminal justice agencies disseminating criminal
1059 justice information derived from a Department of Law Enforcement
1060 criminal justice information system shall maintain a record of
1061 dissemination in accordance with the user agreements in s.
1062 943.0525 ~~rules adopted by the Department of Law Enforcement~~.
1063 (2) The Criminal Justice Information Program shall arrange
1064 for any audits of state and local criminal justice and
1065 noncriminal justice agencies necessary to ensure ~~assure~~
1066 compliance with federal laws and regulations, this chapter, and
1067 rules of the Department of Law Enforcement pertaining to the
1068 establishment, operation, security, and maintenance of criminal
1069 justice information systems.
1070 Section 23. Subsection (2) of section 943.056, Florida
1071 Statutes, is amended to read:
1072 943.056 ~~Access to, review and challenge of,~~ Criminal
1073 history records; access, review, and challenge.—
1074 (2) Criminal justice agencies subject to chapter 120 shall
1075 be subject to hearings regarding those portions of criminal
1076 history records for which the agency served as originator. When
1077 it is determined what the record should contain in order to be
1078 complete and accurate, the Criminal Justice Information Program
1079 shall be advised and shall conform state ~~and federal~~ records to
1080 the corrected criminal history record information and shall
1081 request that the federal records be corrected.
1082 Section 24. Paragraphs (b) and (c) of subsection (3) and
1083 subsections (5) and (6) of section 943.0582, Florida Statutes,
1084 are amended to read:
1085 943.0582 Prearrest, postarrest, or teen court diversion

544712

1086 program expunction.—
1087 (3) The department shall expunge the nonjudicial arrest
1088 record of a minor who has successfully completed a prearrest or
1089 postarrest diversion program if that minor:
1090 (b) Submits the application for prearrest or postarrest
1091 diversion expunction no later than 12 ~~6~~ months after completion
1092 of the diversion program.
1093 (c) Submits to the department, with the application, an
1094 official written statement from the state attorney for the
1095 county in which the arrest occurred certifying that he or she
1096 has successfully completed that county's prearrest or postarrest
1097 diversion program, ~~and~~ that his or her participation in the
1098 program was based on an arrest ~~is strictly limited to minors~~
1099 ~~arrested~~ for a nonviolent misdemeanor, and that he or she has
1100 ~~who have~~ not otherwise been charged with or found to have
1101 committed any criminal offense or comparable ordinance
1102 violation.
1103 ~~(5) This section operates retroactively to permit the~~
1104 ~~expunction of any nonjudicial record of the arrest of a minor~~
1105 ~~who has successfully completed a prearrest or postarrest~~
1106 ~~diversion program on or after July 1, 2000; however, in the case~~
1107 ~~of a minor whose completion of the program occurred before the~~
1108 ~~effective date of this section, the application for prearrest or~~
1109 ~~postarrest diversion expunction must be submitted within 6~~
1110 ~~months after the effective date of this section.~~
1111 (5) ~~(6)~~ Expunction or sealing granted under this section
1112 does not prevent the minor who receives such relief from
1113 petitioning for the expunction or sealing of a later criminal
1114 history record as provided for in ss. 943.0585 and 943.059, if

544712

1115 the minor is otherwise eligible under those sections.
1116 Section 25. Paragraph (b) of subsection (1), paragraph (f)
1117 of subsection (2), and paragraph (a) of subsection (4) of
1118 section 943.0585, Florida Statutes, are amended to read:
1119 943.0585 Court-ordered expunction of criminal history
1120 records.—The courts of this state have jurisdiction over their
1121 own procedures, including the maintenance, expunction, and
1122 correction of judicial records containing criminal history
1123 information to the extent such procedures are not inconsistent
1124 with the conditions, responsibilities, and duties established by
1125 this section. Any court of competent jurisdiction may order a
1126 criminal justice agency to expunge the criminal history record
1127 of a minor or an adult who complies with the requirements of
1128 this section. The court shall not order a criminal justice
1129 agency to expunge a criminal history record until the person
1130 seeking to expunge a criminal history record has applied for and
1131 received a certificate of eligibility for expunction pursuant to
1132 subsection (2). A criminal history record that relates to a
1133 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
1134 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
1135 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
1136 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
1137 any violation specified as a predicate offense for registration
1138 as a sexual predator pursuant to s. 775.21, without regard to
1139 whether that offense alone is sufficient to require such
1140 registration, or for registration as a sexual offender pursuant
1141 to s. 943.0435, may not be expunged, without regard to whether
1142 adjudication was withheld, if the defendant was found guilty of
1143 or pled guilty or nolo contendere to the offense, or if the

544712

1144 defendant, as a minor, was found to have committed, or pled
1145 guilty or nolo contendere to committing, the offense as a
1146 delinquent act. The court may only order expunction of a
1147 criminal history record pertaining to one arrest or one incident
1148 of alleged criminal activity, except as provided in this
1149 section. The court may, at its sole discretion, order the
1150 expunction of a criminal history record pertaining to more than
1151 one arrest if the additional arrests directly relate to the
1152 original arrest. If the court intends to order the expunction of
1153 records pertaining to such additional arrests, such intent must
1154 be specified in the order. A criminal justice agency may not
1155 expunge any record pertaining to such additional arrests if the
1156 order to expunge does not articulate the intention of the court
1157 to expunge a record pertaining to more than one arrest. This
1158 section does not prevent the court from ordering the expunction
1159 of only a portion of a criminal history record pertaining to one
1160 arrest or one incident of alleged criminal activity.
1161 Notwithstanding any law to the contrary, a criminal justice
1162 agency may comply with laws, court orders, and official requests
1163 of other jurisdictions relating to expunction, correction, or
1164 confidential handling of criminal history records or information
1165 derived therefrom. This section does not confer any right to the
1166 expunction of any criminal history record, and any request for
1167 expunction of a criminal history record may be denied at the
1168 sole discretion of the court.
1169 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
1170 petition to a court to expunge a criminal history record is
1171 complete only when accompanied by:
1172 (b) The petitioner’s sworn statement attesting that the

544712

1173 petitioner:
1174 1. Has never, prior to the date on which the petition is
1175 filed, been adjudicated guilty of a criminal offense or
1176 comparable ordinance violation, or been adjudicated delinquent
1177 for committing any felony or a misdemeanor specified in s.
1178 943.051(3)(b).
1179 2. Has not been adjudicated guilty of, or adjudicated
1180 delinquent for committing, any of the acts stemming from the
1181 arrest or alleged criminal activity to which the petition
1182 pertains.
1183 3. Has never secured a prior sealing or expunction of a
1184 criminal history record under this section, s. 943.059, former
1185 s. 893.14, former s. 901.33, or former s. 943.058, ~~or from any~~
1186 ~~jurisdiction outside the state,~~ unless expunction is sought of a
1187 criminal history record previously sealed for 10 years pursuant
1188 to paragraph (2)(h) and the record is otherwise eligible for
1189 expunction.
1190 4. Is eligible for such an expunction to the best of his or
1191 her knowledge or belief and does not have any other petition to
1192 expunge or any petition to seal pending before any court.
1193
1194 Any person who knowingly provides false information on such
1195 sworn statement to the court commits a felony of the third
1196 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1197 775.084.
1198 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
1199 petitioning the court to expunge a criminal history record, a
1200 person seeking to expunge a criminal history record shall apply
1201 to the department for a certificate of eligibility for

544712

1202 expunction. The department shall, by rule adopted pursuant to
1203 chapter 120, establish procedures pertaining to the application
1204 for and issuance of certificates of eligibility for expunction.
1205 A certificate of eligibility for expunction is valid for 12
1206 months after the date stamped on the certificate when issued by
1207 the department. After that time, the petitioner must reapply to
1208 the department for a new certificate of eligibility. Eligibility
1209 for a renewed certification of eligibility must be based on the
1210 status of the applicant and the law in effect at the time of the
1211 renewal application. The department shall issue a certificate of
1212 eligibility for expunction to a person who is the subject of a
1213 criminal history record if that person:
1214 (f) Has never secured a prior sealing or expunction of a
1215 criminal history record under this section, s. 943.059, former
1216 s. 893.14, former s. 901.33, or former s. 943.058, unless
1217 expunction is sought of a criminal history record previously
1218 sealed for 10 years pursuant to paragraph (h) and the record is
1219 otherwise eligible for expunction.
1220 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
1221 criminal history record of a minor or an adult which is ordered
1222 expunged by a court of competent jurisdiction pursuant to this
1223 section must be physically destroyed or obliterated by any
1224 criminal justice agency having custody of such record; except
1225 that any criminal history record in the custody of the
1226 department must be retained in all cases. A criminal history
1227 record ordered expunged that is retained by the department is
1228 confidential and exempt from the provisions of s. 119.07(1) and
1229 s. 24(a), Art. I of the State Constitution and not available to
1230 any person or entity except upon order of a court of competent

544712

1231 jurisdiction. A criminal justice agency may retain a notation
1232 indicating compliance with an order to expunge.
1233 (a) The person who is the subject of a criminal history
1234 record that is expunged under this section or under other
1235 provisions of law, including former s. 893.14, former s. 901.33,
1236 and former s. 943.058, may lawfully deny or fail to acknowledge
1237 the arrests covered by the expunged record, except when the
1238 subject of the record:
1239 1. Is a candidate for employment with a criminal justice
1240 agency;
1241 2. Is a defendant in a criminal prosecution;
1242 3. Concurrently or subsequently petitions for relief under
1243 this section or s. 943.059;
1244 4. Is a candidate for admission to The Florida Bar;
1245 5. Is seeking to be employed or licensed by or to contract
1246 with the Department of Children and Families ~~Family Services~~,
1247 the Division of Vocational Rehabilitation within the Department
1248 of Education, the Agency for Health Care Administration, the
1249 Agency for Persons with Disabilities, the Department of Health,
1250 the Department of Elderly Affairs, or the Department of Juvenile
1251 Justice or to be employed or used by such contractor or licensee
1252 in a sensitive position having direct contact with children, the
1253 disabled, or the elderly; or
1254 6. Is seeking to be employed or licensed by the Department
1255 of Education, any district school board, any university
1256 laboratory school, any charter school, any private or parochial
1257 school, or any local governmental entity that licenses child
1258 care facilities~~; or~~
1259 ~~7. Is seeking authorization from a seaport listed in s.~~

544712

1260 ~~311.09 for employment within or access to one or more of such~~
1261 ~~seaports pursuant to s. 311.12~~.
1262 Section 26. Paragraph (b) of subsection (1), paragraph (e)
1263 of subsection (2), and paragraph (a) of subsection (4) of
1264 section 943.059, Florida Statutes, are amended to read:
1265 943.059 Court-ordered sealing of criminal history records.—
1266 The courts of this state shall continue to have jurisdiction
1267 over their own procedures, including the maintenance, sealing,
1268 and correction of judicial records containing criminal history
1269 information to the extent such procedures are not inconsistent
1270 with the conditions, responsibilities, and duties established by
1271 this section. Any court of competent jurisdiction may order a
1272 criminal justice agency to seal the criminal history record of a
1273 minor or an adult who complies with the requirements of this
1274 section. The court shall not order a criminal justice agency to
1275 seal a criminal history record until the person seeking to seal
1276 a criminal history record has applied for and received a
1277 certificate of eligibility for sealing pursuant to subsection
1278 (2). A criminal history record that relates to a violation of s.
1279 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
1280 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
1281 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
1282 916.1075, a violation enumerated in s. 907.041, or any violation
1283 specified as a predicate offense for registration as a sexual
1284 predator pursuant to s. 775.21, without regard to whether that
1285 offense alone is sufficient to require such registration, or for
1286 registration as a sexual offender pursuant to s. 943.0435, may
1287 not be sealed, without regard to whether adjudication was
1288 withheld, if the defendant was found guilty of or pled guilty or

544712

1289 nolo contendere to the offense, or if the defendant, as a minor,
1290 was found to have committed or pled guilty or nolo contendere to
1291 committing the offense as a delinquent act. The court may only
1292 order sealing of a criminal history record pertaining to one
1293 arrest or one incident of alleged criminal activity, except as
1294 provided in this section. The court may, at its sole discretion,
1295 order the sealing of a criminal history record pertaining to
1296 more than one arrest if the additional arrests directly relate
1297 to the original arrest. If the court intends to order the
1298 sealing of records pertaining to such additional arrests, such
1299 intent must be specified in the order. A criminal justice agency
1300 may not seal any record pertaining to such additional arrests if
1301 the order to seal does not articulate the intention of the court
1302 to seal records pertaining to more than one arrest. This section
1303 does not prevent the court from ordering the sealing of only a
1304 portion of a criminal history record pertaining to one arrest or
1305 one incident of alleged criminal activity. Notwithstanding any
1306 law to the contrary, a criminal justice agency may comply with
1307 laws, court orders, and official requests of other jurisdictions
1308 relating to sealing, correction, or confidential handling of
1309 criminal history records or information derived therefrom. This
1310 section does not confer any right to the sealing of any criminal
1311 history record, and any request for sealing a criminal history
1312 record may be denied at the sole discretion of the court.
1313 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
1314 petition to a court to seal a criminal history record is
1315 complete only when accompanied by:
1316 (b) The petitioner’s sworn statement attesting that the
1317 petitioner:

544712

1318 1. Has never, prior to the date on which the petition is
1319 filed, been adjudicated guilty of a criminal offense or
1320 comparable ordinance violation, or been adjudicated delinquent
1321 for committing any felony or a misdemeanor specified in s.
1322 943.051(3)(b).
1323 2. Has not been adjudicated guilty of or adjudicated
1324 delinquent for committing any of the acts stemming from the
1325 arrest or alleged criminal activity to which the petition to
1326 seal pertains.
1327 3. Has never secured a prior sealing or expunction of a
1328 criminal history record under this section, s. 943.0585, former
1329 s. 893.14, former s. 901.33, or former s. 943.058~~, or from any~~
1330 ~~jurisdiction outside the state~~.
1331 4. Is eligible for such a sealing to the best of his or her
1332 knowledge or belief and does not have any other petition to seal
1333 or any petition to expunge pending before any court.
1334
1335 Any person who knowingly provides false information on such
1336 sworn statement to the court commits a felony of the third
1337 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1338 775.084.
1339 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
1340 petitioning the court to seal a criminal history record, a
1341 person seeking to seal a criminal history record shall apply to
1342 the department for a certificate of eligibility for sealing. The
1343 department shall, by rule adopted pursuant to chapter 120,
1344 establish procedures pertaining to the application for and
1345 issuance of certificates of eligibility for sealing. A
1346 certificate of eligibility for sealing is valid for 12 months

544712

1347 after the date stamped on the certificate when issued by the
1348 department. After that time, the petitioner must reapply to the
1349 department for a new certificate of eligibility. Eligibility for
1350 a renewed certification of eligibility must be based on the
1351 status of the applicant and the law in effect at the time of the
1352 renewal application. The department shall issue a certificate of
1353 eligibility for sealing to a person who is the subject of a
1354 criminal history record provided that such person:
1355 (e) Has never secured a prior sealing or expunction of a
1356 criminal history record under this section, s. 943.0585, former
1357 s. 893.14, former s. 901.33, or former s. 943.058.
1358 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
1359 history record of a minor or an adult which is ordered sealed by
1360 a court of competent jurisdiction pursuant to this section is
1361 confidential and exempt from the provisions of s. 119.07(1) and
1362 s. 24(a), Art. I of the State Constitution and is available only
1363 to the person who is the subject of the record, to the subject's
1364 attorney, to criminal justice agencies for their respective
1365 criminal justice purposes, which include conducting a criminal
1366 history background check for approval of firearms purchases or
1367 transfers as authorized by state or federal law, to judges in
1368 the state courts system for the purpose of assisting them in
1369 their case-related decisionmaking responsibilities, as set forth
1370 in s. 943.053(5), or to those entities set forth in
1371 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
1372 licensing, access authorization, and employment purposes.
1373 (a) The subject of a criminal history record sealed under
1374 this section or under other provisions of law, including former
1375 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

544712

1376 deny or fail to acknowledge the arrests covered by the sealed
1377 record, except when the subject of the record:
1378 1. Is a candidate for employment with a criminal justice
1379 agency;
1380 2. Is a defendant in a criminal prosecution;
1381 3. Concurrently or subsequently petitions for relief under
1382 this section or s. 943.0585;
1383 4. Is a candidate for admission to The Florida Bar;
1384 5. Is seeking to be employed or licensed by or to contract
1385 with the Department of Children and Families ~~Family Services~~,
1386 the Division of Vocational Rehabilitation within the Department
1387 of Education, the Agency for Health Care Administration, the
1388 Agency for Persons with Disabilities, the Department of Health,
1389 the Department of Elderly Affairs, or the Department of Juvenile
1390 Justice or to be employed or used by such contractor or licensee
1391 in a sensitive position having direct contact with children, the
1392 disabled, or the elderly;
1393 6. Is seeking to be employed or licensed by the Department
1394 of Education, any district school board, any university
1395 laboratory school, any charter school, any private or parochial
1396 school, or any local governmental entity that licenses child
1397 care facilities; or
1398 7. Is attempting to purchase a firearm from a licensed
1399 importer, licensed manufacturer, or licensed dealer and is
1400 subject to a criminal history check under state or federal law~~;~~
1401 ~~or~~
1402 ~~8. Is seeking authorization from a Florida seaport~~
1403 ~~identified in s. 311.09 for employment within or access to one~~
1404 ~~or more of such seaports pursuant to s. 311.12~~.

544712

1405 Section 27. Section 943.125, Florida Statutes, is amended
1406 to read:
1407 943.125 Accreditation of state and local law enforcement
1408 agencies, correctional facilities, public agency offices of
1409 inspectors general, and certain pretrial diversion programs ~~Law~~
1410 ~~enforcement agency accreditation~~; intent.—
1411 (1) It is the intent of the Legislature that law
1412 enforcement agencies, correctional facilities, public agency
1413 offices of inspectors general, and those agencies offering
1414 pretrial diversion programs within offices of the state
1415 attorneys, county government, or sheriff's offices in the state
1416 be upgraded and strengthened through the adoption of meaningful
1417 standards of operation for those agencies and their functions.
1418 (2) It is the further intent of the Legislature that these
1419 ~~law enforcement~~ agencies voluntarily adopt standards designed to
1420 promote enhanced professionalism:
1421 (a) For ~~equal and fair~~ law enforcement, to maximize the
1422 capability of law enforcement agencies to enforce the law and
1423 prevent and control criminal activities~~, and to increase~~
1424 ~~interagency cooperation throughout the state~~.
1425 (b) For correctional facilities, to maintain best practices
1426 for the care, custody, and control of inmates.
1427 (c) Within public agency offices of inspector general, to
1428 promote more effective scrutiny of public agency operations and
1429 greater accountability of those serving in those agencies.
1430 (d) In the operation and management of pretrial diversion
1431 programs offered by and through the state attorney's offices,
1432 county government, or sheriff's offices.
1433 (3) ~~It is further the intent of~~ The Legislature also

544712

1434 intends to encourage the continuation of a voluntary state
1435 accreditation program to facilitate the enhanced professionalism
1436 identified in subsection (2) ~~Florida Sheriffs Association and~~
1437 ~~the Florida Police Chiefs Association to develop, either jointly~~
1438 ~~or separately, a law enforcement agency accreditation program~~.
1439 Other than the staff support by the department as authorized in
1440 subsection (5), the accreditation program must be independent of
1441 any law enforcement agency, the Department of Corrections, the
1442 Florida Sheriffs Association, or the Florida Police Chiefs
1443 Association.
1444 (4) The law enforcement accreditation program must address,
1445 at a minimum, the following aspects of law enforcement:
1446 (a) Vehicle pursuits.
1447 (b) Seizure and forfeiture of contraband articles.
1448 (c) Recording and processing citizens' complaints.
1449 (d) Use of force.
1450 (e) Traffic stops.
1451 (f) Handling natural and manmade disasters.
1452 (g) Special operations.
1453 (h) Prisoner transfer.
1454 (i) Collection and preservation of evidence.
1455 (j) Recruitment and selection.
1456 (k) Officer training.
1457 (l) Performance evaluations.
1458 (m) Law enforcement disciplinary procedures and rights.
1459 (n) Use of criminal investigative funds.
1460 (5) Subject to available funding, the department shall
1461 employ and assign adequate support staff to the Commission for
1462 Florida Law Enforcement Accreditation, Inc., and the Florida

544712

1463 Corrections Accreditation Commission, Inc., in support of the
1464 accreditation programs established in this section.
1465 (6) Accreditation standards related to law enforcement and
1466 inspectors general used by the accreditation programs
1467 established in this section shall be determined by the
1468 Commission for Florida Law Enforcement Accreditation, Inc.
1469 Accreditation standards related to corrections functions and
1470 pretrial diversion programs shall be determined by the Florida
1471 Corrections Accreditation Commission, Inc.
1472 Section 28. Subsection (5) of section 943.13, Florida
1473 Statutes, is amended to read:
1474 943.13 Officers' minimum qualifications for employment or
1475 appointment.—On or after October 1, 1984, any person employed or
1476 appointed as a full-time, part-time, or auxiliary law
1477 enforcement officer or correctional officer; on or after October
1478 1, 1986, any person employed as a full-time, part-time, or
1479 auxiliary correctional probation officer; and on or after
1480 October 1, 1986, any person employed as a full-time, part-time,
1481 or auxiliary correctional officer by a private entity under
1482 contract to the Department of Corrections, to a county
1483 commission, or to the Department of Management Services shall:
1484 (5) Have documentation of his or her processed fingerprints
1485 on file with the employing agency or, if a private correctional
1486 officer, have documentation of his or her processed fingerprints
1487 on file with the Department of Corrections or the Criminal
1488 Justice Standards and Training Commission. ~~If administrative~~
1489 ~~delays are caused by the department or the Federal Bureau of~~
1490 ~~Investigation and the person has complied with subsections (1)-~~
1491 ~~(4) and (6)-(9), he or she may be employed or appointed for a~~

544712

1492 ~~period not to exceed 1 calendar year from the date he or she was~~
1493 ~~employed or appointed or until return of the processed~~
1494 ~~fingerprints documenting noncompliance with subsections (1)-(4)~~
1495 ~~or subsection (7), whichever occurs first. Beginning January 15,~~
1496 ~~2007,~~ The department shall retain and enter into the statewide
1497 automated biometric ~~fingerprint~~ identification system authorized
1498 by s. 943.05 all fingerprints submitted to the department as
1499 required by this section. Thereafter, the fingerprints shall be
1500 available for all purposes and uses authorized for arrest
1501 fingerprints ~~fingerprint cards~~ entered in the statewide
1502 automated biometric ~~fingerprint~~ identification system pursuant
1503 to s. 943.051. The department shall search all arrest
1504 fingerprints ~~fingerprint cards~~ received pursuant to s. 943.051
1505 against the fingerprints retained in the statewide automated
1506 biometric ~~fingerprint~~ identification system pursuant to this
1507 section and report to the employing agency any arrest records
1508 that are identified with the retained employee's fingerprints.
1509 ~~By January 1, 2008, a person who must meet minimum~~
1510 ~~qualifications as provided in this section and whose~~
1511 ~~fingerprints are not retained by the department pursuant to this~~
1512 ~~section must be refingerprinted.~~ These fingerprints must be
1513 forwarded to the department for processing and retention.
1514 Section 29. Subsection (1) of section 943.132, Florida
1515 Statutes, is amended to read:
1516 943.132 Implementation of federal qualified active or
1517 qualified retired law enforcement concealed firearms provisions
1518 ~~Law Enforcement Officers Safety Act of 2004.~~
1519 (1) The commission shall by rule establish the manner in
1520 which Title 18, 44 U.S.C. ss. 926B and 926C, ~~the federal Law~~

