SB 142 by **Altman (CO-INTRODUCERS) Sobel**; (Similar to H 1119) Intellectual Disabilities

769222	A	S	RCS	CJ, Altman	Delete L.1635:	04/01 09:02 PM

CS/SB 454 by **ED, Benacquisto**; (Identical to CS/H 0399) Florida College System Institution Police Officers

CS/SB 496 by **JU, Dean**; (Similar to CS/H 0571) Marshal of the Supreme Court

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

CS/SB 874 by **RI, Galvano**; (Compare to CS/CS/H 0005) Open Parties

125780	A	S	RCS	CJ, Bradley	Delete L.30 - 31:	04/01 09:02 PM

SB 890 by **Braynon**; (Identical to H 0271) False Personation

553140	A	S	RCS	CJ, Smith	Delete L.33 - 37:	04/01 09:02 PM
493598	A	S	RCS	CJ, Smith	Delete L.65 - 72:	04/01 09:02 PM

CS/SB 964 by **CF, Abruzzo**; (Similar to CS/H 0887) Termination of Parental Rights

SB 1000 by **Gibson**; Regulation of Firearms

210760	D	S	RCS	CJ, Gibson	Delete everything after	04/01 09:02 PM

SB 1032 by **Altman**; (Compare to H 0069) Correctional Reentry Treatment Facilities

905990	D	S	RCS	CJ, Altman	Delete everything after	04/01 09:02 PM

CS/SB 1110 by **TR, Evers**; (Similar to CS/CS/H 0489) Railroad Police Officers

532492	A	S	RCS	CJ, Evers	Delete L.35 - 43:	04/01 09:02 PM
761198	A	S	RCS	CJ, Evers	Delete L.94 - 95:	04/01 09:02 PM
781814	A	S	WD	CJ, Evers	Delete L.152 - 183:	04/01 09:02 PM

SB 1114 by **Altman**; (Similar to H 7031) Sex Offenses

568176	A	S	WD	CJ, Evers	btw L.88 - 89:	04/01 09:02 PM
392522	A	S	RCS	CJ, Bradley	btw L.88 - 89:	04/01 09:02 PM

SB 1126 by **Joyner**; (Similar to CS/H 0691) Unlawful Possession of the Personal Identification Information of Another Person

393438	A	S	RCS	CJ, Smith	btw L.43 - 44:	04/01 09:02 PM

SB 1140 by **Stargel**; (Compare to CS/H 0049) Drug Paraphernalia

292906	A	S	RCS	CJ, Dean	Delete L.31 - 44.	04/01 09:02 PM

SB 1162 by **Bradley**; (Identical to H 0757) Mandatory Reports of Child Abuse

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

420660	D	S	RCS	CJ, Bradley	Delete everything after	04/01 09:02 PM
663082	AA	S	UNFAV	CJ, Smith	Delete L.87 - 93:	04/01 09:02 PM
312628	AA	S	RCS	CJ, Bradley	Delete L.44:	04/01 09:02 PM
769992	AA	S	RCS	CJ, Bradley	Delete L.51 - 56:	04/01 09:02 PM
609582	AA	S	RCS	CJ, Bradley	Delete L.64:	04/01 09:02 PM
329850	AA	S	RCS	CJ, Bradley	Delete L.66:	04/01 09:02 PM
721972	AA	S	RCS	CJ, Bradley	Delete L.89 - 93:	04/01 09:02 PM
929198	AA	S	WD	CJ, Smith	Delete L.87 - 90:	04/01 09:02 PM
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

SB 1268 by **Detert**; (Similar to CS/H 1379) Service of Process

367026	A	S	RCS	CJ, Altman	btw L.93 - 94:	04/01 09:02 PM
910698	A	S	RCS	CJ, Altman	Delete L.107 - 315:	04/01 09:02 PM

SB 1350 by **Bradley**; (Similar to H 7137) Criminal Penalties

308100	A	S		CJ, Bradley	Delete L.17 - 31:	03/29 12:14 PM
832422	A	S		CJ, Bradley	Delete L.55:	03/29 12:13 PM
806648	A	S		CJ, Bradley	Delete L.79 - 120:	03/29 12:14 PM

CS/SB 1372 by **JU, Bradley**; (Similar to H 7035) Pretrial Detention

SB 1404 by **Stargel**; (Similar to CS/H 1173) Florida Communications Fraud Act

419602	A	S	RCS	CJ, Bradley	Delete L.25 - 33:	04/01 09:02 PM

CS/SB 1420 by **HP, Sobel**; (Similar to CS/H 0317) Mental Health Treatment

SB 1438 by **Simpson**; (Similar to CS/H 0785) Restitution for Juvenile Offenses

975030	D	S		CJ, Evers	Delete everything after	04/01 10:37 AM

SB 1734 by **Flores**; (Compare to CS/H 1325) Public Records/Victims of Human Trafficking