544712

1521 ~~Enforcement Officers Safety Act of 2004,~~ relating to the
1522 carrying of concealed firearms by qualified law enforcement
1523 officers and qualified retired law enforcement officers, as
1524 defined in the act, shall be implemented in the state. In order
1525 to facilitate the implementation within the state of Title 18,
1526 44 U.S.C. ss. 926B and 926C, the commission shall ~~develop and~~
1527 authorize a uniform firearms proficiency verification card to be
1528 issued to persons who achieve a passing score on the firing
1529 range testing component as used ~~utilized~~ in the minimum firearms
1530 proficiency course applicable to active law enforcement
1531 officers, indicating the person's name and the date upon which
1532 he or she achieved the passing score. Each such card shall be
1533 issued only by firearms instructors with current certifications
1534 from ~~certified by~~ the commission.
1535 Section 30. Paragraph (a) of subsection (6) of section
1536 943.1395, Florida Statutes, is amended to read:
1537 943.1395 Certification for employment or appointment;
1538 concurrent certification; reemployment or reappointment;
1539 inactive status; revocation; suspension; investigation.—
1540 (6) The commission shall revoke the certification of any
1541 officer who is not in compliance with the provisions of s.
1542 943.13(4) or who intentionally executes a false affidavit
1543 established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).
1544 (a) The commission shall cause to be investigated any
1545 ground for revocation from the employing agency pursuant to s.
1546 943.139 or from the Governor, and the commission may cause
1547 ~~investigate~~ verifiable complaints to be investigated. Any
1548 investigation initiated by the commission pursuant to this
1549 section must be completed within 6 months after receipt of the

544712

1550 completed report of the disciplinary or internal affairs
1551 investigation from the employing agency or Governor's office. A
1552 verifiable complaint shall be completed within 1 year after
1553 receipt of the complaint. An investigation shall be considered
1554 completed upon a finding by a probable cause panel of the
1555 commission. These time periods shall be tolled during the appeal
1556 of a termination or other disciplinary action through the
1557 administrative or judicial process or during the period of any
1558 criminal prosecution of the officer.
1559 Section 31. Subsection (2), paragraph (a) of subsection
1560 (3), and subsection (6) of section 943.1755, Florida Statutes,
1561 are amended to read:
1562 943.1755 Florida Criminal Justice Executive Institute.—
1563 (2) The institute is established within the Department of
1564 Law Enforcement and affiliated with the State University System.
1565 The Board of Governors of the State University System shall, in
1566 cooperation with the Department of Law Enforcement, determine
1567 the specific placement of the institute within the system. The
1568 Department of Law Enforcement maintains responsibility for
1569 delivering and facilitating all Florida Criminal Justice
1570 Executive Institute training.
1571 (3) The institute shall cooperate with the Criminal Justice
1572 Standards and Training Commission, and shall be guided and
1573 directed by a policy board composed of the following members:
1574 (a) The following persons shall serve on the policy board:
1575 1. The executive director of the Department of Law
1576 Enforcement or a designee.
1577 2. The Secretary of Corrections or a designee.
1578 3. The Commissioner of Education or a designee ~~an employee~~

544712

1579 ~~of the Department of Education designated by the Commissioner~~.
1580 4. The Secretary of Juvenile Justice or a designee.
1581 (6) Seven ~~Six~~ members constitute a quorum of the board.
1582 Section 32. Subsection (2) of section 943.1757, Florida
1583 Statutes, is amended to read:
1584 943.1757 Criminal justice executives; training; policy
1585 report.—
1586 (2) The policy board of the Criminal Justice Executive
1587 Institute shall identify the needs of criminal justice
1588 executives regarding issues related to diverse populations~~,~~ and
1589 ensure that such needs are met through appropriate training.
1590 ~~Beginning January 1, 1995, and every 5 years thereafter, the~~
1591 ~~policy board shall provide to the appropriate substantive~~
1592 ~~committees of each house a report describing executive training~~
1593 ~~needs. In addition,~~ The policy board shall prepare a biennial
1594 report to the appropriate substantive committees of each house
1595 describing how these needs are being met through training by the
1596 Criminal Justice Executive Institute.
1597 Section 33. Paragraph (a) of subsection (4) and subsection
1598 (9) of section 943.25, Florida Statutes, are amended to read:
1599 943.25 Criminal justice trust funds; source of funds; use
1600 of funds.—
1601 (4) The commission shall authorize the establishment of
1602 regional training councils to advise and assist the commission
1603 in developing and maintaining a plan assessing regional criminal
1604 justice training needs and to act as an extension of the
1605 commission in the planning, programming, and budgeting for
1606 expenditures of the moneys in the Criminal Justice Standards and
1607 Training Trust Fund.

544712

1608 (a) The commission may ~~shall~~ annually forward to each
1609 regional training council a list of its specific recommended
1610 priority issues or items to be funded. Each regional training
1611 council shall consider the recommendations of the commission in
1612 relation to the needs of the region and either include the
1613 recommendations in the region's budget plan or satisfactorily
1614 justify their exclusion.
1615 (9) Up to $250,000 per annum from the Criminal Justice
1616 Standards and Training Trust Fund may be used to develop,
1617 validate, update, and maintain test or assessment instruments,
1618 including computer-based testing, relating to selection,
1619 employment, training, or evaluation of officers, instructors, or
1620 courses. Pursuant to s. 943.12(4), (5), and (8), the commission
1621 shall adopt those test or assessment instruments which are
1622 appropriate and job-related as minimum requirements.
1623 Section 34. Subsection (14) of section 943.325, Florida
1624 Statutes, is amended to read:
1625 943.325 DNA database.—
1626 (14) RESULTS.—The results of a DNA analysis and the
1627 comparison of analytic results shall be released only to
1628 criminal justice agencies as defined in s. 943.045 ~~943.045(10),~~
1629 at the request of the agency. Otherwise, such information is
1630 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
1631 s. 24(a), Art. I of the State Constitution.
1632 Section 35. Section 943.33, Florida Statutes, is amended to
1633 read:
1634 943.33 State-operated criminal analysis laboratories.—
1635 (1) The state-operated laboratories shall furnish
1636 laboratory service upon request to law enforcement officials in

544712

1637 the state. The testing services of such laboratories by persons
1638 employed by or acting on behalf of the department shall also be
1639 available to any defendant in a criminal case upon showing of
1640 good cause and upon order of the court with jurisdiction in the
1641 case. When such service is to be made available to the
1642 defendant, the order shall be issued only after motion by the
1643 defendant and hearing held after notice with a copy of the
1644 motion being served upon the prosecutor and the state-operated
1645 laboratory from which the service is being sought.
1646 (2) For purposes of this section, "good cause" means a
1647 finding by the court that the laboratory testing service being
1648 sought by the defendant is anticipated to produce evidence that
1649 is relevant and material to the defense; ~~,~~ that the service
1650 sought is one which is reasonably within the capacity of the
1651 state-operated laboratory, ~~and~~ will not be unduly burdensome
1652 upon the laboratory, will not impede normal daily laboratory
1653 operations, will not negatively impact laboratory certifications
1654 or equipment calibration, and does not violate the laboratory's
1655 national certification or accreditation standards; and that the
1656 service cannot be obtained from any qualified private or
1657 nonstate operated laboratory within the state or otherwise
1658 reasonably available to the defense.
1659 (3) This section does not authorize the presence of defense
1660 experts or others representing the defense inside a state-
1661 operated laboratory facility where actual testing or analysis is
1662 occurring and does not authorize the use of state-operated
1663 laboratory equipment or facilities by defense experts or other
1664 persons not employed by or acting on the behalf of the
1665 department.

544712

1666 (4) The court shall assess the costs of all testing,
1667 equipment operation, and personnel and any other costs directly
1668 attributable to the court-ordered testing ~~such service ordered~~
1669 ~~by the court~~ to the defendant or the defendant's counsel,
1670 whether public, private, or pro bono, who obtained the testing
1671 order ~~local public defender's office~~. The laboratory providing
1672 the service ordered shall include with the report of the
1673 analysis, comparison, or identification a statement of the costs
1674 of the service provided and shall provide a copy of all reports
1675 and analysis performed and cost statement being provided to the
1676 prosecutor in the case and the court.
1677 Section 36. Subsection (9) of section 943.68, Florida
1678 Statutes, is amended to read:
1679 943.68 Transportation and protective services.—
1680 (9) The department shall submit a report each August ~~July~~
1681 15 to the Governor, the Legislature, and the Cabinet~~,~~ detailing
1682 all transportation and protective services provided under
1683 subsections (1), (5), and (6) within the preceding fiscal year.
1684 Each report shall include a detailed accounting of the cost of
1685 such transportation and protective services, including the names
1686 of persons provided such services and the nature of state
1687 business performed.
1688 Section 37. Subsection (3) of section 285.18, Florida
1689 Statutes, is amended to read:
1690 285.18 Tribal council as governing body; powers and
1691 duties.—
1692 (3) The law enforcement agencies of the Seminole Tribe of
1693 Florida and the Miccosukee Tribe of Indians of Florida shall
1694 have the authority of "criminal justice agencies" as defined in

544712

1695 s. 945.045(11)(e) ~~943.045(10)(e)~~ and shall have the specific
1696 authority to negotiate agreements with the ~~Florida~~ Department of
1697 Law Enforcement, the United States Department of Justice, and
1698 other federal law enforcement agencies for access to criminal
1699 history records for the purpose of conducting ongoing criminal
1700 investigations and for the following governmental purposes:
1701 (a) Background investigations, which are required for
1702 employment by a tribal education program, tribal Head Start
1703 program, or tribal day care program as may be required by state
1704 or federal law.
1705 (b) Background investigations, which are required for
1706 employment by tribal law enforcement agencies.
1707 (c) Background investigations, which are required for
1708 employment by a tribal government.
1709 (d) Background investigations with respect to all
1710 employees, primary management officials, and all persons having
1711 a financial interest in a class II Indian tribal gaming
1712 enterprise to ensure eligibility as provided in the Indian
1713 Gaming Regulatory Act, 25 U.S.C. ss. 2701 et al.
1714
1715 With regard to those investigations authorized in paragraphs
1716 (a), (c), and (d), each such individual shall file a complete
1717 set of his or her fingerprints that have been taken by an
1718 authorized law enforcement officer, which set of fingerprints
1719 shall be submitted to the Department of Law Enforcement for
1720 state processing and to the Federal Bureau of Investigation for
1721 federal processing. The cost of processing shall be borne by the
1722 applicant.
1723 Section 38. Paragraph (b) of subsection (2) of section

544712

1724 414.40, Florida Statutes, is amended to read:
1725 414.40 Stop Inmate Fraud Program established; guidelines.—
1726 (2) The Department of Financial Services is directed to
1727 implement the Stop Inmate Fraud Program in accordance with the
1728 following guidelines:
1729 (b) Pursuant to these procedures, the program shall have
1730 access to records containing correctional information not exempt
1731 from the public records law on incarcerated persons which have
1732 been generated as criminal justice information. As used in this
1733 paragraph, the terms ~~term~~ "record" ~~is defined as provided in s.~~
1734 ~~943.045(7),~~ and ~~the term~~ "criminal justice information" have the
1735 same meanings ~~is defined~~ as provided in s. 943.045 ~~943.045(3)~~.
1736 Section 39. Section 447.045, Florida Statutes, is amended
1737 to read:
1738 447.045 Information confidential.—Neither the department
1739 nor any investigator or employee of the department shall divulge
1740 in any manner the information obtained pursuant to the
1741 processing of applicant fingerprints ~~fingerprint cards~~, and such
1742 information is confidential and exempt from ~~the provisions of~~ s.
1743 119.07(1).
1744 Section 40. Subsection (10) of section 455.213, Florida
1745 Statutes, is amended to read:
1746 455.213 General licensing provisions.—
1747 (10) For any profession requiring fingerprints as part of
1748 the registration, certification, or licensure process or for any
1749 profession requiring a criminal history record check to
1750 determine good moral character, ~~a fingerprint card containing~~
1751 the fingerprints of the applicant must accompany all
1752 applications for registration, certification, or licensure. The

544712

1753 fingerprints ~~fingerprint card~~ shall be forwarded to the Division
1754 of Criminal Justice Information Systems within the Department of
1755 Law Enforcement for ~~purposes of~~ processing ~~the fingerprint card~~
1756 to determine whether ~~if~~ the applicant has a criminal history
1757 record. The fingerprints ~~fingerprint card~~ shall also be
1758 forwarded to the Federal Bureau of Investigation ~~for purposes of~~
1759 ~~processing the fingerprint card~~ to determine whether ~~if~~ the
1760 applicant has a criminal history record. The information
1761 obtained by the processing of the fingerprints ~~fingerprint card~~
1762 by the ~~Florida~~ Department of Law Enforcement and the Federal
1763 Bureau of Investigation shall be sent to the department to
1764 determine whether ~~for the purpose of determining if~~ the
1765 applicant is statutorily qualified for registration,
1766 certification, or licensure.
1767 Section 41. Paragraph (d) of subsection (2) of section
1768 468.453, Florida Statutes, is amended to read:
1769 468.453 Licensure required; qualifications; license
1770 nontransferable; service of process; temporary license; license
1771 or application from another state.—
1772 (2) A person shall be licensed as an athlete agent if the
1773 applicant:
1774 (d) Has submitted to the department fingerprints ~~a~~
1775 ~~fingerprint card~~ for a criminal history records check. The
1776 fingerprints ~~fingerprint card~~ shall be forwarded to the Division
1777 of Criminal Justice Information Systems within the Department of
1778 Law Enforcement for ~~purposes of~~ processing ~~the fingerprint card~~
1779 to determine whether ~~if~~ the applicant has a criminal history
1780 record. The fingerprints ~~fingerprint card~~ shall also be
1781 forwarded to the Federal Bureau of Investigation ~~for purposes of~~

544712

1782 ~~processing the fingerprint card~~ to determine whether ~~if~~ the
1783 applicant has a criminal history record. The information
1784 obtained by the processing of the fingerprints ~~fingerprint card~~
1785 by the ~~Florida~~ Department of Law Enforcement and the Federal
1786 Bureau of Investigation shall be sent to the department to
1787 determine whether ~~for the purpose of determining if~~ the
1788 applicant is statutorily qualified for licensure.
1789 Section 42. Subsection (3) of section 475.615, Florida
1790 Statutes, is amended to read:
1791 475.615 Qualifications for registration or certification.—
1792 (3) Appropriate fees, as set forth in the rules of the
1793 board pursuant to s. 475.6147, and a set of fingerprints
1794 ~~fingerprint card~~ must accompany all applications for
1795 registration or certification. The fingerprints ~~fingerprint card~~
1796 shall be forwarded to the Division of Criminal Justice
1797 Information Systems within the Department of Law Enforcement for
1798 ~~purposes of~~ processing ~~the fingerprint card~~ to determine whether
1799 ~~if~~ the applicant has a criminal history record. The fingerprints
1800 ~~fingerprint card~~ shall also be forwarded to the Federal Bureau
1801 of Investigation ~~for purposes of processing the fingerprint card~~
1802 to determine whether ~~if~~ the applicant has a criminal history
1803 record. The information obtained by the processing of the
1804 fingerprints ~~fingerprint card~~ by the Department of Law
1805 Enforcement and the Federal Bureau of Investigation shall be
1806 sent to the department to determine whether ~~for the purpose of~~
1807 ~~determining if~~ the applicant is statutorily qualified for
1808 registration or certification. ~~Effective July 1, 2006, an~~
1809 ~~applicant must provide fingerprints in electronic format.~~
1810 Section 43. Paragraph (j) of subsection (3) of section

544712

1811 493.6105, Florida Statutes, is amended to read:
1812 493.6105 Initial application for license.—
1813 (3) The application must contain the following information
1814 concerning the individual signing the application:
1815 (j) A full set of fingerprints ~~on a card provided by the~~
1816 ~~department~~ and a fingerprint fee to be established by rule of
1817 the department based upon costs determined by state and federal
1818 agency charges and department processing costs. An applicant who
1819 has, within the immediately preceding 6 months, submitted such
1820 fingerprints ~~a fingerprint card~~ and fee for licensing purposes
1821 under this chapter is not required to submit another set of
1822 fingerprints ~~fingerprint card~~ or fee.
1823 Section 44. Paragraph (a) of subsection (1) of section
1824 493.6108, Florida Statutes, is amended to read:
1825 493.6108 Investigation of applicants by Department of
1826 Agriculture and Consumer Services.—
1827 (1) Except as otherwise provided, the department must
1828 investigate an applicant for a license under this chapter before
1829 it may issue the license. The investigation must include:
1830 (a)1. An examination of fingerprint records and police
1831 records. If a criminal history record check of any applicant
1832 under this chapter is performed by means of fingerprint ~~card~~
1833 identification, the time limitations prescribed by s. 120.60(1)
1834 shall be tolled during the time the applicant's fingerprints are
1835 ~~fingerprint card is~~ under review by the Department of Law
1836 Enforcement or the United States Department of Justice, Federal
1837 Bureau of Investigation.
1838 2. If a legible set of fingerprints, as determined by the
1839 Department of Law Enforcement or the Federal Bureau of

544712

1840 Investigation, cannot be obtained after two attempts, the
1841 Department of Agriculture and Consumer Services may determine
1842 the applicant's eligibility based upon a criminal history record
1843 check under the applicant's name conducted by the Department of
1844 Law Enforcement if the fingerprints are taken by a law
1845 enforcement agency or the department and the applicant submits a
1846 written statement signed by the fingerprint technician or a
1847 licensed physician stating that there is a physical condition
1848 that precludes obtaining a legible set of fingerprints or that
1849 the fingerprints taken are the best that can be obtained.
1850 Section 45. Paragraph (f) of subsection (2) of section
1851 494.00312, Florida Statutes, is amended to read:
1852 494.00312 Loan originator license.—
1853 (2) In order to apply for a loan originator license, an
1854 applicant must:
1855 (f) Submit fingerprints in accordance with rules adopted by
1856 the commission:
1857 1. The fingerprints may be submitted to the registry, the
1858 office, or a vendor acting on behalf of the registry or the
1859 office.
1860 2. The office may contract with a third-party vendor to
1861 provide live-scan fingerprinting ~~in lieu of a paper fingerprint~~
1862 ~~card~~.
1863 3. A state criminal history background check must be
1864 conducted through the Department of Law Enforcement, and a
1865 federal criminal history background check must be conducted
1866 through the Federal Bureau of Investigation.
1867 4. All fingerprints submitted to the Department of Law
1868 Enforcement must be submitted electronically and entered into

544712

1869 the statewide automated biometric ~~fingerprint~~ identification
1870 system established in s. 943.05(2)(b) and available for use in
1871 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1872 annual fee to the department to participate in the system and
1873 inform the department of any person whose fingerprints are no
1874 longer required to be retained.
1875 5. The costs of fingerprint processing, including the cost
1876 of retaining the fingerprints, shall be borne by the person
1877 subject to the background check.
1878 6. The office is responsible for reviewing the results of
1879 the state and federal criminal history checks and determining
1880 whether the applicant meets licensure requirements.
1881 Section 46. Paragraph (d) of subsection (2) of section
1882 494.00321, Florida Statutes, is amended to read:
1883 494.00321 Mortgage broker license.—
1884 (2) In order to apply for a mortgage broker license, an
1885 applicant must:
1886 (d) Submit fingerprints for each of the applicant's control
1887 persons in accordance with rules adopted by the commission:
1888 1. The fingerprints may be submitted to the registry, the
1889 office, or a vendor acting on behalf of the registry or the
1890 office.
1891 2. The office may contract with a third-party vendor to
1892 provide live-scan fingerprinting ~~in lieu of a paper fingerprint~~
1893 ~~card~~.
1894 3. A state criminal history background check must be
1895 conducted through the Department of Law Enforcement, and a
1896 federal criminal history background check must be conducted
1897 through the Federal Bureau of Investigation.

544712

1898 4. All fingerprints submitted to the Department of Law
1899 Enforcement must be submitted electronically and entered into
1900 the statewide automated biometric ~~fingerprint~~ identification
1901 system established in s. 943.05(2)(b) and available for use in
1902 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1903 annual fee to the department to participate in the system and
1904 inform the department of any person whose fingerprints are no
1905 longer required to be retained.
1906 5. The costs of fingerprint processing, including the cost
1907 of retaining the fingerprints, shall be borne by the person
1908 subject to the background check.
1909 6. The office is responsible for reviewing the results of
1910 the state and federal criminal history checks and determining
1911 whether the applicant meets licensure requirements.
1912 Section 47. Paragraph (d) of subsection (2) of section
1913 494.00611, Florida Statutes, is amended to read:
1914 494.00611 Mortgage lender license.—
1915 (2) In order to apply for a mortgage lender license, an
1916 applicant must:
1917 (d) Submit fingerprints for each of the applicant's control
1918 persons in accordance with rules adopted by the commission:
1919 1. The fingerprints may be submitted to the registry, the
1920 office, or a vendor acting on behalf of the registry or the
1921 office.
1922 2. The office may contract with a third-party vendor to
1923 provide live-scan fingerprinting ~~in lieu of a paper fingerprint~~
1924 ~~card~~.
1925 3. A state criminal history background check must be
1926 conducted through the Department of Law Enforcement, and a

544712

1927 federal criminal history background check must be conducted
1928 through the Federal Bureau of Investigation.
1929 4. All fingerprints submitted to the Department of Law
1930 Enforcement must be submitted electronically and entered into
1931 the statewide automated biometric ~~fingerprint~~ identification
1932 system established in s. 943.05(2)(b) and available for use in
1933 accordance with s. 943.05(2)(g) and (h). The office shall pay an
1934 annual fee to the department to participate in the system and
1935 inform the department of any person whose fingerprints are no
1936 longer required to be retained.
1937 5. The costs of fingerprint processing, including the cost
1938 of retaining the fingerprints, shall be borne by the person
1939 subject to the background check.
1940 6. The office is responsible for reviewing the results of
1941 the state and federal criminal history checks and determining
1942 whether the applicant meets licensure requirements.
1943 Section 48. Subsections (7) and (10) of section 517.12,
1944 Florida Statutes, are amended to read:
1945 517.12 Registration of dealers, associated persons,
1946 investment advisers, and branch offices.—
1947 (7) The application shall also contain such information as
1948 the commission or office may require about the applicant; any
1949 member, principal, or director of the applicant or any person
1950 having a similar status or performing similar functions; any
1951 person directly or indirectly controlling the applicant; or any
1952 employee of a dealer or of an investment adviser rendering
1953 investment advisory services. Each applicant and any direct
1954 owners, principals, or indirect owners that are required to be
1955 reported on Form BD or Form ADV pursuant to subsection (15)

544712

1956 shall file a complete set of fingerprints. Fingerprints ~~A~~
1957 ~~fingerprint card~~ submitted to the office must be taken by an
1958 authorized law enforcement agency or in a manner approved by the
1959 commission by rule. The office shall submit the fingerprints to
1960 the Department of Law Enforcement for state processing, and the
1961 Department of Law Enforcement shall forward the fingerprints to
1962 the Federal Bureau of Investigation for federal processing. The
1963 cost of the fingerprint processing may be borne by the office,
1964 the employer, or the person subject to the background check. The
1965 Department of Law Enforcement shall submit an invoice to the
1966 office for the fingerprints received each month. The office
1967 shall screen the background results to determine whether ~~if~~ the
1968 applicant meets licensure requirements. The commission may
1969 waive, by rule, the requirement that applicants, including any
1970 direct owners, principals, or indirect owners that are required
1971 to be reported on Form BD or Form ADV pursuant to subsection
1972 (15), file a set of fingerprints or the requirement that such
1973 fingerprints be processed by the Department of Law Enforcement
1974 or the Federal Bureau of Investigation. The commission or office
1975 may require information about any such applicant or person
1976 concerning such matters as:
1977 (a) His or her full name, and any other names by which he
1978 or she may have been known, and his or her age, social security
1979 number, photograph, qualifications, and educational and business
1980 history.
1981 (b) Any injunction or administrative order by a state or
1982 federal agency, national securities exchange, or national
1983 securities association involving a security or any aspect of the
1984 securities business and any injunction or administrative order

544712

1985 by a state or federal agency regulating banking, insurance,
1986 finance, or small loan companies, real estate, mortgage brokers,
1987 or other related or similar industries, which injunctions or
1988 administrative orders relate to such person.
1989 (c) His or her conviction of, or plea of nolo contendere
1990 to, a criminal offense or his or her commission of any acts
1991 which would be grounds for refusal of an application under s.
1992 517.161.
1993 (d) The names and addresses of other persons of whom the
1994 office may inquire as to his or her character, reputation, and
1995 financial responsibility.
1996 (10) An applicant for registration shall pay an assessment
1997 fee of $200, in the case of a dealer or investment adviser, or
1998 $50, in the case of an associated person. An associated person
1999 may be assessed an additional fee to cover the cost for the
2000 fingerprints ~~fingerprint cards~~ to be processed by the office.
2001 Such fee shall be determined by rule of the commission. Each
2002 dealer and each investment adviser shall pay an assessment fee
2003 of $100 for each office in this state. Such fees become the
2004 revenue of the state, except for those assessments provided for
2005 under s. 517.131(1) until such time as the Securities Guaranty
2006 Fund satisfies the statutory limits, and are not returnable in
2007 the event that registration is withdrawn or not granted.
2008 Section 49. Subsection (2) of section 538.09, Florida
2009 Statutes, is amended to read:
2010 538.09 Registration.—
2011 (2) The secondhand dealer shall furnish with her or his
2012 registration a complete set of her or his fingerprints,
2013 certified by an authorized law enforcement officer, and a recent

544712

2014 fullface photographic identification card of herself or himself.
2015 The Department of Law Enforcement shall report its findings to
2016 the Department of Revenue within 30 days after the date the
2017 fingerprints ~~fingerprint cards~~ are submitted for criminal
2018 justice information.
2019 Section 50. Paragraph (b) of subsection (1) of section
2020 538.25, Florida Statutes, is amended to read:
2021 538.25 Registration.—
2022 (1) A person may not engage in business as a secondary
2023 metals recycler at any location without registering with the
2024 department. The department shall accept applications only from a
2025 fixed business address. The department may not accept an
2026 application that provides an address of a hotel room or motel
2027 room, a vehicle, or a post office box.
2028 (b) The department shall forward the full set of
2029 fingerprints to the Department of Law Enforcement for state and
2030 federal processing, provided the federal service is available,
2031 to be processed for any criminal justice information as defined
2032 in s. 943.045. The cost of processing such fingerprints shall be
2033 payable to the Department of Law Enforcement by the department.
2034 The department may issue a temporary registration to each
2035 location pending completion of the background check by state and
2036 federal law enforcement agencies~~,~~ but shall revoke such
2037 temporary registration if the completed background check reveals
2038 a prohibited criminal background. The Department of Law
2039 Enforcement shall report its findings to the Department of
2040 Revenue within 30 days after the date the fingerprints
2041 ~~fingerprint cards~~ are submitted for criminal justice
2042 information.

544712

2043 Section 51. Subsection (2) of section 548.024, Florida
2044 Statutes, is amended to read:
2045 548.024 Background investigation of applicants for
2046 licensure.—
2047 (2) If the commission requires a background criminal
2048 history investigation of any applicant, it shall require the
2049 applicant to submit to the department fingerprints ~~a fingerprint~~
2050 ~~card~~ for this purpose. The fingerprints ~~fingerprint card~~ shall
2051 be forwarded to the Division of Criminal Justice Information
2052 Systems within the Department of Law Enforcement and the Federal
2053 Bureau of Investigation for ~~purposes of~~ processing ~~the~~
2054 ~~fingerprint card~~ to determine whether ~~if~~ the applicant has a
2055 criminal history record. The information obtained by the
2056 processing of the fingerprints ~~fingerprint card~~ by the
2057 Department of Law Enforcement and the Federal Bureau of
2058 Investigation shall be sent to the department to determine
2059 whether ~~for the purpose of determining if~~ the applicant is
2060 statutorily qualified for licensure.
2061 Section 52. Paragraphs (b) and (c) of subsection (10) of
2062 section 550.105, Florida Statutes, are amended to read:
2063 550.105 Occupational licenses of racetrack employees; fees;
2064 denial, suspension, and revocation of license; penalties and
2065 fines.—
2066 (10)
2067 (b) All fingerprints required by this section that are
2068 submitted to the Department of Law Enforcement shall be retained
2069 by the Department of Law Enforcement and entered into the
2070 statewide automated biometric ~~fingerprint~~ identification system
2071 as authorized by s. 943.05(2)(b) and shall be available for all

544712

2072 purposes and uses authorized for arrest fingerprints ~~fingerprint~~
2073 ~~cards~~ entered into the statewide automated biometric ~~fingerprint~~
2074 identification system pursuant to s. 943.051.
2075 (c) The Department of Law Enforcement shall search all
2076 arrest fingerprints received pursuant to s. 943.051 against the
2077 fingerprints retained in the statewide automated biometric
2078 ~~fingerprint~~ identification system under paragraph (b). Any
2079 arrest record that is identified with the retained fingerprints
2080 of a person subject to the criminal history screening
2081 requirements of this section shall be reported to the division.
2082 Each licensee shall pay a fee to the division for the cost of
2083 retention of the fingerprints and the ongoing searches under
2084 this paragraph. The division shall forward the payment to the
2085 Department of Law Enforcement. The amount of the fee to be
2086 imposed for performing these searches and the procedures for the
2087 retention of licensee fingerprints shall be as established by
2088 rule of the Department of Law Enforcement. The division shall
2089 inform the Department of Law Enforcement of any change in the
2090 license status of licensees whose fingerprints are retained
2091 under paragraph (b).
2092 Section 53. Subsection (2) of section 550.908, Florida
2093 Statutes, is amended to read:
2094 550.908 Powers and duties of compact committee.—In order to
2095 carry out the purposes of this compact, the compact committee
2096 has the power and duty to:
2097 (2) Investigate applicants for licensure by the compact
2098 committee and, as permitted by federal and state law, gather
2099 information on such applicants, including criminal history
2100 record information from the Federal Bureau of Investigation and

544712

2101 relevant state and local law enforcement agencies, and, where
2102 appropriate, from the Royal Canadian Mounted Police and law
2103 enforcement agencies of other countries, which is necessary to
2104 determine whether a license should be issued under the licensure
2105 requirements established by the committee under subsection (1).
2106 The fingerprints of each applicant for licensure by the compact
2107 committee shall be taken by the compact committee, its
2108 employees, or its designee, and, pursuant to Pub. L. No. 92-544
2109 or Pub. L. No. 100-413, shall be forwarded to a state
2110 identification bureau or to the Association of Racing
2111 Commissioners International, Inc., for submission to the Federal
2112 Bureau of Investigation for a criminal history record check.
2113 Such fingerprints may be submitted ~~on a fingerprint card or~~ by
2114 electronic or other means authorized by the Federal Bureau of
2115 Investigation or other receiving law enforcement agency.
2116 Section 54. Paragraphs (c) and (d) of subsection (7) of
2117 section 551.107, Florida Statutes, are amended to read:
2118 551.107 Slot machine occupational license; findings;
2119 application; fee.—
2120 (7) Fingerprints for all slot machine occupational license
2121 applications shall be taken in a manner approved by the division
2122 and shall be submitted electronically to the Department of Law
2123 Enforcement for state processing and the Federal Bureau of
2124 Investigation for national processing for a criminal history
2125 record check. All persons as specified in s. 550.1815(1)(a)
2126 employed by or working within a licensed premises shall submit
2127 fingerprints for a criminal history record check and may not
2128 have been convicted of any disqualifying criminal offenses
2129 specified in subsection (6). Division employees and law

544712

2130 enforcement officers assigned by their employing agencies to
2131 work within the premises as part of their official duties are
2132 excluded from the criminal history record check requirements
2133 under this subsection. For purposes of this subsection, the term
2134 "convicted" means having been found guilty, with or without
2135 adjudication of guilt, as a result of a jury verdict, nonjury
2136 trial, or entry of a plea of guilty or nolo contendere.
2137 (c) All fingerprints submitted to the Department of Law
2138 Enforcement and required by this section shall be retained by
2139 the Department of Law Enforcement and entered into the statewide
2140 automated biometric ~~fingerprint~~ identification system as
2141 authorized by s. 943.05(2)(b) and shall be available for all
2142 purposes and uses authorized for arrest fingerprints ~~fingerprint~~
2143 ~~cards~~ entered into the statewide automated biometric ~~fingerprint~~
2144 identification system pursuant to s. 943.051.
2145 (d) The Department of Law Enforcement shall search all
2146 arrest fingerprints received pursuant to s. 943.051 against the
2147 fingerprints retained in the statewide automated biometric
2148 ~~fingerprint~~ identification system under paragraph (c). Any
2149 arrest record that is identified with the retained fingerprints
2150 of a person subject to the criminal history screening
2151 requirements of this section shall be reported to the division.
2152 Each licensed facility shall pay a fee to the division for the
2153 cost of retention of the fingerprints and the ongoing searches
2154 under this paragraph. The division shall forward the payment to
2155 the Department of Law Enforcement. The amount of the fee to be
2156 imposed for performing these searches and the procedures for the
2157 retention of licensee fingerprints shall be as established by
2158 rule of the Department of Law Enforcement. The division shall

544712

2159 inform the Department of Law Enforcement of any change in the
2160 license status of licensees whose fingerprints are retained
2161 under paragraph (c).
2162 Section 55. Paragraph (b) of subsection (1) of section
2163 560.141, Florida Statutes, is amended to read:
2164 560.141 License application.—
2165 (1) To apply for a license as a money services business
2166 under this chapter the applicant must:
2167 (b) In addition to the application form, submit:
2168 1. A nonrefundable application fee as provided in s.
2169 560.143.
2170 2. A set of fingerprints ~~fingerprint card~~ for each of the
2171 persons listed in subparagraph (a)3. unless the applicant is a
2172 publicly traded corporation~~,~~ or is exempted from this chapter
2173 under s. 560.104(1). The fingerprints must be taken by an
2174 authorized law enforcement agency. The office shall submit the
2175 fingerprints to the Department of Law Enforcement for state
2176 processing, and the Department of Law Enforcement shall forward
2177 the fingerprints to the Federal Bureau of Investigation for
2178 federal processing. The cost of the fingerprint processing may
2179 be borne by the office, the employer, or the person subject to
2180 the criminal records background check. The office shall screen
2181 the background results to determine whether ~~if~~ the applicant
2182 meets licensure requirements. As used in this section, the term
2183 “publicly traded” means a stock is currently traded on a
2184 national securities exchange registered with the federal
2185 Securities and Exchange Commission or traded on an exchange in a
2186 country other than the United States regulated by a regulator
2187 equivalent to the Securities and Exchange Commission and the

544712

2188 disclosure and reporting requirements of such regulator are
2189 substantially similar to those of the commission.
2190 3. A copy of the applicant's written anti-money laundering
2191 program required under 31 C.F.R. s. 103.125.
2192 4. Within the time allotted by rule, any information needed
2193 to resolve any deficiencies found in the application.
2194 Section 56. Subsection (1) of section 628.906, Florida
2195 Statutes, is amended to read:
2196 628.906 Application requirements; restrictions on
2197 eligibility of officers and directors.—
2198 (1) To evidence competence and trustworthiness of its
2199 officers and directors, the application for a license to act as
2200 a captive insurance company or captive reinsurance company shall
2201 include, but not be limited to, background investigations,
2202 biographical affidavits, and fingerprints ~~fingerprint cards~~ for
2203 all officers and directors. Fingerprints must be taken by a law
2204 enforcement agency or other entity approved by the office, be
2205 accompanied by the fingerprint processing fee specified in s.
2206 624.501, and processed in accordance with s. 624.34.
2207 Section 57. Subsection (3) of section 633.34, Florida
2208 Statutes, is amended to read:
2209 633.34 Firefighters; qualifications for employment.—Any
2210 person applying for employment as a firefighter must:
2211 (3) Submit a set of fingerprints ~~fingerprint card~~ to the
2212 division with a current processing fee. The fingerprints
2213 ~~fingerprint card~~ will be forwarded to the Department of Law
2214 Enforcement and/or the Federal Bureau of Investigation.
2215 Section 58. Subsections (2) and (3) and paragraphs (b) and
2216 (c) of subsection (4) of section 744.3135, Florida Statutes, are

544712

2217 amended to read:
2218 744.3135 Credit and criminal investigation.—
2219 (2) For nonprofessional guardians, the court shall accept
2220 the satisfactory completion of a criminal history record check
2221 as described in this subsection. A nonprofessional guardian
2222 satisfies the requirements of this section by undergoing a state
2223 and national criminal history record check using fingerprints ~~a~~
2224 ~~fingerprint card. The clerk of the court shall obtain~~
2225 ~~fingerprint cards from the Federal Bureau of Investigation and~~
2226 ~~make them available to nonprofessional guardians~~. Any
2227 nonprofessional guardian who is so required shall have his or
2228 her fingerprints taken and forward them ~~the completed~~
2229 ~~fingerprint card~~ along with the necessary fee to the Department
2230 of Law Enforcement for processing. The results of the
2231 fingerprint ~~card~~ criminal history record check shall be
2232 forwarded to the clerk of the court, who shall maintain the
2233 results in the nonprofessional guardian's file and make the
2234 results available to the court.
2235 (3) For professional guardians, the court and the Statewide
2236 Public Guardianship Office shall accept the satisfactory
2237 completion of a criminal history record check by any method
2238 described in this subsection. A professional guardian satisfies
2239 the requirements of this section by undergoing~~:~~
2240 ~~(a)~~ an electronic fingerprint criminal history record
2241 check. A professional guardian may use any electronic
2242 fingerprinting equipment used for criminal history record
2243 checks. The Statewide Public Guardianship Office shall adopt a
2244 rule detailing the acceptable methods for completing an
2245 electronic fingerprint criminal history record check under this

544712

2246 section. The professional guardian shall pay the actual costs
2247 incurred by the Federal Bureau of Investigation and the
2248 Department of Law Enforcement for the criminal history record
2249 check. The entity completing the record check must immediately
2250 send the results of the criminal history record check to the
2251 clerk of the court and the Statewide Public Guardianship Office.
2252 The clerk of the court shall maintain the results in the
2253 professional guardian's file and shall make the results
2254 available to the court~~; or~~
2255 ~~(b) A criminal history record check using a fingerprint~~
2256 ~~card. The clerk of the court shall obtain fingerprint cards from~~
2257 ~~the Federal Bureau of Investigation and make them available to~~
2258 ~~guardians. Any guardian who is so required shall have his or her~~
2259 ~~fingerprints taken and forward the proper fingerprint card along~~
2260 ~~with the necessary fee to the Department of Law Enforcement for~~
2261 ~~processing. The results of the fingerprint card criminal history~~
2262 ~~record checks shall be forwarded to the clerk of the court, who~~
2263 ~~shall maintain the results in the guardian's file and make the~~
2264 ~~results available to the court and the Statewide Public~~
2265 ~~Guardianship Office~~.
2266 (4)
2267 (b) All fingerprints electronically submitted to the
2268 Department of Law Enforcement under this section shall be
2269 retained by the Department of Law Enforcement in a manner
2270 provided by rule and entered in the statewide automated
2271 biometric ~~fingerprint~~ identification system authorized by s.
2272 943.05(2)(b). The fingerprints shall thereafter be available for
2273 all purposes and uses authorized for arrest fingerprints
2274 ~~fingerprint cards~~ entered in the Criminal Justice Information

544712

2275 Program under s. 943.051.
2276 (c) The Department of Law Enforcement shall search all
2277 arrest fingerprints ~~fingerprint cards~~ received under s. 943.051
2278 against the fingerprints retained in the statewide automated
2279 biometric ~~fingerprint~~ identification system under paragraph (b).
2280 Any arrest record that is identified with the fingerprints of a
2281 person described in this paragraph must be reported to the clerk
2282 of court. The clerk of court must forward any arrest record
2283 received for a professional guardian to the Statewide Public
2284 Guardianship Office within 5 days. Each professional guardian
2285 who elects to submit fingerprint information electronically
2286 shall participate in this search process by paying an annual fee
2287 to the Statewide Public Guardianship Office of the Department of
2288 Elderly Affairs and by informing the clerk of court and the
2289 Statewide Public Guardianship Office of any change in the status
2290 of his or her guardianship appointment. The amount of the annual
2291 fee to be imposed for performing these searches and the
2292 procedures for the retention of professional guardian
2293 fingerprints and the dissemination of search results shall be
2294 established by rule of the Department of Law Enforcement. At
2295 least once every 5 years, the Statewide Public Guardianship
2296 Office must request that the Department of Law Enforcement
2297 forward the fingerprints maintained under this section to the
2298 Federal Bureau of Investigation.
2299 Section 59. Paragraph (b) of subsection (5) of section
2300 775.21, Florida Statutes, is amended to read:
2301 775.21 The Florida Sexual Predators Act.—
2302 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated
2303 as a sexual predator as follows:

544712

2304 (b) If a sexual predator is not sentenced to a term of
2305 imprisonment, the clerk of the court shall ensure that the
2306 sexual predator's fingerprints are taken and forwarded to the
2307 department within 48 hours after the court renders its written
2308 sexual predator finding. The fingerprints ~~fingerprint card~~ shall
2309 be clearly marked, "Sexual Predator Registration ~~Card~~." The
2310 clerk of the court that convicts and sentences the sexual
2311 predator for the offense or offenses described in subsection (4)
2312 shall forward to the department and to the Department of
2313 Corrections a certified copy of any order entered by the court
2314 imposing any special condition or restriction on the sexual
2315 predator that ~~which~~ restricts or prohibits access to the victim,
2316 if the victim is a minor, or to other minors.
2317 Section 60. Paragraph (d) of subsection (3) of section
2318 775.261, Florida Statutes, is amended to read:
2319 775.261 The Florida Career Offender Registration Act.—
2320 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—
2321 (d) If a career offender is not sentenced to a term of
2322 imprisonment, the clerk of the court shall ensure that the
2323 career offender's fingerprints are taken and forwarded to the
2324 department within 48 hours after the court renders its finding
2325 that an offender is a career offender. The fingerprints
2326 ~~fingerprint card~~ shall be clearly marked, "Career Offender
2327 Registration ~~Card~~."
2328 Section 61. Paragraph (a) of subsection (11) of section
2329 790.06, Florida Statutes, is amended to read:
2330 790.06 License to carry concealed weapon or firearm.—
2331 (11)(a) No less than 90 days before the expiration date of
2332 the license, the Department of Agriculture and Consumer Services

544712

2333 shall mail to each licensee a written notice of the expiration
2334 and a renewal form prescribed by the Department of Agriculture
2335 and Consumer Services. The licensee must renew his or her
2336 license on or before the expiration date by filing with the
2337 Department of Agriculture and Consumer Services the renewal form
2338 containing a notarized affidavit stating that the licensee
2339 remains qualified pursuant to the criteria specified in
2340 subsections (2) and (3), a color photograph as specified in
2341 paragraph (5)(e), and the required renewal fee. Out-of-state
2342 residents must also submit a complete set of fingerprints
2343 ~~completed fingerprint card~~ and fingerprint processing fee. The
2344 license shall be renewed upon receipt of the completed renewal
2345 form, color photograph, appropriate payment of fees, and, if
2346 applicable, fingerprints ~~a completed fingerprint card~~.
2347 Additionally, a licensee who fails to file a renewal application
2348 on or before its expiration date must renew his or her license
2349 by paying a late fee of $15. A license may not be renewed 180
2350 days or more after its expiration date, and such a license is
2351 deemed to be permanently expired. A person whose license has
2352 been permanently expired may reapply for licensure; however, an
2353 application for licensure and fees under subsection (5) must be
2354 submitted, and a background investigation shall be conducted
2355 pursuant to this section. A person who knowingly files false
2356 information under this subsection is subject to criminal
2357 prosecution under s. 837.06.
2358 Section 62. Subsection (3) of section 944.607, Florida
2359 Statutes, is amended to read:
2360 944.607 Notification to Department of Law Enforcement of
2361 information on sexual offenders.—

544712

2362 (3) If a sexual offender is not sentenced to a term of
2363 imprisonment, the clerk of the court shall ensure that the
2364 sexual offender's fingerprints are taken and forwarded to the
2365 Department of Law Enforcement within 48 hours after the court
2366 sentences the offender. The fingerprints ~~fingerprint card~~ shall
2367 be clearly marked "Sexual Offender Registration ~~Card~~."
2368 Section 63. Subsection (2) of section 944.608, Florida
2369 Statutes, is amended to read:
2370 944.608 Notification to Department of Law Enforcement of
2371 information on career offenders.—
2372 (2) If a career offender is not sentenced to a term of
2373 imprisonment, the clerk of the court shall ensure that the
2374 career offender's fingerprints are taken and forwarded to the
2375 Department of Law Enforcement within 48 hours after the court
2376 sentences the career offender. The fingerprints ~~fingerprint card~~
2377 shall be clearly marked "Career Offender Registration ~~Card~~."
2378 Section 64. Paragraph (b) of subsection (1) of section
2379 985.11, Florida Statutes, is amended to read:
2380 985.11 Fingerprinting and photographing.—
2381 (1)
2382 (b) A child who is charged with or found to have committed
2383 one of the following offenses shall be fingerprinted, and the
2384 fingerprints shall be submitted to the Department of Law
2385 Enforcement as provided in s. 943.051(3)(b):
2386 1. Assault, as defined in s. 784.011.
2387 2. Battery, as defined in s. 784.03.
2388 3. Carrying a concealed weapon, as defined in s. 790.01(1).
2389 4. Unlawful use of destructive devices or bombs, as defined
2390 in s. 790.1615(1).

544712

2391 5. Neglect ~~Negligent treatment~~ of a child ~~children~~, as
2392 defined in s. 827.03(1)(e) ~~former s. 827.05~~.
2393 6. Assault on a law enforcement officer, a firefighter, or
2394 other specified officers, as defined in s. 784.07(2)(a).
2395 7. Open carrying of a weapon, as defined in s. 790.053.
2396 8. Exposure of sexual organs, as defined in s. 800.03.
2397 9. Unlawful possession of a firearm, as defined in s.
2398 790.22(5).
2399 10. Petit theft, as defined in s. 812.014.
2400 11. Cruelty to animals, as defined in s. 828.12(1).
2401 12. Arson, resulting in bodily harm to a firefighter, as
2402 defined in s. 806.031(1).
2403 13. Unlawful possession or discharge of a weapon or firearm
2404 at a school-sponsored event or on school property as defined in
2405 s. 790.115.
2406
2407 A law enforcement agency may fingerprint and photograph a child
2408 taken into custody upon probable cause that such child has
2409 committed any other violation of law, as the agency deems
2410 appropriate. Such fingerprint records and photographs shall be
2411 retained by the law enforcement agency in a separate file, and
2412 these records and all copies thereof must be marked "Juvenile
2413 Confidential." These records are not available for public
2414 disclosure and inspection under s. 119.07(1) except as provided
2415 in ss. 943.053 and 985.04(2), but shall be available to other
2416 law enforcement agencies, criminal justice agencies, state
2417 attorneys, the courts, the child, the parents or legal
2418 custodians of the child, their attorneys, and any other person
2419 authorized by the court to have access to such records. In

544712

2420 addition, such records may be submitted to the Department of Law
2421 Enforcement for inclusion in the state criminal history records
2422 and used by criminal justice agencies for criminal justice
2423 purposes. These records may, in the discretion of the court, be
2424 open to inspection by anyone upon a showing of cause. The
2425 fingerprint and photograph records shall be produced in the
2426 court whenever directed by the court. Any photograph taken
2427 pursuant to this section may be shown by a law enforcement
2428 officer to any victim or witness of a crime for the purpose of
2429 identifying the person who committed such crime.
2430 Section 65. Paragraphs (c) and (e) of subsection (3) of
2431 section 985.644, Florida Statutes, are amended to read:
2432 985.644 Departmental contracting powers; personnel
2433 standards and screening.—
2434 (3)
2435 (c) All fingerprint information electronically submitted to
2436 the Department of Law Enforcement under paragraph (b) shall be
2437 retained by the Department of Law Enforcement and entered into
2438 the statewide automated biometric ~~fingerprint~~ identification
2439 system authorized by s. 943.05(2)(b). Thereafter, such
2440 fingerprint information shall be available for all purposes and
2441 uses authorized for arrest fingerprint information entered into
2442 the statewide automated biometric ~~fingerprint~~ identification
2443 system pursuant to s. 943.051 until the fingerprint information
2444 is removed pursuant to paragraph (e). The Department of Law
2445 Enforcement shall search all arrest fingerprint information
2446 received pursuant to s. 943.051 against the fingerprint
2447 information entered into the statewide automated biometric
2448 identification ~~fingerprint~~ system pursuant to this subsection.