377098	D	S	RCS	CJ, Altman	Delete everything after	04/01 09:02 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, April 1, 2013
TIME: 12:15 —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 appointments to the offices indicated.		
	Secretary of Corrections		
1	Crews, Michael D. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 6 Nays 0
	Capital Collateral Regional Counsel - Middle Region		
2	Jennings, John "Bill" W. ()	09/30/2015	Recommend Confirm Yeas 6 Nays 0
	Capital Collateral Regional Counsel - Southern Region		
3	Dupree, Neal A. (Davie)	09/30/2015	Recommend Confirm Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 142** Altman (Identical H 1119)	Intellectual Disabilities; Substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; substituting the term “intellectual disability” for the term “mental retardation”; clarifying in specified provisions that the meaning of the terms “intellectual disability” or “intellectually disabled” is the same as the meaning of the terms “mental retardation,” “retarded,” and “mentally retarded” for purposes of matters relating to the criminal laws and court rules, etc. CF 03/06/2013 Favorable CJ 04/01/2013 Fav/CS RC	Fav/CS Yeas 6 Nays 0
5	**CS/SB 454** Education / Benacquisto (Identical CS/H 399)	Florida College System Institution Police Officers; Providing for mutual aid agreements involving Florida College System institution police officers; providing for enforcement of traffic laws in certain areas by Florida College System institution police officers; revising provisions relating to the jurisdictional authority of Florida College System institution police officers, etc. ED 03/12/2013 Fav/CS CJ 04/01/2013 Favorable	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**CS/SB 496** Judiciary / Dean (Similar CS/H 571)	Marshal of the Supreme Court; Requiring the marshal and his or her deputies to comply with specified requirements for law enforcement officers; specifying that the marshal and his or her deputies are law enforcement officers with full powers to bear arms and make arrests under certain conditions; limiting the use of those powers to performance of official duties for the Supreme Court, etc. JU 03/12/2013 Fav/CS CJ 04/01/2013 Favorable RC	Favorable Yeas 6 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 CJ 04/01/2013 Not Considered CA JU	Not Considered
8	**CS/SB 874** Regulated Industries / Galvano (Compare CS/CS/H 5)	Open Parties; Prohibiting a person from allowing a party to take place if a minor is in possession of or consuming alcohol or drugs; revising an exemption; providing criminal penalties, etc. RI 03/07/2013 Fav/CS CJ 04/01/2013 Fav/CS JU	Fav/CS Yeas 6 Nays 0
9	**SB 890** Braynon (Identical H 271)	False Personation; Prohibiting a person from falsely personating a firefighter or certain law enforcement officers if his or her action could deceive a reasonable person into believing that he or she was a bona fide official; prohibiting operation or ownership of a motor vehicle falsely marked in a way which could deceive a reasonable person into believing that such vehicle is authorized by a fire department for use by the person operating it; providing an exception, etc. CJ 04/01/2013 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 964** Children, Families, and Elder Affairs / Abruzzo (Similar CS/H 887, Compare H 477)	Termination of Parental Rights; Providing that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of unlawful sexual battery; creating a presumption that termination of parental rights is in the best interest of the child if the child was conceived as a result of an unlawful sexual battery; providing that a petition to terminate parental rights may be filed at any time, etc. CF 03/12/2013 Fav/CS CJ 04/01/2013 Favorable JU	Favorable Yeas 6 Nays 0
11	**SB 1000** Gibson	Regulation of Firearms; Providing that it is unlawful for a person to own or have in his or her care, custody, possession, or control any firearm or ammunition, or to carry a concealed weapon or firearm, for a period of 90 days if the person is the subject of a preventative assessment received by the Department of Law Enforcement; providing restrictions to be imposed by the department upon receipt of a preventative assessment; providing for removal of restrictions; providing a penalty, etc. CJ 04/01/2013 Fav/CS JU RC	Fav/CS Yeas 6 Nays 0
12	**SB 1032** Altman (Compare H 69, S 880, S 1704)	Correctional Reentry Treatment Facilities; Creating the "Correctional Reentry Treatment Act"; defining the term "correctional reentry treatment facility"; requiring the Department of Corrections to screen adults for eligibility for reentry treatment services; requiring the department to require offenders working at paid employment to use a portion of the employment proceeds equal to the amount of the voucher provided for a government-issued photo identification card plus the actual cost charged by the issuer for any other necessary document, etc. CJ 04/01/2013 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/SB 1110** Transportation / Evers (Similar CS/CS/H 489)	Railroad Police Officers; Requiring special officers employed by a railroad or other common carrier to comply with specified continuing training or education requirements; providing responsibility of certain costs; providing for reclassification of certain offenses committed against a railroad special officer; including special officers employed by a railroad or other common carrier within the definition of "law enforcement officer" and including certain railroads within the definition of "employing agency" for purposes of specified provisions relating to law enforcement officer standards, etc. TR 03/14/2013 Fav/CS CJ 04/01/2013 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
14	**SB 1114** Altman (Similar H 7031, Compare H 293, CS/H 585, CS/S 1434)	Sex Offenses; Replacing the definition of the term "instant message name" with the definition of the term "Internet identifier"; requiring that a sexual predator who is unable to secure or update a driver license or identification card within a specified period must report specified information to the local sheriff's office within a specified period after such change with confirmation that he or she also reported such information to the Department of Highway Safety and Motor Vehicles; providing criminal penalties for knowingly providing false registration information by act or omission, etc. CJ 04/01/2013 Fav/CS JU ACJ AP	Fav/CS Yeas 6 Nays 0
15	**SB 1126** Joyner (Similar CS/H 691)	Unlawful Possession of the Personal Identification Information of Another Person; Defining the term "personal identification information"; providing that it is unlawful for a person to intentionally or knowingly possess, without authorization, any personal identification information of another person; providing that certain specified persons are exempt from provisions regarding the unlawful possession of personal identification information of another person, etc. CJ 04/01/2013 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**SB 1140** Stargel (Compare CS/H 49)	Drug Paraphernalia; Prohibiting the retail sale of certain drug paraphernalia; providing criminal penalties; authorizing the imposition of administrative penalties upon retail tobacco products dealers who commit certain offenses related to drug paraphernalia; repealing provisions relating to the retail sale of certain smoking pipes and smoking devices, etc. CJ 04/01/2013 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
17	**SB 1162** Bradley (Identical H 757)	Mandatory Reports of Child Abuse; Limiting the duty of an officer or employee of a law enforcement agency to provide notice to the Department of Children and Families of reasonable cause to suspect child abuse under certain circumstances; limiting the duty of the Central Abuse Hotline to electronically transfer certain calls and reports to the county sheriff's office under certain circumstances, etc. CF 03/18/2013 Favorable CJ 04/01/2013 Favorable AHS AP	Favorable Yeas 6 Nays 0
18	**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 CJ 04/01/2013 Fav/CS JU CM AP	Fav/CS Yeas 5 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	**SB 1268** Detert (Similar CS/H 1379)	Service of Process; Requiring sheriffs to charge a uniform fee for service of process; requiring a substance abuse licensed service provider to accept an electronic order for involuntary assessment and stabilization which is served by a law enforcement agency on the service provider; providing that it is unlawful for a person to violate a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition, etc. CJ 04/01/2013 Fav/CS JU	Fav/CS Yeas 6 Nays 0
20	**SB 1350** Bradley (Similar H 7137, Compare H 963)	Criminal Penalties; Providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring that a judge consider certain factors before determining if life imprisonment is an appropriate sentence, etc. CJ 04/01/2013 Not Considered ACJ AP	Not Considered
21	**CS/SB 1372** Judiciary / Bradley (Similar H 7035)	Pretrial Detention; Providing additional factors a court may consider when ordering pretrial detention, etc. JU 03/12/2013 Fav/CS CJ 04/01/2013 Favorable ACJ AP	Favorable Yeas 6 Nays 0
22	**SB 1404** Stargel (Similar CS/H 1173)	Florida Communications Fraud Act; Establishing a statute of limitations for criminal and civil causes of actions under the act; specifying circumstances that toll the statute of limitations, etc. CJ 04/01/2013 Fav/CS JU ACJ AP	Fav/CS Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
23	**CS/SB 1420** Health Policy / Sobel (Similar CS/H 317)	Mental Health Treatment; Authorizing forensic and civil facilities to order the continuation of psychotherapeutics for individuals receiving such medications in the jail before admission; providing timeframes within which competency hearings must be held; revising the time for dismissal of certain charges for defendants that remain incompetent to proceed to trial; standardizing the protocols, procedures, diagnostic criteria, and information and findings that must be included in an expert's competency evaluation report, etc. HP 03/20/2013 Fav/CS CJ 04/01/2013 Favorable AP	Favorable Yeas 6 Nays 0
24	**SB 1438** Simpson (Similar CS/H 785)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; providing for payment plans in certain circumstances; deleting provisions for absolving the parent or guardian of liability for restitution in certain circumstances, etc. CJ 04/01/2013 Not Considered JU	Not Considered
25	**SB 1734** Flores (Compare CS/H 1325, H 1327, Link CS/S 1644)	Public Records/Victims of Human Trafficking; Providing an exemption from public records requirements for criminal history records of victims of human trafficking expunged under s. 943.0583, F.S., and information relating to the existence of such an expunged criminal history record that is provided in accordance with specified provisions; prohibiting violations relating to certain confidential information; providing criminal penalties, etc. CJ 04/01/2013 Fav/CS GO RC	Fav/CS Yeas 6 Nays 0
	Other Related Meeting Documents		