544712

2449 Any arrest records identified as a result of the search shall be
2450 reported to the department in the manner and timeframe
2451 established by the Department of Law Enforcement by rule.
2452 (e) The department shall notify the Department of Law
2453 Enforcement when a person whose fingerprint information is
2454 retained by the Department of Law Enforcement under this
2455 subsection is no longer employed by the department, or by a
2456 provider under contract with the department, in a delinquency
2457 facility, service, or program. This notice shall be provided by
2458 the department to the Department of Law Enforcement within 6
2459 months after the date of the change in the person's employment
2460 status. Fingerprint information for persons identified by the
2461 department in the notice shall be removed from the statewide
2462 automated biometric identification ~~fingerprint~~ system.
2463 Section 66. Subsection (3) of section 985.4815, Florida
2464 Statutes, is amended to read:
2465 985.4815 Notification to Department of Law Enforcement of
2466 information on juvenile sexual offenders.—
2467 (3) If a sexual offender is not sentenced to a term of
2468 residential commitment, the clerk of the court shall ensure that
2469 the sexual offender's fingerprints are taken and forwarded to
2470 the Department of Law Enforcement within 48 hours after the
2471 court sentences the offender. The fingerprints ~~fingerprint card~~
2472 shall be clearly marked "Sexual Offender Registration ~~Card~~."
2473 Section 67. Paragraph (b) of subsection (6) of section
2474 1002.395, Florida Statutes, is amended to read:
2475 1002.395 Florida Tax Credit Scholarship Program.—
2476 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
2477 ORGANIZATIONS.—An eligible nonprofit scholarship-funding

544712

2478 organization:
2479 (b) Must comply with the following background check
2480 requirements:
2481 1. All owners and operators as defined in subparagraph
2482 (2)(h)1. are, upon employment or engagement to provide services,
2483 subject to level 2 background screening as provided under
2484 chapter 435. The fingerprints for the background screening must
2485 be electronically submitted to the Department of Law Enforcement
2486 and can be taken by an authorized law enforcement agency or by
2487 an employee of the eligible nonprofit scholarship-funding
2488 organization or a private company who is trained to take
2489 fingerprints. However, the complete set of fingerprints of an
2490 owner or operator may not be taken by the owner or operator. The
2491 results of the state and national criminal history check shall
2492 be provided to the Department of Education for screening under
2493 chapter 435. The cost of the background screening may be borne
2494 by the eligible nonprofit scholarship-funding organization or
2495 the owner or operator.
2496 2. Every 5 years following employment or engagement to
2497 provide services or association with an eligible nonprofit
2498 scholarship-funding organization, each owner or operator must
2499 meet level 2 screening standards as described in s. 435.04, at
2500 which time the nonprofit scholarship-funding organization shall
2501 request the Department of Law Enforcement to forward the
2502 fingerprints to the Federal Bureau of Investigation for level 2
2503 screening. If the fingerprints of an owner or operator are not
2504 retained by the Department of Law Enforcement under subparagraph
2505 3., the owner or operator must electronically file a complete
2506 set of fingerprints with the Department of Law Enforcement. Upon

544712

2507 submission of fingerprints for this purpose, the eligible
2508 nonprofit scholarship-funding organization shall request that
2509 the Department of Law Enforcement forward the fingerprints to
2510 the Federal Bureau of Investigation for level 2 screening, and
2511 the fingerprints shall be retained by the Department of Law
2512 Enforcement under subparagraph 3.
2513 3. ~~Beginning July 1, 2007,~~ All fingerprints submitted to
2514 the Department of Law Enforcement as required by this paragraph
2515 must be retained by the Department of Law Enforcement in a
2516 manner approved by rule and entered in the statewide automated
2517 biometric ~~fingerprint~~ identification system authorized by s.
2518 943.05(2)(b). The fingerprints must thereafter be available for
2519 all purposes and uses authorized for arrest fingerprints
2520 ~~fingerprint cards~~ entered in the statewide automated biometric
2521 ~~fingerprint~~ identification system pursuant to s. 943.051.
2522 4. ~~Beginning July 1, 2007,~~ The Department of Law
2523 Enforcement shall search all arrest fingerprints ~~fingerprint~~
2524 ~~cards~~ received under s. 943.051 against the fingerprints
2525 retained in the statewide automated biometric ~~fingerprint~~
2526 identification system under subparagraph 3. Any arrest record
2527 that is identified with an owner’s or operator’s fingerprints
2528 must be reported to the Department of Education. The Department
2529 of Education shall participate in this search process by paying
2530 an annual fee to the Department of Law Enforcement and by
2531 informing the Department of Law Enforcement of any change in the
2532 employment, engagement, or association status of the owners or
2533 operators whose fingerprints are retained under subparagraph 3.
2534 The Department of Law Enforcement shall adopt a rule setting the
2535 amount of the annual fee to be imposed upon the Department of

544712

2536 Education for performing these services and establishing the
2537 procedures for the retention of owner and operator fingerprints
2538 and the dissemination of search results. The fee may be borne by
2539 the owner or operator of the nonprofit scholarship-funding
2540 organization.
2541 5. A nonprofit scholarship-funding organization whose owner
2542 or operator fails the level 2 background screening shall not be
2543 eligible to provide scholarships under this section.
2544 6. A nonprofit scholarship-funding organization whose owner
2545 or operator in the last 7 years has filed for personal
2546 bankruptcy or corporate bankruptcy in a corporation of which he
2547 or she owned more than 20 percent shall not be eligible to
2548 provide scholarships under this section.
2549
2550 Any and all information and documentation provided to the
2551 Department of Education and the Auditor General relating to the
2552 identity of a taxpayer that provides an eligible contribution
2553 under this section shall remain confidential at all times in
2554 accordance with s. 213.053.
2555 Section 68. Paragraphs (a) and (b) of subsection (3) of
2556 section 1002.421, Florida Statutes, are amended to read:
2557 1002.421 Accountability of private schools participating in
2558 state school choice scholarship programs.—
2559 (3)(a) ~~Beginning July 1, 2007,~~ All fingerprints submitted
2560 to the Department of Law Enforcement as required by this section
2561 shall be retained by the Department of Law Enforcement in a
2562 manner provided by rule and entered in the statewide automated
2563 biometric ~~fingerprint~~ identification system authorized by s.
2564 943.05(2)(b). Such fingerprints shall thereafter be available

544712

2565 for all purposes and uses authorized for arrest fingerprints
2566 ~~fingerprint cards~~ entered in the statewide automated biometric
2567 ~~fingerprint~~ identification system pursuant to s. 943.051.
2568 (b) ~~Beginning July 1, 2007,~~ The Department of Law
2569 Enforcement shall search all arrest fingerprints ~~fingerprint~~
2570 ~~cards~~ received under s. 943.051 against the fingerprints
2571 retained in the statewide automated biometric ~~fingerprint~~
2572 identification system under paragraph (a). Any arrest record
2573 that is identified with the retained fingerprints of a person
2574 subject to the background screening under this section shall be
2575 reported to the employing school with which the person is
2576 affiliated. Each private school participating in a scholarship
2577 program is required to participate in this search process by
2578 informing the Department of Law Enforcement of any change in the
2579 employment or contractual status of its personnel whose
2580 fingerprints are retained under paragraph (a). The Department of
2581 Law Enforcement shall adopt a rule setting the amount of the
2582 annual fee to be imposed upon each private school for performing
2583 these searches and establishing the procedures for the retention
2584 of private school employee and contracted personnel fingerprints
2585 and the dissemination of search results. The fee may be borne by
2586 the private school or the person fingerprinted.
2587 Section 69. Paragraphs (a) and (b) of subsection (3) of
2588 section 1012.32, Florida Statutes, are amended to read:
2589 1012.32 Qualifications of personnel.—
2590 (3)(a) ~~Beginning July 1, 2004,~~ All fingerprints submitted
2591 to the Department of Law Enforcement as required by subsection
2592 (2) shall be retained by the Department of Law Enforcement in a
2593 manner provided by rule and entered in the statewide automated

544712

2594 biometric ~~fingerprint~~ identification system authorized by s.
2595 943.05(2)(b). Such fingerprints shall thereafter be available
2596 for all purposes and uses authorized for arrest fingerprints
2597 ~~fingerprint cards~~ entered in the statewide automated biometric
2598 ~~fingerprint~~ identification system pursuant to s. 943.051.
2599 (b) ~~Beginning December 15, 2004,~~ The Department of Law
2600 Enforcement shall search all arrest fingerprints ~~fingerprint~~
2601 ~~cards~~ received under s. 943.051 against the fingerprints
2602 retained in the statewide automated biometric ~~fingerprint~~
2603 identification system under paragraph (a). Any arrest record
2604 that is identified with the retained fingerprints of a person
2605 subject to the background screening under this section shall be
2606 reported to the employing or contracting school district or the
2607 school district with which the person is affiliated. Each school
2608 district is required to participate in this search process by
2609 payment of an annual fee to the Department of Law Enforcement
2610 and by informing the Department of Law Enforcement of any change
2611 in the affiliation, employment, or contractual status or place
2612 of affiliation, employment, or contracting of its instructional
2613 and noninstructional personnel whose fingerprints are retained
2614 under paragraph (a). The Department of Law Enforcement shall
2615 adopt a rule setting the amount of the annual fee to be imposed
2616 upon each school district for performing these searches and
2617 establishing the procedures for the retention of instructional
2618 and noninstructional personnel fingerprints and the
2619 dissemination of search results. The fee may be borne by the
2620 district school board, the contractor, or the person
2621 fingerprinted.
2622 Section 70. Paragraphs (b), (c), and (e) of subsection (2)

544712

2623 of section 1012.467, Florida Statutes, are amended to read:
2624 1012.467 Noninstructional contractors who are permitted
2625 access to school grounds when students are present; background
2626 screening requirements.—
2627 (2)
2628 (b) As authorized by law, the Department of Law Enforcement
2629 shall retain the fingerprints submitted by the school districts
2630 pursuant to this subsection to the Department of Law Enforcement
2631 for a criminal history background screening in a manner provided
2632 by rule and enter the fingerprints in the statewide automated
2633 biometric ~~fingerprint~~ identification system authorized by s.
2634 943.05(2)(b). The fingerprints shall thereafter be available for
2635 all purposes and uses authorized for arrest fingerprints
2636 ~~fingerprint cards~~ entered into the statewide automated biometric
2637 ~~fingerprint~~ identification system under s. 943.051.
2638 (c) As authorized by law, the Department of Law Enforcement
2639 shall search all arrest fingerprints ~~fingerprint cards~~ received
2640 under s. 943.051 against the fingerprints retained in the
2641 statewide automated biometric ~~fingerprint~~ identification system
2642 under paragraph (b).
2643 (e) A fingerprint retained pursuant to this subsection
2644 shall be purged from the automated biometric ~~fingerprint~~
2645 identification system 5 years following the date the fingerprint
2646 was initially submitted. The Department of Law Enforcement shall
2647 set the amount of the annual fee to be imposed upon each
2648 participating agency for performing these searches and
2649 establishing the procedures for retaining fingerprints and
2650 disseminating search results. The fee may be borne as provided
2651 by law. Fees may be waived or reduced by the executive director

544712

2652 of the Department of Law Enforcement for good cause shown.
2653 Section 71. This act shall take effect July 1, 2013.
2654 ========== T I T L E A M E N D M E N T ==========
2655 And the title is amended as follows:
2656 Delete everything before the enacting clause
2657 and insert:
2658 A bill to be entitled
2659 An act relating to law enforcement; amending ss.
2660 125.5801 and 166.0442, F.S.; revising provisions for
2661 criminal history record checks for certain county and
2662 municipal employees and appointees; amending s.
2663 406.145, F.S.; deleting duties of law enforcement
2664 agencies and the department relating to unidentified
2665 person reporting forms; amending s. 538.26, F.S.;
2666 limiting the number of lead-acid batteries or parts
2667 thereof that a secondary metals recycler may purchase
2668 in certain transactions in a single day; amending s.
2669 937.021, F.S.; revising provisions relating to missing
2670 child and adult reports; amending s. 937.024, F.S.;
2671 revising provisions relating to the birth records of
2672 missing children; amending s. 937.025, F.S.; revising
2673 provisions providing criminal penalties for persons
2674 who knowingly provide false information concerning a
2675 missing child; amending s. 937.028, F.S.; revising
2676 provisions relating to fingerprints of missing
2677 persons; authorizing retention of such fingerprints
2678 entered into the statewide biometric identification
2679 system; amending s. 943.03, F.S.; revising terminology
2680 relating to documents and information systems;

544712

2681 deleting an obsolete provision; amending s. 943.031,
2682 F.S.; correcting a reference; revising provisions
2683 relating to meetings of the Florida Violent Crime and
2684 Drug Control Council, the Drug Control Strategy and
2685 Criminal Gang Committee, and the Victim and Witness
2686 Protection Review Committee; making specified
2687 provisions subject to legislative funding; providing
2688 for return of unexpended funds by specified
2689 recipients; amending s. 943.0435, F.S.; specifying
2690 additional items to be reported by persons required to
2691 register as sexual offenders; amending s. 943.04351,
2692 F.S.; revising requirements for searches of
2693 registration information regarding sexual predators
2694 and sexual offenders; amending s. 943.0438, F.S.;
2695 deleting an obsolete provision; amending s. 943.045,
2696 F.S.; defining the term “biometric”; revising the
2697 definition of the term “criminal justice information”;
2698 amending s. 943.05, F.S.; revising duties of the
2699 Criminal Justice Information Program; redesignating
2700 the statewide automated fingerprint identification
2701 system as the statewide automated biometric
2702 identification system; amending s. 943.051, F.S.;
2703 requiring additional information to be collected from
2704 persons charged with or convicted of specified
2705 offenses and submitted electronically to the
2706 department; providing an exception to the
2707 fingerprinting of certain juveniles; amending s.
2708 943.052, F.S.; revising terminology relating to
2709 disposition reporting; revising information to be

544712

2710 submitted concerning persons received by or discharged
2711 from the state correctional system or certain
2712 juveniles committed to the Department of Juvenile
2713 Justice; amending s. 943.053, F.S.; revising a
2714 reference to rules governing criminal justice
2715 information received from the Federal Government or
2716 other states; conforming terminology; amending s.
2717 943.054, F.S.; revising provisions relating to the
2718 availability of criminal history information derived
2719 from any United States Department of Justice criminal
2720 justice information system; amending s. 943.0542,
2721 F.S.; revising terminology relating to requests for
2722 screening; authorizing rulemaking relating to payments
2723 for screening; amending s. 943.0544, F.S.; revising
2724 terminology relating to the Criminal Justice Network;
2725 amending s. 943.055, F.S.; revising provisions
2726 relating to dissemination of criminal justice
2727 information derived from department information
2728 systems; providing for audits of noncriminal justice
2729 agencies when necessary to ensure compliance with
2730 requirements; amending s. 943.056, F.S.; providing for
2731 requests for corrections of federal criminal history
2732 record information in certain circumstances; amending
2733 s. 943.0582, F.S.; increasing the period in which a
2734 minor may seek expunction of a nonjudicial arrest
2735 record following completion of a diversion program;
2736 revising language relating to a statement to the
2737 department by a state attorney concerning such an
2738 expunction request; deleting an obsolete provision;

544712

2739 amending ss. 943.0585 and 943.059, F.S.; revising
2740 language relating to expunctions and sealing precluded
2741 by prior criminal history sealings or expunctions;
2742 authorizing persons seeking authorization for
2743 employment with or access to certain seaports to deny
2744 or fail to acknowledge certain expunged or sealed
2745 records; amending s. 943.125, F.S.; providing for
2746 accreditation of correctional facilities, public
2747 agency offices of inspectors general, and certain
2748 pretrial diversion programs; authorizing funding and
2749 support of additional accreditation programs; amending
2750 s. 943.13, F.S.; deleting a provision authorizing
2751 temporary employment of a person seeking employment as
2752 a law enforcement or correctional officer if there is
2753 an administrative delay in fingerprint processing;
2754 deleting obsolete language; amending s. 943.132, F.S.;
2755 revising references to federal qualified active or
2756 qualified retired law enforcement concealed firearms
2757 provisions; deleting a requirement that the Criminal
2758 Justice Standards and Training Commission develop a
2759 uniform firearms proficiency verification card;
2760 amending s. 943.1395, F.S.; revising language relating
2761 to investigations on behalf of the Criminal Justice
2762 Standards and Training Commission; amending s.
2763 943.1755, F.S.; providing that the department
2764 maintains responsibility for delivering and
2765 facilitating all Florida Criminal Justice Executive
2766 Institute training; revising membership of the
2767 institute’s policy board; amending s. 943.1757, F.S.;

544712

2768 deleting a requirement for a periodic report by the
2769 Criminal Justice Executive Institute concerning
2770 executive training needs; amending s. 943.25, F.S.;
2771 authorizing, rather than requiring, the Criminal
2772 Justice Standards and Training Commission to forward
2773 to each regional training council a list of its
2774 specific recommended priority issues or items to be
2775 funded; authorizing the commission to use computer-
2776 based testing as an assessment instrument; amending s.
2777 943.325, F.S.; conforming a cross-reference; amending
2778 s. 943.33, F.S.; revising provisions relating to the
2779 availability to defendants of state-operated criminal
2780 analysis laboratories; specifying that defense experts
2781 and others are not authorized to be present in such
2782 laboratories or use laboratory equipment; revising
2783 provisions relating to costs of laboratory testing
2784 performed for defendants; amending s. 943.68, F.S.;
2785 revising the due date of a report detailing
2786 transportation and protective services provided by the
2787 department; amending ss. 285.18, 414.40, 447.045,
2788 455.213, 468.453, 475.615, 493.6105, 493.6108,
2789 494.00312, 494.00321, 494.00611, 517.12, 538.09,
2790 538.25, 548.024, 550.105, 550.908, 551.107, 560.141,
2791 628.906, 633.34, 744.3135, 775.21, 775.261, 790.06,
2792 944.607, 944.608, 985.11, 985.644, 985.4815, 1002.395,
2793 1002.421, 1012.32, and 1012.467, F.S.; conforming
2794 provisions to changes made by the act; providing an
2795 effective date.

By Senator Evers

2-00335A-13 20131434__

A bill to be entitled

An act relating to the Department of Law Enforcement; amending ss. 125.5801 and 166.0442, F.S.; authorizing counties and municipalities to require state and federal criminal history screening for certain specified persons, including employees, private contractors, and employees of private contractors; amending s. 285.18, F.S.; conforming a cross-reference; amending s. 406.145, F.S.; removing the Unidentified Person Report form developed by the department as a method to enter certain data; amending s. 414.40, F.S.; conforming cross-references; amending s. 937.021, F.S.; providing for release of information relating to a missing child; amending s. 937.024, F.S.; eliminating a requirement that the Office of Vital Statistics recall each missing child's birth certificate or birth record from the local registrar of vital statistics in the county of the missing child's birth; amending s. 937.025, F.S.; making grammatical changes; amending s. 937.028, F.S.; requiring fingerprints of a child taken and retained by specified agencies other than the Department of Law Enforcement to be destroyed when the child becomes 18 years of age; requiring that fingerprints of persons, including minors, who are reported missing which have been entered into the automated biometric identification system maintained by the department be retained until the missing person has been recovered; amending s. 943.03, F.S.; removing obsolete provisions

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2-00335A-13 20131434__

applicable to the department; amending s. 943.031, F.S.; making the duties of the Florida Violent Crime and Drug Control Council subject to available funding; removing obsolete provisions; amending s. 943.0435, F.S.; requiring a sexual offender to provide his or her fingerprints and a photograph when registering with the department; amending s. 943.04351, F.S.; requiring a state agency or governmental subdivision, before making an appointment or employment decision, to search certain databases for registered sexual predators and sexual offenders; amending s. 943.0438, F.S.; removing an obsolete date relating to screening athletic coaches as sexual predators or sexual offenders; amending s. 943.045, F.S.; defining the term "biometric"; revising the terms "criminal justice information" and "criminal history information"; amending s. 943.05, F.S.; clarifying duties of the Criminal Justice Information Program pertaining to the statewide automated biometric identification system; amending s. 943.051, F.S.; requiring local law enforcement agencies to have fingerprints, palm prints, and facial images of certain adults and minors captured and electronically submitted to the department; amending s. 943.052, F.S.; revising information that must be included in a disposition report filed with the department; amending s. 943.053, F.S.; requiring that information from criminal justice information systems of the federal government or other states not be disseminated in a manner inconsistent

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with the rules instituted by the National Crime Prevention and Privacy Compact; amending s. 943.054, F.S.; providing for the availability of federal criminal history records and information in a specified manner; removing certain obsolete restrictions; amending s. 943.0542, F.S.; requiring that payment for a criminal history check be made in the manner prescribed by the department by rule; amending s. 943.0544, F.S.; permitting the department to develop and administer a criminal justice intrastate network; amending ss. 943.055 and 943.056, F.S.; revising provisions to conform to changes made by the act; amending s. 943.0582, F.S.; extending the diversion expunction completion date; removing obsolete language; amending ss. 943.0585 and 943.059, F.S.; revising provisions to conform to changes made by the act; amending s. 943.125, F.S.; providing for the accreditation of state and local law enforcement agencies, correctional facilities, and public agency offices of inspectors general and others; providing legislative intent; specifying the criteria for the law enforcement accreditation; requiring the department to employ and assign support staff to certain accreditation commissions if funding is available; requiring the accreditation commissions to determine accreditation standards used by the accreditation programs; amending s. 943.13, F.S.; removing obsolete provisions and making technical changes; amending s. 943.132, F.S.; deleting a cross-

reference to a federal law relating to the carrying of concealed firearms by qualified active or qualified retired law enforcement officers; amending ss. 943.1395 and 943.1755, F.S.; making technical changes; revising provisions to conform to changes made by the act; amending s. 943.1757, F.S.; removing obsolete time provisions; amending s. 943.25, F.S.; conforming provisions to changes made by the act and making technical changes; amending s. 943.325, F.S.; conforming a cross-reference; amending s. 943.33, F.S.; providing that state-operated laboratories shall furnish laboratory services to law enforcement officials; revising the definition of the term "good cause"; prohibiting the presence of specified persons inside a state-operated laboratory; declaring who is responsible for costs of providing such materials; amending s. 943.68, F.S.; changing a reporting date; providing an effective date.