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Michael D. Crews

Secretary of Corrections

NOTICE OF HEARING

TO: Secretary Michael D. Crews

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Monday, April 01, 2013, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 12:15 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 27th 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.

Amended
500

RECEIVED
FEB 12 2013
COMMITTEE ON
ETHICS AND ELECTIONS

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

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

Michael D. Crews

is duly appointed

Secretary,
Department of Corrections

for a term beginning on the
Seventeenth day of December, A.D., 2012,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the First day of February, A.D., 2013.

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
DEPARTMENT OF STATE
2013 JAN 16 PM 4:56
DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 16, 2013

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 amended the following appointment under the provisions of Section 20.315, Florida Statutes:

Mr. Michael D. Crews

as Secretary of the Department of Corrections, succeeding Ken Tucker, subject to confirmation by the Senate. This appointment is effective December 17, 2012, for a term ending at the pleasure of the Governor.

Sincerely,

Rick Scott
Governor

RS/jrp

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.

Date Completed

1. Name: Mr. Crews Michael Daun
   Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: Tallahassee
   Street
   Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address:
   Street City County
   Post Office Box Zip Code Area Code/Phone Number (optional)

   Specify the preferred mailing address: Business ☒ Residence ☐

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

5. Date of Birth: Place of Birth

6. Social Security Number:

7. Driver License Number:

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

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

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1961

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

A. County of Registration: Leon B. Current Party Affiliation: Democrat

12. Education

A. High School: Marianna High School, Marianna, Fl. (Name and Location) Year Graduated: 1979

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
George C. Wallace Community College/Dothan, Al.	1979-81	
Florida State University/Tallahassee, Fl.	1981-83	BS-Criminology

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

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) Yes ☐ No ■ If Yes" give details:

Date	Place	Nature	Disposition

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
Department of Corrections	State Corrections	Deputy Secretary	11/28/11-12/16/12
Fl. Dept. of Law Enforcement	Law Enforcement	Director/Professionalism Program	10/2/87-11/28/11

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
Deputy Secretary	Dept. of Corrections	11/2011-12/2012
Professionalism Program Director	Fl. Dept. of Law Enforcement	10/87-11/2011
Corrections and Correctional Probation Officer	Dept. of Corrections	7/84-10/87

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

Served as the Director of the FDLE Professionalism Program 2004-11 which served as staff with the Criminal Justice Standards and Training Commission.

Certified as a Corrections and Correctional Probation Officer with the Department of Corrections/1984-87

Certified Law Enforcement Officer with Florida Wildlife Commission and FDLE 1993-2011

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:

BS-Criminology

Corrections Officer

Correctional Probation Officer

Law Enforcement Officer

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

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

American Correctional Association

Florida Police Chiefs Association

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

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

Office Title	Date of Election or Appointment	Term of Office	Level of Government

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

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended	Meetings Missed	Reason for Absence

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

Date	Nature of Violation	Disposition

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

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

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

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

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

_____

_____

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

License/Certificate Title & Number	Original Issue Date	Issuing Authority	Disciplinary Action/Date
Corrections Officer #64255	10/15/84	Criminal Justice Standards and Training Commission	None
Correctional Probation Officer	10/1/86	Grandfathered Criminal Justice Standards and Training Commission	None
Law Enforcement Officer #137687	5/19/93	Criminal Justice Standards and Training Commission	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

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

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
Florida Dept. of Corrections	Department of Corrections

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
Wayne Quinsey			
Juanita Chastain			
Chip Brady			

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
Fl. Police Chiefs Assoc.	924 N. Gadsden St. Tallahassee, Fl	None	1997-Present
American Correctional Assoc.	206 N. Washington Street, Suite 200. Alexandria, Va.	None	2012-Present
International Assoc. of Directors of Law Enforcement Standards and Training	3287 Tasa Drive, Meridian, ID,	Vice-President (1) Year President (15) months	2002-11

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

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

CERTIFICATION

STATE OF FLORIDA
COUNTY OF LEON

Before me, the undersigned Notary Public of Florida, personally appeared Michael D. Crews, 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

Sworn to and subscribed before me this 28th day of January, 2013.

Bradie M. Strickland
Signature of Notary Public-State of Florida

NOTARY PUBLIC STATE OF FLORIDA
BRADIE M. STRICKLAND
MY COMMISSION # EE 042817
EXPIRES: December 2, 2014
Bonded Thru Budget Notary Services

Bradie M. Strickland
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

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.)_____

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, April 01, 2013
TIME: 12:15 —3:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

---

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: Secretary of Corrections

Appointee: Crews, Michael D.

Term: 12/17/2012-Pleasure of Governor

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: Michael D. Crews

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

DATE: 4/1/13

File 1 copy with the Secretary of the Senate (303 Capitol)

S-002 (10/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Confirmation

Bill Number: _____ *(if applicable)*

Name: Michael D. Crews

Amendment Barcode: _____ *(if applicable)*

Job Title: Secretary

Address: 501 S. Calhoun
Street

Tallahassee, FL 32399
City *State* *Zip*

Phone: 717-3030

E-mail: _____

Speaking: ☐ For ☐ Against ☑ Information

Representing: Dept. of Corrections

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)

4 / 1 /2013
Meeting Date

Topic: CRENS confirmation

Bill Number: _____ *(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

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

John "Bill" W. Jennings

Capital Collateral Regional Counsel - Middle Region

NOTICE OF HEARING

TO: Mr. John "Bill" W. Jennings

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Monday, April 01, 2013, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 12:15 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 27th 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

147

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

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

John W. Jennings

is duly appointed

Capital Collateral Regional Counsel,
Middle Region

for a term beginning on the
Eighth day of March, A.D., 2013,
until the Thirtieth day of September, A.D., 2015
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

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.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Thirteenth day of March, A.D., 2013.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

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

RICK SCOTT
GOVERNOR

RECEIVED
DEPT OF STATE
2013 MAR 12 PM 4:06
DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 8, 2013

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 27.701, Florida Statutes:

Mr. John W. Jennings

as Capital Collateral Regional Counsel - Middle Region, subject to confirmation by the Senate. This appointment is effective March 8, 2013, for a term ending September 30, 2015.

Sincerely,

Rick Scott
Governor

RS/rm

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

QUESTIONNAIRE FOR SENATE CONFIRMATION

RECEIVED

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

13 MAR 11 AM 10: 36

Please type or print in blue or black ink.

March 8, 2013

DIVISION OF ELECTIONS
SECRETARY OF STATE

Date Completed

1. Name: Mr. Jennings John W.
   MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: _____
   STREET OFFICE # CITY
   _____
   POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: _____
   STREET CITY COUNTY
   _____
   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

5. Date of Birth. _____ ace of Birth: _____
6. Social Security Number: _____
7. Driver License Number: _____ _____ Issuing State: F _____
8. Have you ever used or been known by any other legal name? Yes ☐ No ☑ If "Yes" Explain
   _____
   _____
   _____
   _____

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

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1977

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

A. County of Registration: Hillsborough B. Current Party Affiliation: Republican

12. Education

A. High School: Winter Park High School, Winter Park, FL Year Graduated: 1967

(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
Seminole Jr. College	8/68 thru 6/69	AA
University of Central Florida	6/69 thru 5/71	BA
South Texas College of Law	8/71 thru 8/74	JD

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

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) Yes ☐ No ☑ If Yes" give details:

DATE	PLACE	NATURE	DISPOSITION

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
State of Florida	Legal	Capital Collateral Regional Counsel	April 2001 to Present

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
CCRC	Capital Collateral Regional Counsel - Middle	4/2001 to Present
APD	Office of Public Defender - 13th Circuit	6/1998 to 2/2000
ASA	Office of the State Attorney, 10th Circuit	4/1986 to 5/1998
ASA	Office of the State Attorney, 13th Circuit	8/1977 to 4/1986

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

I was an Assistant State Attorney for 20+ years, as well as an Assistant Public Defender for 2 years. I have been the head of CCRC-M for 11 years. In addition to directing and leading the Agency in the highly specialized field of death row appeals, I have guided the office in legal, administrative and lobbying matters. CCRC-M has provided effective and efficient representation, as recognized by the Auditor General's Office. In 2007, I chaired the Governor's Commission on Administration of Lethal Injection. CCRC-M has led the way in automating the Offices (BOMS & a file retrieval system).

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:

Board Certified in Criminal Trial Law (1990 -2005); Florida Bar Association (December 1975); Texas Bar Association (December 1974); United States Supreme Court (August 1978); U.S. Court of Appeals - 11th Circuit (October 1981)

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

"Bad Checks and Bankruptcy" - Florida Bar Journal - October 1983
Paul Harris Fellowship - Rotary 1996
School Enrichment Resource Volunteers in Education - 1998 & 1999

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

Same as #17B above.

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

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

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
Capital Collateral Regional Counsel - Middle	2001; 2003; 2011 & 2012	3 years	State

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

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

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

DATE	NATURE OF VIOLATION	DISPOSITION

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

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

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

A. Title of Office: Capital Collateral Regional Counsel - Middle

B. Term of Appointment: 2001 - 2003; 2003-2006; 2011-12

C. Confirmation results: Confirmed in both 2001 & 2003

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

_____

_____

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

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE
0201156	December 1975	The Florida Bar	NO

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

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
Capital Collateral Regional Counsel - Middle	Son	OPS (part time college student)	N/A

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
Executive Office of Governor	Capital Collateral Regional Counsel - Middle
Florida Senate	Capital Collateral Regional Counsel - Middle
Florida House of Representatives	Capital Collateral Regional Counsel - Middle

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
Hon. Jerry Hill		
Commissioner Victor Crist		
Hon. Mark Ober		

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
The Florida Bar	651 E. Jefferson Street, Tallahassee, FL 32399	N/A	since 1975
Hillsborough County Bar Assoc.	1610 North Tampa Street, Tampa FL 33602	N/A	since 1998
Florida Assoc. of Crim. Defense Lawyers	Post Office Box 1528, Tallahassee, FL 32302	N/A	Since 2002

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

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

CERTIFICATION

RECEIVED
13 MAR 11 AM 10:37
DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA, COUNTY OF Hillsborough

Before me, the undersigned Notary Public of Florida, personally appeared John W. Jennings, 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

Sworn to and subscribed before me
this Eight day of March, 2013.

Signature of Notary Public-State of Florida

Teresa A. Stratton
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 8-9-2013

Personally Known ☒ **OR** Produced Identification ☐

Type of Identification Produced _____

(seal)

TERESA A. STRATTON
Commission # DD 914717
Expires August 9, 2013
Bonded Thru Troy Fain Insurance 800-385-7019

RECEIVED
13 MAR 11 AM 10: 36
DIVISION OF ELECTIONS
SECRETARY OF STATE

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)(d)1.d

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

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

The Florida Senate

COMMITTEE RECOMMENDATION ON EXECUTIVE APPOINTMENT

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Monday, April 01, 2013
TIME: 12:15 —3:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

---

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: Capital Collateral Regional Counsel - Middle Region

Appointee: Jennings, John "Bill" W.

Term: 3/8/2013-9/30/2015

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: John "Bill" W. Jennings

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

DATE: 4/1/13

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Neal A. Dupree

Capital Collateral Regional Counsel - Southern Region

NOTICE OF HEARING

TO: Mr. Neal A. Dupree

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Monday, April 01, 2013, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 12:15 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 27th 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

150

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

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

Neal A. Dupree

is duly appointed

Capital Collateral Regional Counsel,
Southern Region

for a term beginning on the
Eighth day of March, A.D., 2013,
until the Thirtieth day of September, 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 Thirteenth day of March, A.D., 2013.