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

Section 1. Section 125.5801, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 125.5801, F.S., for present text.)

125.5801 Criminal history record checks for certain county employees and appointees.—

(1) Notwithstanding chapter 435, a county may require, by ordinance, state and national criminal history screening for

117 any:
118 (a) Position of county employment or appointment, whether
119 paid, unpaid, or contractual, which the governing body of the
120 county finds is critical to security or public safety;
121 (b) Private contractor, employee of a private contractor,
122 vendor, repair person, or delivery person who is subject to
123 licensing or regulation by the county; or
124 (c) Private contractor, employee of a private contractor,
125 vendor, repair person, or delivery person who has direct contact
126 with individual members of the public or access to any public
127 facility or publicly operated facility in such manner or to such
128 an extent that the governing body of the county finds that
129 preventing unsuitable persons from having such contact or access
130 is critical to security or public safety.
131 (2) The ordinance must require each person applying for, or
132 continuing employment or appointment in, any such position,
133 applying for initial or continuing licensing or regulation, or
134 having such contact or access, to be fingerprinted. The
135 fingerprints shall be submitted to the Department of Law
136 Enforcement for a state criminal history record check and to the
137 Federal Bureau of Investigation for a national criminal history
138 record check. The information obtained from the criminal history
139 record checks conducted pursuant to the ordinance may be used by
140 the county to determine an applicant's eligibility for such
141 employment or appointment and to determine a person's
142 eligibility for continued employment or appointment. This
143 section is not intended to preempt or prevent any other
144 background screening, including, but not limited to, other
145 criminal history record checks, which a county may lawfully

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146 undertake.
147 Section 2. Section 166.0442, Florida Statutes, is amended
148 to read:
149 (Substantial rewording of section. See
150 s. 166.0442, F.S., for present text.)
151 166.0442 Criminal history record checks for certain
152 municipal employees and appointees.—
153 (1) Notwithstanding chapter 435, a municipality may
154 require, by ordinance, state and national criminal history
155 screening for any:
156 (a) Position of municipal employment or appointment,
157 whether paid, unpaid, or contractual, which the governing body
158 of the municipality finds is critical to security or public
159 safety;
160 (b) Private contractor, employee of a private contractor,
161 vendor, repair person, or delivery person who is subject to
162 licensing or regulation by the municipality; or
163 (c) Private contractor, employee of a private contractor,
164 vendor, repair person, or delivery person who has direct contact
165 with individual members of the public or access to any public
166 facility or publicly operated facility in such manner or to such
167 an extent that the governing body of the municipality finds that
168 preventing unsuitable persons from having such contact or access
169 is critical to security or public safety.
170 (2) The ordinance must require each person applying for, or
171 continuing employment or appointment in, any such position,
172 applying for initial or continuing licensing or regulation, or
173 having such contact or access, to be fingerprinted. The
174 fingerprints shall be submitted to the Department of Law

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175 Enforcement for a state criminal history record check and to the
176 Federal Bureau of Investigation for a national criminal history
177 record check. The information obtained from the criminal history
178 record checks conducted pursuant to the ordinance may be used by
179 the municipality to determine an applicant's eligibility for
180 such employment or appointment and to determine a person's
181 eligibility for continued employment or appointment. This
182 section is not intended to preempt or prevent any other
183 background screening, including, but not limited to, other
184 criminal history background checks, that a municipality may
185 lawfully undertake.
186 Section 3. Subsection (3) of section 285.18, Florida
187 Statutes, is amended to read:
188 285.18 Tribal council as governing body; powers and
189 duties.—
190 (3) The law enforcement agencies of the Seminole Tribe of
191 Florida and the Miccosukee Tribe of Indians of Florida shall
192 have the authority of "criminal justice agencies" as defined in
193 s. 943.045(11)(e) ~~s. 943.045(10)(c)~~ and shall have the specific
194 authority to negotiate agreements with the Florida Department of
195 Law Enforcement, the United States Department of Justice, and
196 other federal law enforcement agencies for access to criminal
197 history records for the purpose of conducting ongoing criminal
198 investigations and for the following governmental purposes:
199 (a) Background investigations, which are required for
200 employment by a tribal education program, tribal Head Start
201 program, or tribal day care program as may be required by state
202 or federal law.
203 (b) Background investigations, which are required for

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204 employment by tribal law enforcement agencies.
205 (c) Background investigations, which are required for
206 employment by a tribal government.
207 (d) Background investigations with respect to all
208 employees, primary management officials, and all persons having
209 a financial interest in a class II Indian tribal gaming
210 enterprise to ensure eligibility as provided in the Indian
211 Gaming Regulatory Act, 25 U.S.C. ss. 2701 et al.
212
213 With regard to those investigations authorized in paragraphs
214 (a), (c), and (d), each such individual shall file a complete
215 set of his or her fingerprints that have been taken by an
216 authorized law enforcement officer, which set of fingerprints
217 shall be submitted to the Department of Law Enforcement for
218 state processing and to the Federal Bureau of Investigation for
219 federal processing. The cost of processing shall be borne by the
220 applicant.
221 Section 4. Section 406.145, Florida Statutes, is amended to
222 read:
223 406.145 Unidentified persons; reporting requirements.—When
224 an unidentified body is transported to a district medical
225 examiner pursuant to this chapter, the medical examiner shall
226 immediately report receipt of such body to the appropriate law
227 enforcement agency, provided such law enforcement agency was not
228 responsible for transportation of the body to the medical
229 examiner. If the medical examiner cannot determine the law
230 enforcement agency having jurisdiction, he or she shall notify
231 the sheriff of the county in which the medical examiner is
232 located, who shall determine the law enforcement agency

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233 responsible for the identification. It is the duty of the law
234 enforcement officer assigned to and investigating the death to
235 immediately establish the identity of the body. If the body is
236 not immediately identified, the law enforcement agency
237 responsible for investigating the death shall ~~complete an~~
238 ~~Unidentified Person Report and~~ enter the data, through the
239 Florida Crime Information Center, into the Unidentified Person
240 File of the National Crime Information Center. ~~An Unidentified~~
241 ~~Person Report is that form identified by the Florida Department~~
242 ~~of Law Enforcement for use by law enforcement agencies in~~
243 ~~compiling information for entrance into the Unidentified Person~~
244 ~~File.~~
245 Section 5. Paragraph (b) of subsection (2) of section
246 414.40, Florida Statutes, is amended to read:
247 414.40 Stop Inmate Fraud Program established; guidelines.—
248 (2) The Department of Financial Services is directed to
249 implement the Stop Inmate Fraud Program in accordance with the
250 following guidelines:
251 (b) Pursuant to these procedures, the program shall have
252 access to records containing correctional information not exempt
253 from the public records law on incarcerated persons which have
254 been generated as criminal justice information. As used in this
255 paragraph, the term "record" is defined as provided in s.
256 943.045(8) ~~s. 943.045(7)~~, and the term "criminal justice
257 information" is defined as provided in s. 943.045(4) ~~s.~~
258 ~~943.045(3)~~.
259 Section 6. Paragraphs (a), (b), (d), and (e) of subsection
260 (5) of section 937.021, Florida Statutes, are amended to read:
261 937.021 Missing child and missing adult reports.—

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262 (5)(a) Upon receiving a request to record, report,
263 transmit, display, or release an Amber Alert or Missing Child
264 Alert information from the law enforcement agency having
265 jurisdiction over the missing child, the Department of Law
266 Enforcement as the state Amber Alert coordinator, any state or
267 local law enforcement agency, and the personnel of these
268 agencies; any radio or television network, broadcaster, or other
269 media representative; any dealer of communications services as
270 defined in s. 202.11; or any agency, employee, individual, or
271 entity is immune from civil liability for damages for complying
272 in good faith with the request and is presumed to have acted in
273 good faith in recording, reporting, transmitting, displaying, or
274 releasing an Amber Alert or Missing Child Alert information
275 pertaining to the child.
276 (b) Upon receiving a request to record, report, transmit,
277 display, or release information and photographs pertaining to a
278 missing adult or missing child from the law enforcement agency
279 having jurisdiction over the missing adult or missing child, the
280 department, a state or local law enforcement agency, and the
281 personnel of these agencies; any radio or television network,
282 broadcaster, or other media representative; any dealer of
283 communications services as defined in s. 202.11; or any agency,
284 employee, individual, or person is immune from civil liability
285 for damages for complying in good faith with the request to
286 provide information and is presumed to have acted in good faith
287 in recording, reporting, transmitting, displaying, or releasing
288 information or photographs pertaining to the missing adult or
289 missing child.
290 (d) The presumption of good faith is not overcome if a

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291 technical or clerical error is made by any agency, employee,
292 individual, or entity acting at the request of the local law
293 enforcement agency having jurisdiction, or if the Amber Alert,
294 Missing Child Alert, missing child information, missing adult
295 information, or Silver Alert information is incomplete or
296 incorrect because the information received from the local law
297 enforcement agency was incomplete or incorrect.
298 (e) ~~Neither~~ This subsection or ~~nor~~ any other provision of
299 law does not create ~~creates~~ a duty of the agency, employee,
300 individual, or entity to record, report, transmit, display, or
301 release the Amber Alert, Missing Child Alert, missing child
302 information, missing adult information, or Silver Alert
303 information received from the local law enforcement agency
304 having jurisdiction. The decision to record, report, transmit,
305 display, or release information is discretionary with the
306 agency, employee, individual, or entity receiving the
307 information.
308 Section 7. Paragraphs (d) and (e) of subsection (1) and
309 paragraph (a) of subsection (2) of section 937.024, Florida
310 Statutes, are amended to read:
311 937.024 Birth records of missing children; registrars'
312 duties.—
313 (1) The Office of Vital Statistics shall:
314 ~~(d) Recall each missing child's birth certificate or birth~~
315 ~~record from the local registrar of vital statistics in the~~
316 ~~county of the missing child's birth.~~
317 (d) ~~(e)~~ Collect each month a list of missing children who
318 have been located, as provided by the Department of Law
319 Enforcement's Florida Crime Information Center; identify which,

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320 if any, of the located children were born in this state; and
321 remove its flags from the birth certificates or birth records of
322 such children accordingly.
323 (2)(a) A copy of the birth certificate or information
324 concerning the birth record of any child whose record has been
325 flagged ~~or recalled~~ pursuant to paragraph (1)(c) ~~or paragraph~~
326 ~~(1)(d)~~ may not be provided by the State Registrar or any local
327 registrar in response to any inquiry, unless the flag has been
328 removed pursuant to paragraph (1)(d) or upon the official
329 request of the Missing Endangered Persons Information
330 Clearinghouse in the department ~~(1)(c)~~.
331 Section 8. Subsection (7) of section 937.025, Florida
332 Statutes, is amended to read:
333 937.025 Missing children; student records; reporting
334 requirements; penalties.—
335 (7) A person who knowingly provides false information
336 concerning a missing child or the efforts to locate and return a
337 missing child whose ~~to a~~ parent, family member, or guardian ~~of a~~
338 ~~child who~~ has ~~been~~ reported the child missing commits a
339 misdemeanor of the first degree, punishable as provided in s.
340 775.082 or s. 775.083.
341 Section 9. Section 937.028, Florida Statutes, is amended to
342 read:
343 937.028 Fingerprints; missing persons ~~children~~.—
344 (1) If fingerprints have been taken for the purpose of
345 identifying a child, in the event that child becomes missing,
346 the state agency, public or private organization, or other
347 person who took such fingerprints may ~~shall~~ not release the
348 fingerprints to any law enforcement agency or other person for

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349 any purpose other than the identification of a missing child.
350 Such records and data are exempt from the provisions of s.
351 119.07(1).
352 (2) Fingerprints of children taken and retained by any
353 state agency, other than the department, any public or private
354 organization, or other person, excluding the parent or legal
355 custodian of the child, shall be destroyed when the child
356 becomes 18 years of age. Fingerprints of persons, including
357 minors, who are reported missing which have been entered into
358 the automated biometric identification system maintained by the
359 department may be retained until the department is notified that
360 the missing person has been recovered.
361 Section 10. Paragraph (a) of subsection (6) and subsections
362 (12), (13), and (15) of section 943.03, Florida Statutes, are
363 amended to read:
364 943.03 Department of Law Enforcement.—
365 (6)(a) The department shall be governed by all laws
366 regulating the purchase of supplies and equipment as other state
367 agencies and may enter into contracts with other state agencies
368 to make photographs and photocopies ~~photostats~~, to transmit
369 information electronically ~~by teletype~~, and to perform all those
370 services consonant with the purpose of this chapter.
371 (12) The department may establish, implement, and maintain
372 a statewide, integrated ~~violent~~ crime information system capable
373 of transmitting criminal justice information relating to ~~violent~~
374 criminal offenses to and between criminal justice agencies
375 throughout the state.
376 (13) Subject to sufficient annual appropriations, the
377 department shall develop and maintain, in consultation with the

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378 Criminal and Juvenile Justice Information Systems Council under
379 s. 943.08, an information system that supports the
380 administration of the state's criminal and juvenile justice
381 information sharing ~~system~~ in compliance with this chapter and
382 other provisions of law. The department shall serve as custodial
383 manager of the Criminal Justice Network ~~statewide~~
384 ~~telecommunications and data network~~ developed and maintained as
385 part of the information system authorized by this subsection.
386 (15) The Department of Law Enforcement, in consultation
387 with the Criminal and Juvenile Justice Information Systems
388 Council established in s. 943.06, shall modify the existing
389 statewide uniform statute table in its criminal history system
390 to meet the business requirements of state and local criminal
391 justice and law enforcement agencies. In order to accomplish
392 this objective, the department shall:
393 (a) Define the minimum business requirements necessary for
394 successful implementation.
395 (b) Consider the charging and booking requirements of
396 sheriffs' offices and police departments and the business
397 requirements of state attorneys, public defenders, criminal
398 conflict and civil regional counsel, clerks of court, judges,
399 and state law enforcement agencies.
400 (c) Adopt rules establishing the necessary technical and
401 business process standards required to implement, operate, and
402 ensure uniform system use and compliance.
403
404 ~~The required system modifications and adopted rules shall be~~
405 ~~implemented by December 31, 2012.~~
406 Section 11. Subsections (2), (4), and (5), paragraphs (b)

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407 and (c) of subsection (6), and subsection (8), of section
408 943.031, Florida Statutes, are amended to read:
409 943.031 Florida Violent Crime and Drug Control Council.—
410 (2) MEMBERSHIP.—The council shall consist of 14 members, as
411 follows:
412 (a) The Attorney General or a designate.
413 (b) A designate of the executive director of the Department
414 of Law Enforcement.
415 (c) The Secretary of ~~the Department of~~ Corrections or a
416 designate.
417 (d) The Secretary of Juvenile Justice or a designate.
418 (e) The Commissioner of Education or a designate.
419 (f) The president of the Florida Network of Victim/Witness
420 Services, Inc., or a designate.
421 (g) The policy coordinator in the Public Safety Unit of the
422 Governor's Office of Planning and Budgeting, or a designate.
423 (h) The Chief Financial Officer, or a designate.
424 (i) Six members appointed by the Governor, consisting of
425 two sheriffs, two chiefs of police, one medical examiner, and
426 one state attorney or their designates.
427
428 The Governor, when making appointments under this subsection,
429 must take into consideration representation by geography,
430 population, ethnicity, and other relevant factors to ensure that
431 the membership of the council is representative of the state at
432 large. Designates appearing on behalf of a council member who is
433 unable to attend a meeting of the council are empowered to vote
434 on issues before the council to the same extent the designating
435 council member is so empowered.

436 (4) MEETINGS.—The council must meet at least annually
437 ~~semiannually~~. Additional meetings may be held when ~~it is~~
438 determined by the department and chair ~~that extraordinary~~
439 ~~circumstances require an additional meeting of the council~~. A
440 majority of the members of the council constitutes a quorum. The
441 council meetings may be conducted by conference call,
442 teleconferencing, or similar technology.
443 (5) DUTIES OF COUNCIL.—Subject to available funding
444 provided to the department by the Legislature, the council shall
445 provide advice and make recommendations, as necessary, to the
446 executive director of the department.
447 (a) The council may advise the executive director on the
448 feasibility of undertaking initiatives which include, but are
449 not limited to, the following:
450 1. Establishing a program that provides grants to criminal
451 justice agencies that develop and implement effective violent
452 crime prevention and investigative programs and which provides
453 grants to law enforcement agencies for the purpose of drug
454 control, criminal gang, and illicit money laundering
455 investigative efforts or task force efforts that are determined
456 by the council to significantly contribute to achieving the
457 state's goal of reducing drug-related crime, that represent
458 significant criminal gang investigative efforts, that represent
459 a significant illicit money laundering investigative effort, or
460 that otherwise significantly support statewide strategies
461 developed by the Statewide Drug Policy Advisory Council
462 established under s. 397.333, subject to the limitations
463 provided in this section. The grant program may include an
464 innovations grant program to provide startup funding for new

465 initiatives by local and state law enforcement agencies to
466 combat violent crime or to implement drug control, criminal
467 gang, or illicit money laundering investigative efforts or task
468 force efforts by law enforcement agencies, including, but not
469 limited to, initiatives such as:
470 a. Providing enhanced community-oriented policing.
471 b. Providing additional undercover officers and other
472 investigative officers to assist with violent crime
473 investigations in emergency situations.
474 c. Providing funding for multiagency or statewide drug
475 control, criminal gang, or illicit money laundering
476 investigative efforts or task force efforts that cannot be
477 reasonably funded completely by alternative sources and that
478 significantly contribute to achieving the state's goal of
479 reducing drug-related crime, that represent significant criminal
480 gang investigative efforts, that represent a significant illicit
481 money laundering investigative effort, or that otherwise
482 significantly support statewide strategies developed by the
483 Statewide Drug Policy Advisory Council established under s.
484 397.333.
485 2. Expanding the use of automated biometric ~~fingerprint~~
486 identification systems at the state and local level.
487 3. Identifying methods to prevent violent crime.
488 4. Identifying methods to enhance multiagency or statewide
489 drug control, criminal gang, or illicit money laundering
490 investigative efforts or task force efforts that significantly
491 contribute to achieving the state's goal of reducing drug-
492 related crime, that represent significant criminal gang
493 investigative efforts, that represent a significant illicit

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494 money laundering investigative effort, or that otherwise
495 significantly support statewide strategies developed by the
496 Statewide Drug Policy Advisory Council established under s.
497 397.333.
498 5. Enhancing criminal justice training programs that
499 address violent crime, drug control, illicit money laundering
500 investigative techniques, or efforts to control and eliminate
501 criminal gangs.
502 6. Developing and promoting crime prevention services and
503 educational programs that serve the public, including, but not
504 limited to:
505 a. Enhanced victim and witness counseling services that
506 also provide crisis intervention, information referral,
507 transportation, and emergency financial assistance.
508 b. A well-publicized rewards program for the apprehension
509 and conviction of criminals who perpetrate violent crimes.
510 7. Enhancing information sharing and assistance in the
511 criminal justice community by expanding the use of community
512 partnerships and community policing programs. Such expansion may
513 include the use of civilian employees or volunteers to relieve
514 law enforcement officers of clerical work in order to enable the
515 officers to concentrate on street visibility within the
516 community.
517 (b) The full council shall:
518 1. Receive periodic reports from regional violent crime
519 investigation and statewide drug control strategy implementation
520 coordinating teams which relate to violent crime trends or the
521 investigative needs or successes in the regions, including
522 discussions regarding the activity of significant criminal gangs

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523 in the region, factors, and trends relevant to the
524 implementation of the statewide drug strategy, and the results
525 of drug control and illicit money laundering investigative
526 efforts funded in part by the council.
527 2. Maintain and use criteria for the disbursement of funds
528 from the Violent Crime Investigative Emergency and Drug Control
529 Strategy Implementation Account or any other account from which
530 the council may disburse proactive investigative funds as may be
531 established within the Department of Law Enforcement Operating
532 Trust Fund or other appropriations provided to the Department of
533 Law Enforcement by the Legislature in the General Appropriations
534 Act. The criteria shall allow for the advancement of funds to
535 reimburse agencies regarding violent crime investigations as
536 approved by the full council and the advancement of funds to
537 implement proactive drug control strategies or significant
538 criminal gang investigative efforts as authorized by the Drug
539 Control Strategy and Criminal Gang Committee or the Victim and
540 Witness Protection Review Committee. Regarding violent crime
541 investigation reimbursement, an expedited approval procedure
542 shall be established for rapid disbursement of funds in violent
543 crime emergency situations.
544 (c) As used in this section, "significant criminal gang
545 investigative efforts" eligible for proactive funding must
546 involve at a minimum an effort against a known criminal gang
547 that:
548 1. Involves multiple law enforcement agencies.
549 2. Reflects a dedicated significant investigative effort on
550 the part of each participating agency in personnel, time devoted
551 to the investigation, and agency resources dedicated to the

552 effort.
553 3. Reflects a dedicated commitment by a prosecuting
554 authority to ensure that cases developed by the investigation
555 will be timely and effectively prosecuted.
556 4. Demonstrates a strategy and commitment to dismantling
557 the criminal gang via seizures of assets, significant money
558 laundering and organized crime investigations and prosecutions,
559 or similar efforts.
560
561 The council may require satisfaction of additional elements, to
562 include reporting criminal investigative and criminal
563 intelligence information related to criminal gang activity and
564 members in a manner required by the department, as a
565 prerequisite for receiving proactive criminal gang funding.
566 (6) DRUG CONTROL STRATEGY AND CRIMINAL GANG COMMITTEE.—
567 (b) Subject to available funding provided to the department
568 by the Legislature, the committee shall review and approve all
569 requests for disbursement of funds from the Violent Crime
570 Investigative Emergency and Drug Control Strategy Implementation
571 Account within the Department of Law Enforcement Operating Trust
572 Fund and from other appropriations provided to the department by
573 the Legislature in the General Appropriations Act. An expedited
574 approval procedure shall be established for rapid disbursement
575 of funds in violent crime emergency situations. Committee
576 meetings may be conducted by conference call, teleconferencing,
577 or similar technology.
578 (c) Those receiving any proactive funding provided by the
579 council through the committee shall be required to report the
580 results of the investigations to the council once the

581 investigation has been completed. The committee shall also
582 require ongoing status reports on ongoing investigations using
583 such findings in its closed sessions, and may require a
584 recipient to return to the council any portion of unspent
585 funding that has been provided.
586 (8) VICTIM AND WITNESS PROTECTION REVIEW COMMITTEE.—
587 (a) The Victim and Witness Protection Review Committee is
588 created within the Florida Violent Crime and Drug Control
589 Council, consisting of the statewide prosecutor or a state
590 attorney, a sheriff, a chief of police, and the designee of the
591 executive director of the Department of Law Enforcement. The
592 committee shall be appointed from the membership of the council
593 by the chair of the council after the chair has consulted with
594 the executive director of the Department of Law Enforcement.
595 Committee members shall meet in conjunction with the meetings of
596 the council or at other times as required by the department and
597 the chair. Committee meetings may be conducted by conference
598 call, teleconferencing, or similar technology.
599 (b) Subject to available funding provided to the department
600 by the Legislature, the committee shall:
601 1. Maintain and use criteria for disbursing funds to
602 reimburse law enforcement agencies for costs associated with
603 providing victim and witness temporary protective or temporary
604 relocation services.
605 2. Review and approve or deny, in whole or in part, all
606 reimbursement requests submitted by law enforcement agencies.
607 (c) The lead law enforcement agency providing victim or
608 witness protective or temporary relocation services pursuant to
609 the provisions of s. 914.25 may submit a request for

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610 reimbursement to the Victim and Witness Protection Review
611 Committee in a format approved by the committee. The lead law
612 enforcement agency shall submit such reimbursement request on
613 behalf of all law enforcement agencies that cooperated in
614 providing protective or temporary relocation services related to
615 a particular criminal investigation or prosecution. As part of
616 the reimbursement request, the lead law enforcement agency must
617 indicate how any reimbursement proceeds will be distributed
618 among the agencies that provided protective or temporary
619 relocation services.
620 (d) The committee, in its discretion, may use funds
621 available to the committee to provide all or partial
622 reimbursement to the lead law enforcement agency for such costs,
623 or may decline to provide any reimbursement.
624 ~~(e) The committee may conduct its meeting by teleconference~~
625 ~~or conference phone calls when the chair of the committee finds~~
626 ~~that the need for reimbursement is such that delaying until the~~
627 ~~next scheduled council meeting will adversely affect the~~
628 ~~requesting agency's ability to provide the protection services.~~
629 Section 12. Paragraph (b) of subsection (2) and paragraph
630 (d) of subsection (4) of section 943.0435, Florida Statutes, are
631 amended to read:
632 943.0435 Sexual offenders required to register with the
633 department; penalty.—
634 (2) A sexual offender shall:
635 (b) Provide his or her name; date of birth; social security
636 number; race; sex; height; weight; hair and eye color; tattoos
637 or other identifying marks; fingerprints; photograph; occupation
638 and place of employment; address of permanent or legal residence

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or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; home telephone number and any cellular telephone number; any electronic mail address and any instant message name required to be provided pursuant to paragraph (4)(d); date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may ~~shall~~ not be provided in lieu of a physical residential address.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled, employed, or carrying on a vocation at an institution of higher education in this state, the sexual offender shall also provide to the

department through the sheriff's office the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment or employment status. Each change in enrollment or employment status shall be reported in person at the sheriff's office, within 48 hours after any change in status. The sheriff shall promptly notify each institution of the sexual offender's presence and any change in the sexual offender's enrollment or employment status.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the offender and forward the photographs and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(4)

(d) A sexual offender must register any electronic mail address or instant message name with the department before ~~prior to~~ using such electronic mail address or instant message name ~~on or after October 1, 2007~~. The department shall establish an online system through which sexual offenders may securely access and update all electronic mail address and instant message name information.