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

2013 MAR 12 PM 4:06
DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 8, 2013

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 27.701, Florida Statutes:

Mr. Neal A. Dupree

as Capital Collateral Regional Counsel – Southern Region, subject to confirmation by the Senate. This appointment is effective March 8, 2013, for a term ending September 30, 2015.

Sincerely,

Rick Scott
Governor

RS/rm

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

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1955

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

A. County of Registration: Broward B. Current Party Affiliation: Democrat

12. Education

A. High School: Msgr. Pace High School 15600 NW 32nd Ave Opa Locka, Florida Year Graduated: 1973
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
University of Florida	September 1973 thru December 1976	Bachelor of Arts in Psychology
University of Florida	March 1977 thru March 1980	Juris Doctorate

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

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) Yes No X If Yes" give details:

DATE	PLACE	NATURE	DISPOSITION

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
Capital Collateral Regional Counsel – South	Law Office	CCRC-South	August 1998 - present

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes X 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
CCRC-South	CCRC-South	August 1998 – present
Assistant State Attorney	Broward County State Attorney Office	May 1983 – November 1987

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

I believe that my diversified experience as CCRC-South, prosecutor, federal public defender, criminal justice act appointee and private lawyer uniquely qualifies me for this position. I have been on both sides of the criminal law practice, which gives me a comprehensive perspective of the criminal justice system. Since I have experience at every level of the state and federal systems, as well as fifteen years administrative experience in this position, I believe that I am the person best qualified to direct CCRC-South.

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

Juris Doctorate University of Florida March 1980

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

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

None

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

19. A. Have you ever been elected or appointed to any public office in this state? Yes X 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
Capital Collateral Regional Counsel-South	July 1998	1998 – 2000	State Agency
Capital Collateral Regional Counsel-South	April 1999	1999 – 2000	State Agency
Capital Collateral Regional Counsel-South	2000	2000 – 2003	State Agency
Capital Collateral Regional Counsel-South	2004	2003 – 2011	State Agency
Capital Collateral Regional Counsel-South	2011	2011 – 2012	State Agency
Capital Collateral Regional Counsel-South	2012	2012 – present	State Agency

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

(1) How frequently were meetings scheduled: Quarterly

(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 X If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

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

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated Removed Resigned

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

A. Capital Collateral Regional Counsel-South Title of Office: CCRC-South

B. Term of Appointment: 1998 to present

C. Confirmation results: confirmed by Senate 1999, 2001, 2004, no action 2012

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

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes X 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
Florida Bar 311545	December 11, 1980	Florida Bar	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 X If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

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 X If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

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 X No

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

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

AGENCY LOBBIED	PRINCIPAL REPRESENTED
Florida Legislature	CCRC-South
Executive Office of the Governor	CCRC-South

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
Hon. Wendy Berger			
Hon. Howard Finkelstein			
Steven Hammer, 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
None			

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 X If "Yes", explain:

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

CERTIFICATION

RECEIVED
13 MAR 11 AM 9:56
DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA, COUNTY OF LEON

Before me, the undersigned Notary Public of Florida, personally appeared Neal Dupree, 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

Sworn to and subscribed before me this 11 day of March, 2013.

Ruthie J. Dickson
Signature of Notary Public-State of Florida

RUTHIE J. DICKSON
Commission # EE 844223
Expires October 25, 2016
Bonded Thru Troy Fain Insurance 800-385-7019

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

My Commission expires:

RUTHIE J. DICKSON
Commission # EE 844223
Expires October 25, 2016
Bonded Thru Troy Fain Insurance 800-385-7019

Personally Known **OR** Produced Identification

Type of Identification Produced driverlicense

(seal)

RECEIVED
13 MAR 11 AM 9:56
DIVISION OF ELECTIONS
SECRETARY OF STATE

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.)_____

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

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

The Florida Senate

COMMITTEE RECOMMENDATION ON EXECUTIVE APPOINTMENT

COMMITTEE: Committee on Criminal Justice
MEETING DATE: Monday, April 01, 2013
TIME: 12:15 —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: Capital Collateral Regional Counsel - Southern Region

Appointee: Dupree, Neal A.

Term: 3/8/2013-9/30/2015

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: Neal A. Dupree

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

DATE: 4/1/13

File 1 copy with the Secretary of the Senate (303 Capitol)

S-002 (10/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 142

INTRODUCER: Criminal Justice Committee and Senators Altman and Sobel

SUBJECT: Intellectual Disabilities

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	**Favorable**
2.	Cellon	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/SB 142 substitutes the term "intellectual disability" for "mental retardation" throughout the Florida Statutes. The bill specifies that as the new terminology is applied in the pretrial, trial, sentencing, and death penalty areas of the criminal law, the terms "intellectual disability" or "intellectually disabled" are interchangeable with the terms "mental retardation" or "retardation" and "mentally retarded" as previously defined.

This bill also substitutes "the Arc of Florida" for "the Association for Retarded Citizens" to reflect the correct name of the organization.

This bill will not have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill amends the following sections of the Florida Statutes: 39.502, 40.013, 86.041, 92.53, 92.54, 92.55, 320.10, 383.14, 393.063, 393.11, 394.455, 400.960, 408.032, 409.908, 413.20, 440.49, 499.0054, 514.072, 627.6041, 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16, 914.17, 916.105, 916.106, 916.107, 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 918.16, 921.137, 941.38, 944.602, 945.025, 945.12, 945.42, 947.185, 984.19, 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61.

II. Present Situation:

Mental Retardation

Mental retardation is a condition or syndrome defined by a collection of symptoms, traits, and characteristics. Under the most current Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), the term mental retardation means a significantly subaverage intellectual functioning, such as an IQ of approximately 70 or below, and concurrent deficits of impairment in present adaptive functioning[1] in at least two of the following areas:

- Communication
- Self-care
- Home living
- Social or interpersonal skills
- Use of community resources
- Self-direction
- Functional academic skills
- Work
- Leisure
- Health
- Safety[2]

Onset of the disability occurs before age 18.[3]

Mental retardation has been defined and renamed many times. For example, in 1910, three levels of mental retardation were identified: idiot, imbecile, and moron.[4] Additionally, feeblemindedness and mental deficiency were used as labels for mental retardation during the late 19th and early 20th century.[5]

The Arc of the United States, an organization that advocates for and serves people with intellectual and developmental disabilities, changed its name in 1992[6] to reflect contemporary sensibilities. The Arc notes:

> The term "mental retardation" is an out-dated term that may offer some protections in some states, however, with the passage of Rosa's Law in 2010,

[1] According to the DSM-IV, adaptive functioning relates to the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group. American Psychiatric Association, DSM-IV 42 (March 2010).
[2] *Id*. at 41.
[3] *Id.*
[4] Fred J. Biasini, *et al.*, Department of Psychology, University of Alabama at Birmingham, *Mental Retardation: A Symptom and a Syndrome, available at* http://www.ibis-birthdefects.org/start/mentalSyndrome.htm (last visited Jan. 29, 2013).
[5] *Id*.
[6] Prior to becoming The Arc of the United States, the organization was called the Association for Retarded Citizens of the United States. The Arc, *History of Name Changes*, *available at* http://www.thearc.org/page.aspx?pid=2344 (last visited Jan. 25, 2013). In 2007, the Association for Retarded Citizens of Florida, Inc., adopted the fictitious name The Arc of Florida, and the organization officially changed its name in 2010. The Arc of Florida, *About the Arc, History*, *available at* http://arcflorida.org/index.php?option=com_content&view=category&layout=blog&id=5&Itemid=2 (last visited Jan. 25, 2013).

> many states have replaced all terminology from mental retardation to intellectual disability. Although some still use the term "mental retardation" to be eligible for some services in a few states, in no case does having the label guarantee that supports will be available. The Arc does not encourage the use of nor promote the term mental retardation. The general public, including families, individuals, funders, administrators, and public policymakers at local, state and federal levels, are becoming aware of how offensive the term is ….[7]

Other organizations in the United States, such as United Cerebral Palsy, take similar positions on use of this term.[8] In addition, the State of Washington enacted legislation in 2010 amending its statutes to make the change to "intellectual disability."[9]

The American Psychiatric Association (APA), the organization that publishes the DSM, has undertaken a complete revision of the DSM-IV, which was originally published in 1994.[10] The APA has proposed renaming "mental retardation" as "intellectual developmental disorder" in order to be consistent with current practice.[11] The new criteria will be released in May 2013.[12]

Current Statutory Definitions

Section 921.137, F.S., which prohibits the imposition of the death penalty on a mentally-retarded defendant, states:

> "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities shall

---

[7] The Arc, *Introduction to Intellectual Disabilities* (revised Mar. 1, 2011), *available at* http://www.thearc.org/page.aspx?pid=2448 (last visited Jan. 23, 2013). "Rosa's Law" amended the language in all federal health, education, and labor laws to remove the phrase "mentally retarded" and substitute the phrase "intellectual disability." Press Release, The White House *Remarks by the President at the Signing of the 21st Century Communications and Video Accessibility Act of 2010* (Oct. 8, 2010), *available at* http://www.whitehouse.gov/the-press-office/2010/10/08/remarks-president-signing-21st-century-communications-and-video-accessib (last visited Feb. 4. 2013).

[8] *See* United Cerebral Palsy, *Legislative Agenda for the 112th Congress*, *available at* http://www.ucp.org/public-policy/legislative-agenda (last visited Jan. 25, 2013); American Association on Intellectual and Developmental Disabilities, *Definition of Intellectual Disability*, *available at* http://www.aaidd.org/content_100.cfm?navID=21 (last visited Jan. 25, 2013).

[9] *See* Revised Code of Washington 44.04.280.

[10] American Psychiatric Association *Overview* DSM-5 Development, *available at* http://www.dsm5.org/ABOUT/Pages?DSMVOverview.aspx (last visited Jan. 25, 2013).

[11] American Psychiatric Association, *Intellectual Disability* (Dec. 18, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

[12] American Psychiatric Association, DSM-5 Development, *Timeline*, *available at* http://www.dsm5.org/about/Pages/Timeline.aspx (last visited Feb. 4, 2013).

> adopt rules to specify the standardized intelligence tests as provided in this subsection.