Section 13. Section 943.04351, Florida Statutes, is amended to read:

943.04351 Search of registration information regarding sexual predators and sexual offenders required before ~~prior to~~ appointment or employment.—A state agency or governmental subdivision, before ~~prior to~~ making any decision to appoint or

697 employ a person to work, whether for compensation or as a
698 volunteer, at any park, playground, day care center, or other
699 place where children regularly congregate, must conduct a search
700 of that person's name or other identifying information against
701 the registration information regarding sexual predators and
702 sexual offenders through the Dru Sjodin National Sexual Offender
703 Public Website maintained by the United States Department of
704 Justice. If, for any reason, that website is not available, a
705 search of the registration information regarding sexual
706 predators and sexual offenders maintained by the department
707 under s. 943.043 must be performed ~~maintained by the Department~~
708 ~~of Law Enforcement under s. 943.043~~. ~~The agency or governmental~~
709 ~~subdivision may conduct the search using the Internet site~~
710 ~~maintained by the Department of Law Enforcement.~~ This section
711 does not apply to those positions or appointments within a state
712 agency or governmental subdivision for which a state and
713 national criminal history background check is conducted.
714 Section 14. Paragraph (a) of subsection (2) of section
715 943.0438, Florida Statutes, is amended to read:
716 943.0438 Athletic coaches for independent sanctioning
717 authorities.—
718 (2) An independent sanctioning authority shall:
719 (a)1. Conduct a background screening of each current and
720 prospective athletic coach. A ~~No~~ person may not ~~shall~~ be
721 authorized by the independent sanctioning authority to act as an
722 athletic coach ~~after July 1, 2010~~, unless a background screening
723 has been conducted and did not result in disqualification under
724 paragraph (b). Background screenings shall be conducted annually
725 for each athletic coach. For purposes of this section, a

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726 background screening shall be conducted with a search of the
727 athletic coach's name or other identifying information against
728 state and federal registries of sexual predators and sexual
729 offenders, which are available to the public on Internet sites
730 provided by:
731 a. The Department of Law Enforcement under s. 943.043; and
732 b. The Attorney General of the United States under 42
733 U.S.C. s. 16920.
734 2. For purposes of this section, a background screening
735 conducted by a commercial consumer reporting agency in
736 compliance with the federal Fair Credit Reporting Act using the
737 identifying information referenced in subparagraph 1. and that
738 includes searching that information against the sexual predator
739 and sexual offender Internet sites listed in sub-subparagraphs
740 1.a. and b. shall be deemed in compliance with the requirements
741 of this section.
742 Section 15. Present subsections (3) and (4) of section
743 943.045, Florida Statutes, are amended, subsections (6) through
744 (18) are renumbered as subsections (7) through (19),
745 respectively, and a new subsection (3) is added to that section,
746 to read:
747 943.045 Definitions; ss. 943.045-943.08.—The following
748 words and phrases as used in ss. 943.045-943.08 shall have the
749 following meanings:
750 (3) "Biometric" refers to impressions, reproductions, or
751 representations of human physical characteristics, such as DNA,
752 fingerprints, palm prints and footprints, eye retinas and
753 irises, voice patterns, and facial images, by means such as
754 booking and driver license photographs, which, when measured and

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755 analyzed, can be used for identification purposes.
756 (4) ~~(3)~~ "Criminal justice information" means information on
757 individuals collected or disseminated as a result of arrest,
758 detention, or the initiation of a criminal proceeding by
759 criminal justice agencies, including arrest record information,
760 correctional and release information, criminal history record
761 information, conviction record information, offender
762 registration information, identification record information, and
763 wanted persons record information. The term does ~~shall~~ not
764 include statistical or analytical records or reports in which
765 individuals are not identified and from which their identities
766 are not ascertainable. The term does ~~shall~~ not include criminal
767 intelligence information or criminal investigative information.
768 (5) ~~(4)~~ "Criminal history information" means information
769 collected by criminal justice agencies on persons, which
770 information consists of identifiable descriptions and notations
771 of arrests, detentions, indictments, informations, or other
772 formal criminal charges and the disposition thereof. The term
773 does not include identification information, such as biometrics
774 ~~fingerprint records~~, if the information does not indicate
775 involvement of the person in the criminal justice system.
776 Section 16. Paragraphs (b) through (e), (g), and (h) of
777 subsection (2) and subsection (3) of section 943.05, Florida
778 Statutes, are amended to read:
779 943.05 Criminal Justice Information Program; duties; crime
780 reports.—
781 (2) The program shall:
782 (b) Establish, implement, and maintain a statewide
783 automated biometric ~~fingerprint~~ identification system capable

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784 of, but not limited to, reading, classifying, matching, and
785 storing fingerprints, rolled fingerprints, ~~and~~ latent
786 fingerprints, palm prints, and facial images. Information
787 contained within the system must ~~shall~~ be available to every
788 criminal justice agency that is responsible for the
789 administration of criminal justice.
790 (c) Initiate a crime information system that is ~~shall be~~
791 responsible for:
792 1. Preparing and disseminating semiannual reports to the
793 Governor, the Legislature, all criminal justice agencies, and,
794 upon request, the public. Each report must ~~shall~~ include, but
795 need not be limited to, types of crime reported, offenders,
796 arrests, and victims.
797 2. Upon request, providing other states and federal
798 criminal justice agencies with Florida crime data. ~~Where~~
799 ~~convenient, such data shall conform to definitions established~~
800 ~~by the requesting agencies.~~
801 3. In cooperation with other criminal justice agencies,
802 developing and maintaining an offender-based transaction system.
803 (d) Adopt rules to effectively and efficiently implement,
804 administer, manage, maintain, and use the automated biometric
805 ~~fingerprint~~ identification system and uniform offense reports
806 and arrest reports. The rules shall be considered minimum
807 requirements and do ~~shall~~ not preclude a criminal justice agency
808 from implementing its own enhancements. However, rules and forms
809 prescribing uniform arrest or probable cause affidavits and
810 alcohol influence reports to be used by all law enforcement
811 agencies in making DUI arrests under s. 316.193 shall be
812 adopted, and shall be used by all law enforcement agencies in

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813 this state. ~~The rules and forms prescribing such uniform~~
814 ~~affidavits and reports shall be adopted and implemented by July~~
815 ~~1, 2004.~~ Failure to use these uniform affidavits and reports
816 does~~, however, shall~~ not prohibit prosecution under s. 316.193.
817 (e) Establish, implement, and maintain a Domestic and
818 Repeat Violence Injunction Statewide Verification System capable
819 of electronically transmitting information to and between
820 criminal justice agencies relating to domestic violence
821 injunctions, injunctions to prevent child abuse issued under
822 chapter 39, and repeat violence injunctions issued by the courts
823 throughout the state. Such information must include, but is not
824 limited to, information as to the existence and status of any
825 such injunction for verification purposes.
826 (g) Upon official written request, and subject to the
827 department having sufficient funds and equipment to participate
828 in such a request, from the agency executive director or
829 secretary or from his or her designee, or from qualified
830 entities participating in the volunteer and employee criminal
831 history screening system under s. 943.0542, or as otherwise
832 required by law, retain fingerprints submitted by criminal and
833 noncriminal justice agencies to the department for a criminal
834 history background screening as provided by rule and enter the
835 fingerprints in the statewide automated biometric ~~fingerprint~~
836 identification system authorized by paragraph (b). Such
837 fingerprints must ~~shall~~ thereafter be available for all purposes
838 and uses authorized for arrest fingerprint submissions entered
839 into the statewide automated biometric ~~fingerprint~~
840 identification system pursuant to s. 943.051.
841 (h) For each agency or qualified entity that officially

842 requests retention of fingerprints or for which retention is
843 otherwise required by law, search all arrest fingerprint
844 submissions received under s. 943.051 against the fingerprints
845 retained in the statewide automated biometric ~~fingerprint~~
846 identification system under paragraph (g).
847 1. Any arrest record that is identified with the retained
848 fingerprints of a person subject to background screening as
849 provided in paragraph (g) shall be reported to the appropriate
850 agency or qualified entity.
851 2. To participate in this search process, agencies or
852 qualified entities must notify each person fingerprinted that
853 his or her fingerprints will be retained, pay an annual fee to
854 the department unless otherwise provided by law, and inform the
855 department of any change in the affiliation, employment, or
856 contractual status of each person whose fingerprints are
857 retained under paragraph (g) if such change removes or
858 eliminates the agency or qualified entity's basis or need for
859 receiving reports of any arrest of that person, so that the
860 agency or qualified entity is not obligated to pay the upcoming
861 annual fee for the retention and searching of that person's
862 fingerprints to the department. The department shall adopt a
863 rule setting the amount of the annual fee to be imposed upon
864 each participating agency or qualified entity for performing
865 these searches and establishing the procedures for the retention
866 of fingerprints and the dissemination of search results. The fee
867 may be borne by the agency, qualified entity, or person subject
868 to fingerprint retention or as otherwise provided by law.
869 Consistent with the recognition of criminal justice agencies
870 expressed in s. 943.053(3), these services shall be provided to

871 criminal justice agencies for criminal justice purposes free of
872 charge. Qualified entities that elect to participate in the
873 fingerprint retention and search process are required to timely
874 remit the fee to the department by a payment mechanism approved
875 by the department. If requested by the qualified entity, and
876 with the approval of the department, such fees may be timely
877 remitted to the department by a qualified entity upon receipt of
878 an invoice for such fees from the department. Failure of a
879 qualified entity to pay the amount due on a timely basis or as
880 invoiced by the department may result in the refusal by the
881 department to permit the qualified entity to continue to
882 participate in the fingerprint retention and search process
883 until all fees due and owing are paid.
884 3. Agencies that participate in the fingerprint retention
885 and search process may adopt rules pursuant to ss. 120.536(1)
886 and 120.54 to require employers to keep the agency informed of
887 any change in the affiliation, employment, or contractual status
888 of each person whose fingerprints are retained under paragraph
889 (g) if such change removes or eliminates the agency's basis or
890 need for receiving reports of any arrest of that person, so that
891 the agency is not obligated to pay the upcoming annual fee for
892 the retention and searching of that person's fingerprints to the
893 department.
894 (3) If fingerprints submitted to the department for
895 background screening, whether retained or not, are identified
896 with the fingerprints of a person having a criminal history
897 record, such fingerprints may thereafter be available for all
898 purposes and uses authorized for arrest fingerprints ~~fingerprint~~
899 ~~cards~~, including, but not limited to, entry into the statewide

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900 automated biometric ~~fingerprint~~ identification system to augment
901 or replace the fingerprints that identify the criminal history
902 record.
903 Section 17. Subsections (2) and (3) of section 943.051,
904 Florida Statutes, are amended to read:
905 943.051 Criminal justice information; collection and
906 storage; fingerprinting.—
907 (2) Each adult person charged with or convicted of a
908 felony, misdemeanor, or violation of a comparable ordinance by a
909 state, county, municipal, or other law enforcement agency shall
910 have fingerprints, palm prints, and facial images captured and
911 electronically ~~be fingerprinted, and such fingerprints shall be~~
912 submitted to the department in the manner prescribed by rule.
913 Exceptions to this requirement for specified misdemeanors or
914 comparable ordinance violations may be made by the department by
915 rule.
916 (3)(a) A minor who is charged with or found to have
917 committed an offense that would be a felony if committed by an
918 adult shall have fingerprints, palm prints, and facial images
919 captured and electronically ~~be fingerprinted and the~~
920 ~~fingerprints shall be~~ submitted to the department in the manner
921 prescribed by rule.
922 (b) A minor who is charged with or found to have committed
923 the following offenses shall be fingerprinted, and the
924 fingerprints shall be submitted to the department unless the
925 child is issued a civil citation pursuant to s. 985.12:
926 1. Assault, as defined in s. 784.011.
927 2. Battery, as defined in s. 784.03.
928 3. Carrying a concealed weapon, as defined in s. 790.01(1).

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929 4. Unlawful use of destructive devices or bombs, as defined
930 in s. 790.1615(1).
931 5. Negligent treatment of children, as defined in s.
932 827.03(1)(e) ~~former s. 827.05~~.
933 6. Assault or battery on a law enforcement officer, a
934 firefighter, or other specified officers, as defined in s.
935 784.07(2)(a) and (b).
936 7. Open carrying of a weapon, as defined in s. 790.053.
937 8. Exposure of sexual organs, as defined in s. 800.03.
938 9. Unlawful possession of a firearm, as defined in s.
939 790.22(5).
940 10. Petit theft, as defined in s. 812.014(3).
941 11. Cruelty to animals, as defined in s. 828.12(1).
942 12. Arson, as defined in s. 806.031(1).
943 13. Unlawful possession or discharge of a weapon or firearm
944 at a school-sponsored event or on school property as defined in
945 s. 790.115.
946 Section 18. Section 943.052, Florida Statutes, is amended
947 to read:
948 943.052 Disposition reporting.—The Criminal Justice
949 Information Program shall, by rule, establish procedures and a
950 format for each criminal justice agency to monitor its records
951 and submit reports, as provided by this section, to the program.
952 The disposition report shall be developed by the program and
953 must ~~shall~~ include the offender-based transaction system number.
954 (1) Each law enforcement officer or booking officer shall
955 include, with submitted ~~on the~~ arrest information and
956 fingerprints, ~~fingerprint card~~ the offender-based transaction
957 system number.

958 (2) Each clerk of the court shall submit the uniform
959 dispositions to the program ~~or~~ in a manner acceptable to the
960 program. The report shall be submitted at least monthly, ~~once a~~
961 ~~month and, when acceptable by the program, may be submitted~~ in
962 an automated format acceptable to the department. The
963 disposition report is mandatory for dispositions relating to
964 adult offenders only. Beginning July 1, 2008, a disposition
965 report ~~for each disposition~~ relating to ~~a~~ minor offenders
966 ~~offender~~ is mandatory.
967 (3)(a) The Department of Corrections shall submit
968 information to the program relating to the receipt ~~or discharge~~
969 of a ~~any~~ person who is sentenced to a state correctional
970 institution.
971 (b) The Department of Juvenile Justice shall submit
972 fingerprints, palm prints, and facial images ~~information~~ to the
973 program relating to the receipt ~~or discharge~~ of a ~~any~~ minor who
974 is found to have committed an offense that would be a felony if
975 committed by an adult, or is found to have committed a
976 misdemeanor specified in s. 943.051(3), and who is committed to
977 the custody of the Department of Juvenile Justice.
978 Section 19. Subsections (2), (3), (11), and (13) of section
979 943.053, Florida Statutes, are amended to read:
980 943.053 Dissemination of criminal justice information;
981 fees.—
982 (2) Criminal justice information derived from federal
983 criminal justice information systems or criminal justice
984 information systems of other states may ~~shall~~ not be
985 disseminated in a manner inconsistent with the rules instituted
986 by the National Crime Prevention and Privacy Compact, 42 U.S.C.

987 s. 14616, as approved and ratified by the Legislature in s.
988 943.0543, or with other applicable laws or rules ~~laws,~~
989 ~~regulations, or rules of the originating agency~~.
990 (3)(a) Criminal history information, including information
991 relating to minors, compiled by the Criminal Justice Information
992 Program from intrastate sources shall be available on a priority
993 basis to criminal justice agencies for criminal justice purposes
994 free of charge. After providing the program with all known
995 personal identifying information, persons in the private sector
996 and noncriminal justice agencies may be provided criminal
997 history information upon tender of fees as established in this
998 subsection and in the manner prescribed by rule of the
999 Department of Law Enforcement. Any access to criminal history
1000 information by the private sector or noncriminal justice
1001 agencies as provided in this subsection shall be assessed
1002 without regard to the quantity or category of criminal history
1003 record information requested.
1004 (b) The fee per record for criminal history information
1005 provided pursuant to this subsection and s. 943.0542 is $24 per
1006 name submitted, except that the fee for the guardian ad litem
1007 program and vendors of the Department of Children and Family
1008 Services, the Department of Juvenile Justice, and the Department
1009 of Elderly Affairs shall be $8 for each name submitted; the fee
1010 for a state criminal history provided for application processing
1011 as required by law to be performed by the Department of
1012 Agriculture and Consumer Services shall be $15 for each name
1013 submitted; and the fee for requests under s. 943.0542, which
1014 implements the National Child Protection Act, shall be $18 for
1015 each volunteer name submitted. The state offices of the Public

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1016 Defender may ~~shall~~ not be assessed a fee for Florida criminal
1017 history information or wanted person information.
1018 (11) A criminal justice agency that is authorized under
1019 federal rules or law to conduct a criminal history background
1020 check on an agency employee who is not certified by the Criminal
1021 Justice Standards and Training Commission under s. 943.12 may
1022 submit to the department the fingerprints of the noncertified
1023 employee to obtain state and national criminal history
1024 information. The fingerprints shall be retained and entered in
1025 the statewide automated biometric ~~fingerprint~~ identification
1026 system authorized by s. 943.05 and must ~~shall~~ be available for
1027 all purposes and uses authorized for arrest fingerprint
1028 submissions entered in the statewide automated biometric
1029 ~~fingerprint~~ identification system pursuant to s. 943.051. The
1030 department shall search all arrest fingerprint submissions
1031 received pursuant to s. 943.051 against the fingerprints
1032 retained in the statewide automated biometric ~~fingerprint~~
1033 identification system pursuant to this section. In addition to
1034 all purposes and uses authorized for arrest biometric
1035 ~~fingerprint~~ submissions for which submitted fingerprints may be
1036 used, any arrest record that is identified with the retained
1037 employee fingerprints must be reported to the submitting
1038 employing agency.
1039 (13)(a) For the department to accept an electronic
1040 fingerprint submission from:
1041 1. A private vendor engaged in the business of providing
1042 electronic fingerprint submission; or
1043 2. A private entity or public agency that submits the
1044 fingerprints of its own employees, volunteers, contractors,

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1045 associates, or applicants for the purpose of conducting a
1046 required or permitted criminal history background check,
1047
1048 the vendor, entity, or agency submitting the fingerprints must
1049 enter into an agreement with the department which ~~that~~ at a
1050 minimum obligates the vendor, entity, or agency to comply with
1051 certain specified standards to ensure that all persons who have
1052 ~~having~~ direct or indirect responsibility for verifying
1053 information, taking fingerprints, ~~identifying,~~ and
1054 electronically submitting fingerprints are qualified to do so.
1055 The agreement must also ~~and will~~ ensure the integrity and
1056 security of all personal information gathered from the persons
1057 whose fingerprints are submitted.
1058 (b) Such standards must ~~shall~~ include, but need not be
1059 limited to, requirements ~~requiring~~ that:
1060 1. All persons responsible for taking fingerprints and
1061 collecting personal identifying information from the persons
1062 being fingerprinted ~~to~~ meet current written state and federal
1063 guidelines for identity verification and for recording legible
1064 fingerprints;
1065 2. The department and the Federal Bureau of Investigation's
1066 technical standards for the electronic submission of
1067 fingerprints be ~~are~~ satisfied;
1068 3. The fingerprint images electronically submitted satisfy
1069 the department's and the Federal Bureau of Investigation's
1070 quality standards; and
1071 4. A person ~~may~~ not take his or her own fingerprints for
1072 submission to the department.
1073 (c) The requirement for entering into an agreement with the

1074 department for this purpose does not apply to criminal justice
1075 agencies as defined in s. 943.045(11) ~~at s. 943.045(10)~~.
1076 (d) The agreement with the department must require the
1077 vendor, entity, or agency to collect from the person or entity
1078 on whose behalf the fingerprints are submitted the fees
1079 prescribed by state and federal law for processing the
1080 fingerprints for a criminal history check. The agreement must
1081 provide that such fees be timely remitted to the department by a
1082 payment mechanism approved by the department. If requested by
1083 the vendor, entity, or agency, and with the approval of the
1084 department, such fees may be timely remitted to the department
1085 by a vendor, entity, or agency upon receipt of an invoice for
1086 such fees from the department. Failure of a vendor, entity, or
1087 agency to pay the amount due on a timely basis or as invoiced by
1088 the department may result in the refusal by the department to
1089 accept future fingerprint submissions until all fees due and
1090 owing are paid.
1091 Section 20. Subsection (1) of section 943.054, Florida
1092 Statutes, is amended to read:
1093 943.054 Exchange of federal criminal history records and
1094 information.—
1095 (1) Criminal history information derived from any United
1096 States Department of Justice criminal justice information system
1097 is available:
1098 (a) To criminal justice agencies for criminal justice
1099 purposes.
1100 (b) Pursuant to applicable federal laws and regulations,
1101 including those instituted by the National Crime Prevention and
1102 Privacy Compact, 42 U.S.C. s. 14616, for use in connection with

1103 licensing or local or state employment or for such other uses
1104 only as authorized by federal or state laws which have been
1105 approved by the United States Attorney General or the Attorney
1106 General's designee. ~~When no active prosecution of the charge is~~
1107 ~~known to be pending, arrest data more than 1 year old is not~~
1108 ~~disseminated unless accompanied by information relating to the~~
1109 ~~disposition of that arrest.~~
1110 (c) For issuance of press releases and publicity designed
1111 to effect the apprehension of wanted persons in connection with
1112 serious or significant offenses.
1113 Section 21. Paragraphs (b) and (c) of subsection (2) of
1114 section 943.0542, Florida Statutes, are amended to read:
1115 943.0542 Access to criminal history information provided by
1116 the department to qualified entities.—
1117 (2)
1118 (b) A qualified entity shall submit to the department a
1119 request for screening an employee or volunteer or person
1120 applying to be an employee or volunteer by submitting
1121 fingerprints ~~on a completed fingerprint card, or the request may~~
1122 ~~be submitted~~ electronically. The qualified entity must maintain
1123 a signed waiver allowing the release of the state and national
1124 criminal history record information to the qualified entity.
1125 (c) Each ~~such~~ request must be paid for ~~accompanied~~ by a fee
1126 for a statewide criminal history check by the department
1127 established by s. 943.053, plus the amount currently prescribed
1128 by the Federal Bureau of Investigation for the national criminal
1129 history check in compliance with the National Child Protection
1130 Act of 1993, as amended. Payment must be made in the manner
1131 prescribed by the department by rule.

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1132 Section 22. Subsection (2) of section 943.0544, Florida
1133 Statutes, is amended to read:
1134 943.0544 Criminal justice information network and
1135 information management.—
1136 (2) The department may develop, implement, maintain,
1137 manage, and operate the Criminal Justice Network, which shall be
1138 an intrastate network for agency ~~intraagency~~ information and
1139 data-sharing network for use by the state's criminal justice
1140 agencies. The department, in consultation with the Criminal and
1141 Juvenile Justice Information Systems Council, shall determine
1142 and regulate access to the Criminal Justice Network by the
1143 state's criminal justice agencies.
1144 Section 23. Section 943.055, Florida Statutes, is amended
1145 to read:
1146 943.055 Records and audit.—
1147 (1) Criminal justice agencies disseminating criminal
1148 justice information derived from a Department of Law Enforcement
1149 criminal justice information system shall maintain a record of
1150 dissemination in accordance with the user agreements in s.
1151 943.0525 ~~with rules adopted by the Department of Law~~
1152 ~~Enforcement~~.
1153 (2) The Criminal Justice Information Program shall arrange
1154 for any audits of state and local criminal justice and
1155 noncriminal justice agencies necessary to assure compliance with
1156 federal laws and regulations, this chapter, and rules of the
1157 Department of Law Enforcement pertaining to the establishment,
1158 operation, security, and maintenance of criminal justice
1159 information systems.
1160 Section 24. Subsection (2) of section 943.056, Florida

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1161 Statutes, is amended to read:
1162 943.056 Access to, review and challenge of, criminal
1163 history records.—
1164 (2) Criminal justice agencies subject to chapter 120 shall
1165 be subject to hearings regarding those portions of criminal
1166 history records for which the agency served as originator. When
1167 it is determined what the record should contain in order to be
1168 complete and accurate, the Criminal Justice Information Program
1169 shall be advised and shall conform state ~~and federal~~ records to
1170 the corrected criminal history record information and shall
1171 request that the federal records be corrected.
1172 Section 25. Paragraphs (b) and (c) of subsection (3),
1173 subsection (5), and subsection (6) of section 943.0582, Florida
1174 Statutes, are amended to read:
1175 943.0582 Prearrest, postarrest, or teen court diversion
1176 program expunction.—
1177 (3) The department shall expunge the nonjudicial arrest
1178 record of a minor who has successfully completed a prearrest or
1179 postarrest diversion program if that minor:
1180 (b) Submits the application for prearrest or postarrest
1181 diversion expunction no later than 12 ~~6~~ months after completion
1182 of the diversion program.
1183 (c) Submits to the department, with the application, an
1184 official written statement from the state attorney for the
1185 county in which the arrest occurred certifying that he or she
1186 has successfully completed that county's prearrest or postarrest
1187 diversion program, ~~and~~ that his or her participation in the
1188 program was based on an arrest ~~is strictly limited to minors~~
1189 ~~arrested~~ for a nonviolent misdemeanor, and that he or she has

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1190 ~~who have~~ not otherwise been charged with or found to have
1191 committed any criminal offense or comparable ordinance
1192 violation.
1193 ~~(5) This section operates retroactively to permit the~~
1194 ~~expunction of any nonjudicial record of the arrest of a minor~~
1195 ~~who has successfully completed a prearrest or postarrest~~
1196 ~~diversion program on or after July 1, 2000; however, in the case~~
1197 ~~of a minor whose completion of the program occurred before the~~
1198 ~~effective date of this section, the application for prearrest or~~
1199 ~~postarrest diversion expunction must be submitted within 6~~
1200 ~~months after the effective date of this section.~~
1201 (5) ~~(6)~~ Expunction or sealing granted under this section
1202 does not prevent the minor who receives such relief from
1203 petitioning for the expunction or sealing of a later criminal
1204 history record as provided for in ss. 943.0585 and 943.059, if
1205 the minor is otherwise eligible under those sections.
1206 Section 26. Subsection (1), paragraph (f) of subsection
1207 (2), and paragraphs (a) and (c) of subsection (4) of section
1208 943.0585, Florida Statutes, are amended to read:
1209 943.0585 Court-ordered expunction of criminal history
1210 records.—The courts of this state have jurisdiction over their
1211 own procedures, including the maintenance, expunction, and
1212 correction of judicial records containing criminal history
1213 information to the extent such procedures are not inconsistent
1214 with the conditions, responsibilities, and duties established by
1215 this section. Any court of competent jurisdiction may order a
1216 criminal justice agency to expunge the criminal history record
1217 of a minor or an adult who complies with the requirements of
1218 this section. The court shall not order a criminal justice

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1219 agency to expunge a criminal history record until the person
1220 seeking to expunge a criminal history record has applied for and
1221 received a certificate of eligibility for expunction pursuant to
1222 subsection (2). A criminal history record that relates to a
1223 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
1224 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
1225 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
1226 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
1227 any violation specified as a predicate offense for registration
1228 as a sexual predator pursuant to s. 775.21, without regard to
1229 whether that offense alone is sufficient to require such
1230 registration, or for registration as a sexual offender pursuant
1231 to s. 943.0435, may not be expunged, without regard to whether
1232 adjudication was withheld, if the defendant was found guilty of
1233 or pled guilty or nolo contendere to the offense, or if the
1234 defendant, as a minor, was found to have committed, or pled
1235 guilty or nolo contendere to committing, the offense as a
1236 delinquent act. The court may only order expunction of a
1237 criminal history record pertaining to one arrest or one incident
1238 of alleged criminal activity, except as provided in this
1239 section. The court may, at its sole discretion, order the
1240 expunction of a criminal history record pertaining to more than
1241 one arrest if the additional arrests directly relate to the
1242 original arrest. If the court intends to order the expunction of
1243 records pertaining to such additional arrests, such intent must
1244 be specified in the order. A criminal justice agency may not
1245 expunge any record pertaining to such additional arrests if the
1246 order to expunge does not articulate the intention of the court
1247 to expunge a record pertaining to more than one arrest. This

1248 section does not prevent the court from ordering the expunction
1249 of only a portion of a criminal history record pertaining to one
1250 arrest or one incident of alleged criminal activity.
1251 Notwithstanding any law to the contrary, a criminal justice
1252 agency may comply with laws, court orders, and official requests
1253 of other jurisdictions relating to expunction, correction, or
1254 confidential handling of criminal history records or information
1255 derived therefrom. This section does not confer any right to the
1256 expunction of any criminal history record, and any request for
1257 expunction of a criminal history record may be denied at the
1258 sole discretion of the court.
1259 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
1260 petition to a court to expunge a criminal history record is
1261 complete only when accompanied by:
1262 (a) A valid certificate of eligibility for expunction
1263 issued by the department pursuant to subsection (2).
1264 (b) The petitioner's sworn statement attesting that the
1265 petitioner:
1266 1. Has never, before ~~prior to~~ the date on which the
1267 petition is filed, been adjudicated guilty of a criminal offense
1268 or comparable ordinance violation, or been adjudicated
1269 delinquent for committing any felony or a misdemeanor specified
1270 in s. 943.051(3)(b).
1271 2. Has not been adjudicated guilty of, or adjudicated
1272 delinquent for committing, any of the acts stemming from the
1273 arrest or alleged criminal activity to which the petition
1274 pertains.
1275 3. Has never secured a prior sealing or expunction of a
1276 criminal history record under this section, former s. 893.14,

1277 former s. 901.33, ~~or~~ former s. 943.058, or s. 943.059 ~~from any~~
1278 ~~jurisdiction outside the state,~~ unless expunction is sought of a
1279 criminal history record previously sealed for 10 years pursuant
1280 to paragraph (2)(h) and the record is otherwise eligible for
1281 expunction.
1282 4. Is eligible for such an expunction to the best of his or
1283 her knowledge or belief and does not have any other petition to
1284 expunge or any petition to seal pending before any court.
1285
1286 Any person who knowingly provides false information on such
1287 sworn statement to the court commits a felony of the third
1288 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1289 775.084.
1290 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
1291 petitioning the court to expunge a criminal history record, a
1292 person seeking to expunge a criminal history record shall apply
1293 to the department for a certificate of eligibility for
1294 expunction. The department shall, by rule adopted pursuant to
1295 chapter 120, establish procedures pertaining to the application
1296 for and issuance of certificates of eligibility for expunction.
1297 A certificate of eligibility for expunction is valid for 12
1298 months after the date stamped on the certificate when issued by
1299 the department. After that time, the petitioner must reapply to
1300 the department for a new certificate of eligibility. Eligibility
1301 for a renewed certification of eligibility must be based on the
1302 status of the applicant and the law in effect at the time of the
1303 renewal application. The department shall issue a certificate of
1304 eligibility for expunction to a person who is the subject of a
1305 criminal history record if that person:

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1306 (f) Has never secured a prior sealing or expunction of a
1307 criminal history record under this section, former s. 893.14,
1308 former s. 901.33, ~~or~~ former s. 943.058, or s. 943.059 unless
1309 expunction is sought of a criminal history record previously
1310 sealed for 10 years pursuant to paragraph (h) and the record is
1311 otherwise eligible for expunction.
1312 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
1313 criminal history record of a minor or an adult which is ordered
1314 expunged by a court of competent jurisdiction pursuant to this
1315 section must be physically destroyed or obliterated by any
1316 criminal justice agency having custody of such record; except
1317 that any criminal history record in the custody of the
1318 department must be retained in all cases. A criminal history
1319 record ordered expunged that is retained by the department is
1320 confidential and exempt from the provisions of s. 119.07(1) and
1321 s. 24(a), Art. I of the State Constitution and not available to
1322 any person or entity except upon order of a court of competent
1323 jurisdiction. A criminal justice agency may retain a notation
1324 indicating compliance with an order to expunge.
1325 (a) The person who is the subject of a criminal history
1326 record that is expunged under this section or under other
1327 provisions of law, including former s. 893.14, former s. 901.33,
1328 and former s. 943.058, may lawfully deny or fail to acknowledge
1329 the arrests covered by the expunged record, except when the
1330 subject of the record:
1331 1. Is a candidate for employment with a criminal justice
1332 agency;
1333 2. Is a defendant in a criminal prosecution;
1334 3. Concurrently or subsequently petitions for relief under

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1335 this section or s. 943.059;
1336 4. Is a candidate for admission to The Florida Bar;
1337 5. Is seeking to be employed or licensed by or to contract
1338 with the Department of Children and Families ~~Family Services~~,
1339 the Division of Vocational Rehabilitation within the Department
1340 of Education, the Agency for Health Care Administration, the
1341 Agency for Persons with Disabilities, the Department of Health,
1342 the Department of Elderly Affairs, or the Department of Juvenile
1343 Justice or to be employed or used by such contractor or licensee
1344 in a sensitive position having direct contact with children, the
1345 disabled, or the elderly; or
1346 6. Is seeking to be employed or licensed by the Department
1347 of Education, any district school board, any university
1348 laboratory school, any charter school, any private or parochial
1349 school, or any local governmental entity that licenses child
1350 care facilities.~~; or~~
1351 ~~7. Is seeking authorization from a seaport listed in s.~~
1352 ~~311.09 for employment within or access to one or more of such~~
1353 ~~seaports pursuant to s. 311.12.~~
1354 (c) Information relating to the existence of an expunged
1355 criminal history record which is provided in accordance with
1356 paragraph (a) is confidential and exempt from the provisions of
1357 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
1358 except that the department shall disclose the existence of a
1359 criminal history record ordered expunged to the entities set
1360 forth in subparagraphs (a)1., 4., 5., and 6.~~, and 7.~~ for their
1361 respective licensing, access authorization, and employment
1362 purposes, and to criminal justice agencies for their respective
1363 criminal justice purposes. It is unlawful for any employee of an

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1364 entity set forth in subparagraph (a)1., subparagraph (a)4.,
1365 subparagraph (a)5., or subparagraph (a)6.~~, or subparagraph (a)7.~~
1366 to disclose information relating to the existence of an expunged
1367 criminal history record of a person seeking employment, access
1368 authorization, or licensure with such entity or contractor,
1369 except to the person to whom the criminal history record relates
1370 or to persons having direct responsibility for employment,
1371 access authorization, or licensure decisions. Any person who
1372 violates this paragraph commits a misdemeanor of the first
1373 degree, punishable as provided in s. 775.082 or s. 775.083.
1374 Section 27. Subsection (1), paragraph (e) of subsection
1375 (2), and subsection (4) of section 943.059, Florida Statutes,
1376 are amended to read:
1377 943.059 Court-ordered sealing of criminal history records.—
1378 The courts of this state shall continue to have jurisdiction
1379 over their own procedures, including the maintenance, sealing,
1380 and correction of judicial records containing criminal history
1381 information to the extent such procedures are not inconsistent
1382 with the conditions, responsibilities, and duties established by
1383 this section. Any court of competent jurisdiction may order a
1384 criminal justice agency to seal the criminal history record of a
1385 minor or an adult who complies with the requirements of this
1386 section. The court shall not order a criminal justice agency to
1387 seal a criminal history record until the person seeking to seal
1388 a criminal history record has applied for and received a
1389 certificate of eligibility for sealing pursuant to subsection
1390 (2). A criminal history record that relates to a violation of s.
1391 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
1392 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter

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1393 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
1394 916.1075, a violation enumerated in s. 907.041, or any violation
1395 specified as a predicate offense for registration as a sexual
1396 predator pursuant to s. 775.21, without regard to whether that
1397 offense alone is sufficient to require such registration, or for
1398 registration as a sexual offender pursuant to s. 943.0435, may
1399 not be sealed, without regard to whether adjudication was
1400 withheld, if the defendant was found guilty of or pled guilty or
1401 nolo contendere to the offense, or if the defendant, as a minor,
1402 was found to have committed or pled guilty or nolo contendere to
1403 committing the offense as a delinquent act. The court may only
1404 order sealing of a criminal history record pertaining to one
1405 arrest or one incident of alleged criminal activity, except as
1406 provided in this section. The court may, at its sole discretion,
1407 order the sealing of a criminal history record pertaining to
1408 more than one arrest if the additional arrests directly relate
1409 to the original arrest. If the court intends to order the
1410 sealing of records pertaining to such additional arrests, such
1411 intent must be specified in the order. A criminal justice agency
1412 may not seal any record pertaining to such additional arrests if
1413 the order to seal does not articulate the intention of the court
1414 to seal records pertaining to more than one arrest. This section
1415 does not prevent the court from ordering the sealing of only a
1416 portion of a criminal history record pertaining to one arrest or
1417 one incident of alleged criminal activity. Notwithstanding any
1418 law to the contrary, a criminal justice agency may comply with
1419 laws, court orders, and official requests of other jurisdictions
1420 relating to sealing, correction, or confidential handling of
1421 criminal history records or information derived therefrom. This

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1422 section does not confer any right to the sealing of any criminal
1423 history record, and any request for sealing a criminal history
1424 record may be denied at the sole discretion of the court.
1425 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
1426 petition to a court to seal a criminal history record is
1427 complete only when accompanied by:
1428 (a) A valid certificate of eligibility for sealing issued
1429 by the department pursuant to subsection (2).
1430 (b) The petitioner's sworn statement attesting that the
1431 petitioner:
1432 1. Has never, prior to the date on which the petition is
1433 filed, been adjudicated guilty of a criminal offense or
1434 comparable ordinance violation, or been adjudicated delinquent
1435 for committing any felony or a misdemeanor specified in s.
1436 943.051(3)(b).
1437 2. Has not been adjudicated guilty of or adjudicated
1438 delinquent for committing any of the acts stemming from the
1439 arrest or alleged criminal activity to which the petition to
1440 seal pertains.
1441 3. Has never secured a prior sealing or expunction of a
1442 criminal history record under this section, former s. 893.14,
1443 former s. 901.33, former s. 943.058, s. 943.0585 ~~or from any~~
1444 ~~jurisdiction outside the state~~.
1445 4. Is eligible for such a sealing to the best of his or her
1446 knowledge or belief and does not have any other petition to seal
1447 or any petition to expunge pending before any court.
1448
1449 Any person who knowingly provides false information on such
1450 sworn statement to the court commits a felony of the third

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1451 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1452 775.084.
1453 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
1454 petitioning the court to seal a criminal history record, a
1455 person seeking to seal a criminal history record shall apply to
1456 the department for a certificate of eligibility for sealing. The
1457 department shall, by rule adopted pursuant to chapter 120,
1458 establish procedures pertaining to the application for and
1459 issuance of certificates of eligibility for sealing. A
1460 certificate of eligibility for sealing is valid for 12 months
1461 after the date stamped on the certificate when issued by the
1462 department. After that time, the petitioner must reapply to the
1463 department for a new certificate of eligibility. Eligibility for
1464 a renewed certification of eligibility must be based on the
1465 status of the applicant and the law in effect at the time of the
1466 renewal application. The department shall issue a certificate of
1467 eligibility for sealing to a person who is the subject of a
1468 criminal history record provided that such person:
1469 (e) Has never secured a prior sealing or expunction of a
1470 criminal history record under this section, former s. 893.14,
1471 former s. 901.33, ~~or~~ former s. 943.058, or s. 943.0585.
1472 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
1473 history record of a minor or an adult which is ordered sealed by
1474 a court of competent jurisdiction pursuant to this section is
1475 confidential and exempt from the provisions of s. 119.07(1) and
1476 s. 24(a), Art. I of the State Constitution and is available only
1477 to the person who is the subject of the record, to the subject's
1478 attorney, to criminal justice agencies for their respective
1479 criminal justice purposes, which include conducting a criminal

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1480 history background check for approval of firearms purchases or
1481 transfers as authorized by state or federal law, to judges in
1482 the state courts system for the purpose of assisting them in
1483 their case-related decisionmaking responsibilities, as set forth
1484 in s. 943.053(5), or to those entities set forth in
1485 subparagraphs (a)1., 4., 5., and 6.~~, and 8.~~ for their respective
1486 licensing, access authorization, and employment purposes.
1487 (a) The subject of a criminal history record sealed under
1488 this section or under other provisions of law, including former
1489 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
1490 deny or fail to acknowledge the arrests covered by the sealed
1491 record, except when the subject of the record:
1492 1. Is a candidate for employment with a criminal justice
1493 agency;
1494 2. Is a defendant in a criminal prosecution;
1495 3. Concurrently or subsequently petitions for relief under
1496 this section or s. 943.0585;
1497 4. Is a candidate for admission to The Florida Bar;
1498 5. Is seeking to be employed or licensed by or to contract
1499 with the Department of Children and Families ~~Family Services~~,
1500 the Division of Vocational Rehabilitation within the Department
1501 of Education, the Agency for Health Care Administration, the
1502 Agency for Persons with Disabilities, the Department of Health,
1503 the Department of Elderly Affairs, or the Department of Juvenile
1504 Justice or to be employed or used by such contractor or licensee
1505 in a sensitive position having direct contact with children, the
1506 disabled, or the elderly;
1507 6. Is seeking to be employed or licensed by the Department
1508 of Education, any district school board, any university

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1509 laboratory school, any charter school, any private or parochial
1510 school, or any local governmental entity that licenses child
1511 care facilities; or
1512 7. Is attempting to purchase a firearm from a licensed
1513 importer, licensed manufacturer, or licensed dealer and is
1514 subject to a criminal history check under state or federal law.~~;~~
1515 ~~or~~
1516 ~~8. Is seeking authorization from a Florida seaport~~
1517 ~~identified in s. 311.09 for employment within or access to one~~
1518 ~~or more of such seaports pursuant to s. 311.12.~~
1519 (b) Subject to the exceptions in paragraph (a), a person
1520 who has been granted a sealing under this section, former s.
1521 893.14, former s. 901.33, or former s. 943.058 may not be held
1522 under any provision of law of this state to commit perjury or to
1523 be otherwise liable for giving a false statement by reason of
1524 such person's failure to recite or acknowledge a sealed criminal
1525 history record.
1526 (c) Information relating to the existence of a sealed
1527 criminal record provided in accordance with the provisions of
1528 paragraph (a) is confidential and exempt from the provisions of
1529 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
1530 except that the department shall disclose the sealed criminal
1531 history record to the entities set forth in subparagraphs (a)1.,
1532 4., 5., and 6.~~, and 8.~~ for their respective licensing, access
1533 authorization, and employment purposes. It is unlawful for any
1534 employee of an entity set forth in subparagraph (a)1.,
1535 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.~~,~~
1536 ~~or subparagraph (a)8.~~ to disclose information relating to the
1537 existence of a sealed criminal history record of a person

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1538 seeking employment, access authorization, or licensure with such
1539 entity or contractor, except to the person to whom the criminal
1540 history record relates or to persons having direct
1541 responsibility for employment, access authorization, or
1542 licensure decisions. Any person who violates the provisions of
1543 this paragraph commits a misdemeanor of the first degree,
1544 punishable as provided in s. 775.082 or s. 775.083.
1545 Section 28. Section 943.125, Florida Statutes, is amended
1546 to read:
1547 943.125 Accreditation of state and local law enforcement
1548 agencies, correctional facilities, public agency offices of
1549 inspectors general, and operations offering pretrial diversion
1550 operations within offices of the state attorneys, the county
1551 governments, or the sheriffs ~~agency accreditation~~; intent.—
1552 (1) It is the intent of the Legislature that law
1553 enforcement agencies, correctional facilities, public agency
1554 offices of inspectors general, and operations offering pretrial
1555 diversion within offices of the state attorneys, the county
1556 governments, or the sheriffs in the state be upgraded and
1557 strengthened through the adoption of meaningful standards of
1558 operation for those agencies, facilities, and offices and their
1559 functions.
1560 (2) It is the further intent of the Legislature that these
1561 ~~law enforcement~~ agencies voluntarily adopt standards designed to
1562 promote enhanced professionalism for:
1563 (a) Equal and fair law enforcement, to maximize the
1564 capability of law enforcement agencies to enforce the law and
1565 prevent and control criminal activities~~, and to increase~~
1566 ~~interagency cooperation throughout the state~~.

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1567 (b) Correctional facilities, to maintain best practices for
1568 the care, custody, and control of inmates.
1569 (c) Public agency offices of inspectors general, to promote
1570 more effective scrutiny of public agency operations and greater
1571 accountability of those serving in those agencies.
1572 (d) Operation and management of pretrial diversion programs
1573 offered by and through the offices of the state attorneys, the
1574 county governments, or the sheriffs.
1575 (3) It is further the intent of the Legislature to
1576 encourage the continuation of a voluntary state accreditation
1577 program to facilitate the enhanced professionalism of the
1578 agencies, facilities, and offices and their operations ~~Florida~~
1579 ~~Sheriffs Association and the Florida Police Chiefs Association~~
1580 ~~to develop, either jointly or separately, a law enforcement~~
1581 ~~agency accreditation program~~. Other than the staff support by
1582 the department as authorized in subsection (5), the
1583 accreditation program must be independent of any law enforcement
1584 agency, the Department of Corrections, the Florida Sheriffs
1585 Association, or the Florida Police Chiefs Association.
1586 (4) The law enforcement accreditation program must address,
1587 at a minimum, the following aspects of law enforcement:
1588 (a) Vehicle pursuits.
1589 (b) Seizure and forfeiture of contraband articles.
1590 (c) Recording and processing citizens' complaints.
1591 (d) Use of force.
1592 (e) Traffic stops.
1593 (f) Handling natural and manmade disasters.
1594 (g) Special operations.
1595 (h) Prisoner transfer.

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1596 (i) Collection and preservation of evidence.
1597 (j) Recruitment and selection.
1598 (k) Officer training.
1599 (l) Performance evaluations.
1600 (m) Law enforcement disciplinary procedures and rights.
1601 (n) Use of criminal investigative funds.
1602 (5) Subject to available funding, the department shall
1603 employ and assign adequate support staff to the Commission for
1604 Florida Law Enforcement Accreditation, Inc., and the Florida
1605 Corrections Accreditation Commission in support of the
1606 accreditation programs.
1607 (6) The Commission for Florida Law Enforcement
1608 Accreditation shall determine accreditation standards related to
1609 law enforcement and inspectors general which must be used by the
1610 accreditation programs established in this section. The Florida
1611 Corrections Accreditation Commission, Inc., shall determine
1612 accreditation standards related to corrections functions and
1613 pretrial diversion programs.
1614 Section 29. Subsection (5) of section 943.13, Florida
1615 Statutes, is amended to read:
1616 943.13 Officers' minimum qualifications for employment or
1617 appointment.—On or after October 1, 1984, any person employed or
1618 appointed as a full-time, part-time, or auxiliary law
1619 enforcement officer or correctional officer; on or after October
1620 1, 1986, any person employed as a full-time, part-time, or
1621 auxiliary correctional probation officer; and on or after
1622 October 1, 1986, any person employed as a full-time, part-time,
1623 or auxiliary correctional officer by a private entity under
1624 contract to the Department of Corrections, to a county

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1625 commission, or to the Department of Management Services shall:
1626 (5) Have documentation of his or her processed fingerprints
1627 on file with the employing agency or, if a private correctional
1628 officer, have documentation of his or her processed fingerprints
1629 on file with the Department of Corrections or the Criminal
1630 Justice Standards and Training Commission. ~~If administrative~~
1631 ~~delays are caused by the department or the Federal Bureau of~~
1632 ~~Investigation and the person has complied with subsections (1)~~
1633 ~~(4) and (6) (9), he or she may be employed or appointed for a~~
1634 ~~period not to exceed 1 calendar year from the date he or she was~~
1635 ~~employed or appointed or until return of the processed~~
1636 ~~fingerprints documenting noncompliance with subsections (1) (4)~~
1637 ~~or subsection (7), whichever occurs first.~~ Beginning January 15,
1638 2007, the department shall retain and enter into the statewide
1639 automated biometric ~~fingerprint~~ identification system authorized
1640 by s. 943.05 all fingerprints submitted to the department as
1641 required by this section. Thereafter, the fingerprints must
1642 ~~shall~~ be available for all purposes and uses authorized for
1643 arrest fingerprints ~~fingerprint cards~~ entered in the statewide
1644 automated biometric ~~fingerprint~~ identification system pursuant
1645 to s. 943.051. The department shall search all arrest
1646 fingerprints ~~fingerprint cards~~ received pursuant to s. 943.051
1647 against the fingerprints retained in the statewide automated
1648 biometric ~~fingerprint~~ identification system pursuant to this
1649 section and report to the employing agency any arrest records
1650 that are identified with the retained employee's fingerprints.
1651 ~~By January 1, 2008, a person who must meet minimum~~
1652 ~~qualifications as provided in this section and whose~~
1653 ~~fingerprints are not retained by the department pursuant to this~~

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1654 ~~section must be refingerprinted.~~ These fingerprints shall ~~must~~
1655 be forwarded to the department for processing and retention.
1656 Section 30. Section 943.132, Florida Statutes, is amended
1657 to read:
1658 943.132 Implementation of federal law on qualified active
1659 or retired law enforcement officers carrying concealed firearms
1660 ~~Law Enforcement Officers Safety Act of 2004~~.—
1661 (1) The commission shall by rule establish the manner in
1662 which Title 18, 44 U.S.C. ss. 926B and 926C, ~~the federal Law~~
1663 ~~Enforcement Officers Safety Act of 2004,~~ relating to the
1664 carrying of concealed firearms by qualified law enforcement
1665 officers and qualified retired law enforcement officers, as
1666 defined in the act, shall be implemented in the state. In order
1667 to facilitate the implementation within the state of Title 18,
1668 44 U.S.C. ss. 926B and 926C, the commission shall ~~develop and~~
1669 authorize a uniform firearms proficiency verification card to be
1670 issued to persons who achieve a passing score on the firing
1671 range testing component as utilized in the minimum firearms
1672 proficiency course applicable to active law enforcement
1673 officers, indicating the person's name and the date upon which
1674 he or she achieved the passing score. Each such card shall be
1675 issued only by firearms instructors currently certified by the
1676 commission.
1677 (2) Facilities operating firing ranges on which firearms
1678 instructors certified by the commission administer the firing
1679 range testing component as utilized in the minimum firearms
1680 proficiency course applicable to active law enforcement officers
1681 may open the firing range under terms and conditions established
1682 by the operating entity to other persons for purposes of

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1683 allowing such persons to demonstrate their ability to achieve a
1684 passing score on the firing range testing component as used
1685 ~~utilized~~ in the minimum firearms proficiency course. All costs
1686 associated with the demonstration by any such person that he or
1687 she meets the requirements of the firing range testing component
1688 as utilized in the minimum firearms proficiency course shall be
1689 at the expense of the person being tested.
1690 Section 31. Paragraph (a) of subsection (6) of section
1691 943.1395, Florida Statutes, is amended to read:
1692 943.1395 Certification for employment or appointment;
1693 concurrent certification; reemployment or reappointment;
1694 inactive status; revocation; suspension; investigation.—
1695 (6) The commission shall revoke the certification of any
1696 officer who is not in compliance with the provisions of s.
1697 943.13(4) or who intentionally executes a false affidavit
1698 established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).
1699 (a) The commission shall cause to be investigated any
1700 ground for revocation from the employing agency pursuant to s.
1701 943.139 or from the Governor, and the commission may cause
1702 ~~investigate~~ verifiable complaints to be investigated. Any
1703 investigation initiated by the commission pursuant to this
1704 section must be completed within 6 months after receipt of the
1705 completed report of the disciplinary or internal affairs
1706 investigation from the employing agency or Governor's office. A
1707 verifiable complaint shall be completed within 1 year after
1708 receipt of the complaint. An investigation shall be considered
1709 completed upon a finding by a probable cause panel of the
1710 commission. These time periods shall be tolled during the appeal
1711 of a termination or other disciplinary action through the

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1712 administrative or judicial process or during the period of any
1713 criminal prosecution of the officer.
1714 Section 32. Subsection (2), paragraph (a) of subsection
1715 (3), and subsection (6) of section 943.1755, Florida Statutes,
1716 are amended to read:
1717 943.1755 Florida Criminal Justice Executive Institute.—
1718 (2) The institute is established within the Department of
1719 Law Enforcement and affiliated with the State University System.
1720 The Board of Governors of the State University System shall, in
1721 cooperation with the Department of Law Enforcement, determine
1722 the specific placement of the institute within the system. The
1723 Bureau of Professional Development of the department maintains
1724 responsibility for delivering and facilitating all Florida
1725 Criminal Justice Executive Institute training.
1726 (3) The institute shall cooperate with the Criminal Justice
1727 Standards and Training Commission, and shall be guided and
1728 directed by a policy board composed of the following members:
1729 (a) The following persons shall serve on the policy board:
1730 1. The executive director of the Department of Law
1731 Enforcement or his or her designee.
1732 2. The Secretary of Corrections or his or her designee.
1733 3. The Commissioner of Education or his or her designee ~~an~~
1734 ~~employee of the Department of Education designated by the~~
1735 ~~Commissioner~~.
1736 4. The Secretary of Juvenile Justice or his or her
1737 designee.
1738 (6) Seven ~~Six~~ members constitute a quorum of the board.
1739 Section 33. Section 943.1757, Florida Statutes, is amended
1740 to read:

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1741 943.1757 Criminal justice executives; training; policy
1742 report.—
1743 (1) The Legislature finds that there exists a need to
1744 provide training to criminal justice executives in the subject
1745 of interpersonal skills relating to diverse populations, with an
1746 emphasis on the awareness of cultural differences.
1747 (2) The policy board of the Criminal Justice Executive
1748 Institute shall identify the needs of criminal justice
1749 executives regarding issues related to diverse populations, and
1750 ensure that such needs are met through appropriate training.
1751 ~~Beginning January 1, 1995, and every 5 years thereafter, the~~
1752 ~~policy board shall provide to the appropriate substantive~~
1753 ~~committees of each house a report describing executive training~~
1754 ~~needs. In addition,~~ The policy board shall prepare a biennial
1755 report to the appropriate substantive committees of each house
1756 describing how these needs are being met through training by the
1757 Criminal Justice Executive Institute.
1758 Section 34. Subsection (9) of section 943.25, Florida
1759 Statutes, is amended to read:
1760 943.25 Criminal justice trust funds; source of funds; use
1761 of funds.—
1762 (9) Up to $250,000 per annum from the Criminal Justice
1763 Standards and Training Trust Fund may be used to develop,
1764 validate, update, and maintain test or assessment instruments
1765 and to include computer-based testing relating to selection,
1766 employment, training, or evaluation of officers, instructors, or
1767 courses. Pursuant to s. 943.12(4), (5), and (8), the commission
1768 shall adopt those test or assessment instruments that ~~which~~ are
1769 appropriate and job-related as minimum requirements.

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1770 Section 35. Subsection (14) of section 943.325, Florida
1771 Statutes, is amended to read:
1772 943.325 DNA database.—
1773 (14) RESULTS.—The results of a DNA analysis and the
1774 comparison of analytic results shall be released only to
1775 criminal justice agencies as defined in s. 943.045(11) ~~s.~~
1776 ~~943.045(10)~~, at the request of the agency. Otherwise, such
1777 information is confidential and exempt from the provisions of s.
1778 119.07(1) and s. 24(a), Art. I of the State Constitution.
1779 Section 36. Section 943.33, Florida Statutes, is amended to
1780 read:
1781 943.33 State-operated criminal analysis laboratories.—The
1782 state-operated laboratories shall furnish laboratory service
1783 upon request to law enforcement officials in the state. The
1784 testing services of such laboratories by persons employed by or
1785 acting on behalf of the department are ~~shall~~ also ~~be~~ available
1786 to any defendant in a criminal case upon showing of good cause
1787 and upon order of the court with jurisdiction in the case. When
1788 such service is to be made available to the defendant, the order
1789 shall be issued only after motion by the defendant and hearing
1790 held after notice with a copy of the motion being served upon
1791 the prosecutor and the state-operated laboratory from which the
1792 service is being sought. As used in ~~For purposes of~~ this
1793 section, the term "good cause" means a finding by the court that
1794 the laboratory service being sought by the defendant is
1795 anticipated to produce evidence that is relevant and material to
1796 the defense;~~,~~ that the service sought is one that ~~which~~ is
1797 reasonably within the capacity of the state-operated laboratory
1798 and will not be unduly burdensome upon the laboratory, impede

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

1799 normal daily laboratory operations, negatively impact the
1800 laboratory's certifications or equipment calibration, and
1801 violate the laboratory's national certification or accreditation
1802 standards; and that the service cannot be obtained from any
1803 qualified private or nonstate operated laboratory within the
1804 state or otherwise reasonably available to the defense. This
1805 section does not authorize the presence of defense experts or
1806 others representing the defense inside a state-operated
1807 laboratory facility where actual testing or analysis is
1808 occurring, and does not authorize the use of state-operated
1809 laboratory equipment or facilities by defense experts or other
1810 persons not employed by or acting on the behalf of the
1811 department. The court shall assess the costs of all testing,
1812 equipment operation, personnel costs, and any other costs
1813 directly attributable to the court-ordered testing ~~such service~~
1814 ~~ordered by the court~~ to the defendant or the defendant's
1815 counsel, whether public, private, or pro bono, who obtained the
1816 testing order ~~local public defender's office~~. The laboratory
1817 providing the service ordered shall include with the report of
1818 the analysis, comparison, or identification a statement of the
1819 costs of the service provided and shall provide a copy of all
1820 reports and analysis performed and cost statement being provided
1821 to the prosecutor in the case and the court.
1822 Section 37. Subsection (9) of section 943.68, Florida
1823 Statutes, is amended to read:
1824 943.68 Transportation and protective services.—
1825 (9) The department shall submit a report each August ~~July~~
1826 15 to the Governor, the Legislature, and the Cabinet, detailing
1827 all transportation and protective services provided under

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1828 subsections (1), (5), and (6) within the preceding fiscal year.
1829 Each report shall include a detailed accounting of the cost of
1830 such transportation and protective services, including the names
1831 of persons provided such services and the nature of state
1832 business performed.
1833 Section 38. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/13
Meeting Date

Topic: Criminal History Screening

Bill Number: 1434 (if applicable)

Name: Lisa Hurley

Amendment Barcode: (if applicable)

Job Title: 100 S. Monroe St.

Address: Tallahassee FL 32301
Street

City State Zip

Phone: 850.922.4300

E-mail: lhurley@fl-counties.com

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

Representing: FL Assoc of Counties

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/18/2013
Meeting Date

Topic: Department of Law Enforcement

Bill Number: SB 1434 *(if applicable)*

Name: Michael Ramage

Amendment Barcode: *(if applicable)*

Job Title: General Counsel

Address: 2331 Phillips Road
Street

Tallahassee, FL 32308
City, State, Zip

Phone: 850-410-7676

E-mail: michaelramage@fdle.state.fl.us

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

Representing: Florida Department of Law Enforcement

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

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

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

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1476

INTRODUCER: Senator Dean

SUBJECT: Murder of a Child 17 Years of Age or Younger

DATE: March 13, 2013 REVISED:

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

I. Summary:

SB 1476 allows for "depraved mind" second degree murder and third degree felony murder to be reclassified for sentencing purposes if the victim is 17 years old or younger at the time of the crime. It is not necessary that the defendant know the age of the victim.

If the bill passes and becomes law it could result in much greater lengths of imprisonment in these particular cases.

This bill creates section 782.066 of the Florida Statutes within the homicide chapter.

II. Present Situation:

Capital Murder

Currently s. 776.04(1), F.S., punishes the following crimes as capital offenses:

- premeditated murder;
- felony murder[1] which is committed by a person engaged in another felony; and
- murder linked to the distribution of certain controlled substances when such drug is proven to be the proximate cause of the death of the drug user.

[1] Felony murder occurs when a person is killed by the person engaged in the commission of one of the enumerated felonies in s. 782.04(2), F.S. It is not necessary to prove that the defendant had a design or intent to kill. The defendant's state of mind with regard to the killing is immaterial. The death can even be accidental and still qualify as a felony murder. See *Adams v. State*, 341 So.2d 765 (Fla. 1997), *cert. den.*, 434 U.S. 878 (1977), *reh. den.*, 434 U.S. 977 (1977).

Capital offenses are punishable by death or life in prison without the possibility of parole.[2]

"Depraved Mind" Second Degree Murder

Section 782.04(2), F.S., defines second degree murder as "the unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual."[3] Second degree murder is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment.[4]

Second Degree Murder Felony Murder

When a person is killed by someone *other than the one who is perpetrating* or attempting to perpetrate *one of the enumerated felonies* it is second degree felony murder.[5] The perpetrator of the enumerated felony commits second degree felony murder even if he or she is not the person who killed the victim. Second degree felony murder is a first degree felony punishable by a term of years not exceeding life in prison.[6]

Third Degree Felony Murder

Third degree felony murder occurs when a person is killed, without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any of the enumerated felonies.[7] This is a second degree felony punishable by up to 15 years imprisonment.[8]

III. Effect of Proposed Changes:

The bill creates a new section of the Florida Statutes that allows for two different "types" of murder to be reclassified for sentencing purposes if the victim is 17 years old or younger at the time of the crime. It is not necessary that the defendant know the age of the victim.

Second Degree "Depraved Mind" Murder Reclassified to Capital Murder

If the murder victim is 17 or younger, the bill allows for the reclassification of "depraved mind" murder to be reclassified from a first degree felony to capital murder. The resulting sentence

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[2] Section 782.04(1)(b), F.S., requires that: "In all cases under this section, the procedure set forth in s. 921.141 shall be followed in order to determine sentence of death or life imprisonment."

[3] From *Light v. State*, 841 So.2d 623 (Fla.2nd Dist.,2003): "As explained in the standard jury instructions: "An act is 'imminently dangerous to another and demonstrating a depraved mind' if it is an act or series of acts that: (1) a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and (2) is done from ill will, hatred, spite or an evil intent and (3) is of such a nature that the act itself indicates an indifference to human life." Fla. Std. Jury Instr. (Crim.) 98; *see also Duckett v. State*, 686 So.2d 662, 663 (Fla. 2d DCA 1996)."

[4] s. 784.04(2), F.S.

[5] s. 784.04(3), F.S.

[6] s. 784.04(3), F.S.

[7] s. 784.04(4), F.S.

[8] s. 775.082(3)(c), F.S.

could be elevated from a term of years not exceeding life imprisonment[9] to death or life in prison without the possibility of parole.[10]

This reclassification creates the potential for a death or life sentence for a crime that, while it *does* result in death, it *does not* require premeditation *nor* that the death occur during the commission of another felony (where the underlying felony "supplies" the malice aforethought[11]). If a death sentence were imposed it would be a significant departure from current law.

Third Degree Felony Murder Reclassified to a First Degree Felony

This particular felony murder crime occurs during the commission of a felony but when perpetrated without any design to effect death. Third degree felony murder is punishable as a second degree felony offense.[12] It is reclassified for sentencing by the bill from a second degree felony to a first degree felony. The sentence for a second degree felony is up to 15 years imprisonment.[13] Under the provisions of the bill, when the victim is 17 years of age or younger a first degree felony sentence could be handed down which could result in up to 30 years in prison.[14]

The bill also provides that the sentence in these particular cases not be suspended nor deferred. The court must not withhold adjudication of guilt or imposition of sentence.

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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[9] s. 784.04(2), F.S.
[10] s. 782.04(1)(b), F.S.
[11] *Adams v. State*, 341 So.2d 765 (Fla. 1997), *cert. den*., 434 U.S. 878 (1977), *reh. den*., 434 U.S. 977 (1977).
[12] s. 782.04(4), F.S.
[13] s. 775.082(3)(c), F.S.
[14] s. 775.082(3)(b), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is not known at this time whether the bill will have a prison bed impact. The bill will be discussed at the next meeting of the Criminal Justice Impact Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Dean

5-00211B-13 20131476__

A bill to be entitled

An act relating to murder of a child 17 years of age or younger; creating s. 782.066, F.S.; providing for reclassification of specified murder offenses if committed upon a child 17 years of age or younger; prohibiting a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence; providing an effective date.

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

Section 1. Section 782.066, Florida Statutes, is created to read:

782.066 Murder; child 17 years of age or younger.—

(1) Whenever a person is charged with committing a violation of s. 782.04, other than s. 782.04(1), upon a child 17 years of age or younger, the offense for which the person is charged may be reclassified as follows, regardless of whether he or she had a reason to know the age of the victim:

(a) In the case of a violation of s. 782.04(2), from a felony of the first degree to a capital felony, punishable as provided in s. 775.082.

(b) In the case of a violation of s. 782.04(4), from a felony of the second degree to a felony of the first degree.

(2) Notwithstanding s. 948.01, a court may not suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of this section.

Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

COMMITTEES:
Environmental Preservation and Conservation, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

March 7, 2013

The Honorable Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers:

I respectfully request you place Senate Bill 1476, relating to Murder of a Child 17 Years of Age or Younger, on your Criminal Justice Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

Charles S. Dean
State Senator District 5

cc: Amanda Cannon, Staff Director

REPLY TO:
❒ 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
❒ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
❒ 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

3-18-13 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic: Murder

Bill Number: 1476 *(if applicable)*

Name: Bob Dillinger

Amendment Barcode: *(if applicable)*

Job Title: Public Defender - 6th

Address: CJC
Street

Clearwater FL 33762
City *State* *Zip*

Phone: 727-464-6866

E-mail: pdb@weareth.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: PD Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

CourtSmart Tag Report

Room: LL 37 **Case:** **Type:**
Caption: 6Senate Criminal Justice Committee **Judge:**

Started: 3/18/2013 1:04:51 PM
Ends: 3/18/2013 3:00:24 PM **Length: 01:55:34**

1:04:56 PM	Meeting to Order
1:05:02 PM	Roll Call
1:05:45 PM	Tab 13 - SB 1406 Senator Bean
1:10:37 PM	Roll Call
1:11:32 PM	Tab 4 - SB 504 Senator Brandes
1:13:30 PM	Bob Dillinger, Florida Public Defender, Clearwater, FL
1:15:09 PM	Roll Call
1:15:43 PM	Tab 8 - SB 824 Senator Garcia
1:17:40 PM	Brian Pitts, Justice-2-Jesus
1:19:44 PM	Roll Call
1:20:18 PM	Tab 12 - SB 1330 Senator Latvala (presented by Tracy Caddell)
1:22:29 PM	Brian Pitts, Justice-2-Jesus
1:24:35 PM	Roll Call
1:25:10 PM	Tab 11 - SB 1222 Senator Richter (Michel Nachef presenting)
1:31:14 PM	Bob Dillinger, PD Assoc, Clearwater, FL
1:32:38 PM	Greg Stevens, Largo FL
1:37:31 PM	Bill Tp'd
1:38:00 PM	Tab 1 - Confirmation Hearing - Antony Parker Ryan Esquire, Rivera Beach (CCRC 4th Dist)
1:40:20 PM	Roll Call
1:41:28 PM	Tab 14 - SB 1434 Senator Evers
1:45:09 PM	Roll Call
1:46:07 PM	Tab 5 - CS/SB 654 Senator Montford
1:48:59 PM	Roll Call
1:49:58 PM	Tab 2 - CS/SB 112 Senator Dean
1:54:34 PM	Brian Pitts, Justice-2-Jesus
1:56:46 PM	Greg Stevens, Florida Families
1:59:20 PM	Roll Call
2:00:43 PM	Tab 6 - SB 664 Senator Simmons
2:02:58 PM	Roll Call
2:03:33 PM	Tab 9 - SB 946 Senator Simmons
2:08:45 PM	Brian Pitts, Justice-2-Jesus
2:11:16 PM	Roll Call
2:12:21 PM	Tab 15 - SB 1476 Senator Dean
2:12:49 PM	Bob Dillinger, PD Association, Clearwater, FL
2:16:54 PM	Roll Call
2:18:00 PM	Tab 7 SB 812 Senator Gibson
2:24:38 PM	Major Mike Allen, Florida Sheriffs Association, Winter Haven, FL
2:26:18 PM	Angela Reddick, Mother
2:30:55 PM	Ion Kysel, ACLU Human Rights Watch
2:37:34 PM	Tab 11 - SB 1222 Senator Richter
2:40:15 PM	Roll Call
2:40:48 PM	Tab 7 - SB 812 Senator Gibson
2:41:29 PM	Lisa Jobe, Protect Our Lost Kids, Lake Wales, FL
2:42:32 PM	Brant S. Copeland, Florida Council of Churches
2:43:46 PM	Rev. Nancy Dahlberg, National Religious Campaign Against Torture
2:46:08 PM	Greg Stevens, Largo, Florida
2:49:21 PM	Will Kendrick, Dept. of Corrections
2:50:40 PM	Brian Pitts, Justice-2-Jesus, St. Petersburg, FL
2:54:00 PM	Bill tp'd
2:54:25 PM	Tab 10 - SB 1216 Senator Bradley
3:00:12 PM	Meeting adjourned