The definition used in the death penalty statute is taken from the definition of "retardation" in ch. 393, F.S., the area of law relating to developmental disabilities, which defines retardation as:

> [S]ignificantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that manifests before the age of 18 and can reasonably be expected to continue indefinitely. "Significantly subaverage general intellectual functioning," for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency. "Adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.[13]

The statutory definition of developmental disability indicates that it *is* attributable to mental retardation, among other conditions. Section 393.063(9), F.S., defines "developmental disability" as:

> [A] disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Individuals with developmental disabilities may be eligible for a variety of home and community based services through the Agency for Persons with Disabilities and other state and federal entities.

The term "intellectual disability" is not currently defined in the Florida Statutes, although the term is defined, and is interchangeable with the term "mental retardation," pursuant to Rule 65G-4.014(3) of the Florida Administrative Code. The Rule, states:

Mental Retardation or Intellectual Disability – is evidenced by the concurrent existence of:

> (a) Significantly subaverage general intellectual functioning evidenced by an Intelligence Quotient (IQ) two or more standard deviations below the mean on an individually administered standardized intelligence test, and
> (b) Significant deficits in adaptive functioning in one or more of the following areas:
> 1. Communication skills,
> 2. Self-care, home living,
> 3. Social and interpersonal skills,
> 4. Use of community resources and self-direction,
> 5. Functional academic skills,
> 6. Work, leisure, health and safety awareness and skills,

[13] Section 393.063(32), F.S.

(c) Which are manifested prior to age 18; and
(d) Constitute a substantial handicap which is reasonably expected to continue indefinitely.

In 2008, the term "intellectual disability" was substituted for the term "mentally handicapped" in the definition of "exceptional student" as the term is used in the statutes creating the McKay Scholarship Program.[14]

III. Effect of Proposed Changes:

This bill substitutes the term "intellectual disability" for "mental retardation" throughout the Florida Statutes. Specifically, the term "intellectual disability" is being used in statutes pertaining to:

- Persons disqualified or excused from jury service (s. 40.013, F.S.);
- Actions by executors, administrators, trustees, etc. (s. 86.041, F.S.);
- Certain judicial or other proceedings involving victims or witnesses under the age of 16 or person with mental retardation (ss. 92.53, 92.54, and 92.55, F.S.);
- Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors (s. 383.14, F.S.);
- Developmental Disabilities (ss. 393.063 and 393.11, F.S.);
- Mental Health (s. 394.455, F.S.);
- Intermediate Care Facilities for Developmentally Disabled Persons (s. 400.960, F.S.);
- Medicaid (s. 409.908, F.S.);
- Vocational Rehabilitation (s. 413.20, F.S.);
- Special Disability Trust Fund (s. 440.49, F.S.);
- Advertising and labeling of drugs, devices, and cosmetics; exemptions (s. 499.0054, F.S.);
- Insurance (ss. 627.6041, 627.6615, 641.31, and 650.05, F.S.);
- Health Care Surrogates (s. 765.204, F.S.);
- Gambling (s. 849.04, F.S.);
- Criminal proceedings relating to victims under age 16 or persons with mental retardation (ss. 914.16, 914.17, and 918.16, F.S.);
- Mentally Deficient and Mentally Ill Defendants (ss. 916.105, 916.106, 916.107, 916.301, 916.3012, 916.302, 916.3025, 916.303, and 916.304, F.S.);
- Prohibition on imposition of the death sentence upon a defendant with mental retardation (s. 921.137, F.S.);
- Extradition of persons alleged to be of unsound mind (s. 941.38, F.S.);

[14] "Exceptional student" means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard or hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ~~are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children,~~ ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e). Chapter 2008-204, s. 3, Laws of Fla.

- Department of Corrections and State Correctional Institution (ss. 944.602, 945.025, 945.12, and 945.42, F.S.);
- Application for mental retardation services as condition of parole (s. 947.185, F.S.);
- Children and Families in Need of Services (s. 984.19, F.S.); and
- Juvenile Justice; Interstate Compact on Juveniles (ss. 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61, F.S.)

The bill does not make substantive changes to any of the statutes so revised.

The bill also amends ss. 39.502 and 320.10, F.S., by replacing the name "the Association for Retarded Citizens" with "the Arc of Florida" to reflect the current name of the organization.

The bill includes legislative intent in order to avoid any potential confusion which might arise as the new term is applied because the American Psychiatric Association has not yet released the DSM-5, formally adopting the term "intellectual disability" rather than "mental retardation," and because use of the term "intellectual disability" has not yet become universal. Specifically:

- The changes made by the bill are not intended to expand or contract the scope of the Florida Statutes; and
- The bill may not be construed to change the application of any provision of the Florida Statutes to any person.

In addition, the bill clarifies that as the new terminology is applied in the pretrial, trial, sentencing, and death penalty areas of the criminal law, it has the same meaning and is interchangeable with the terms "mental retardation," "retardation," and "mentally retarded."[15]

The bill makes a number of technical corrections to the Florida Statutes, including:

- Removing definitions, from part VIII of ch. 400, F.S., of terms that are no longer used in that part;
- Removing obsolete grandfathering language from s. 514.072, F.S., relating to certification of swimming instructors for people with developmental disabilities; and
- Renaming part III of ch. 916, F.S., as "Forensic Services for Persons who are Intellectually Disabled or Autistic."

Finally, the bill amends s. 408.032, F.S., to provide that an "intermediate care facility for the developmentally disabled" means a residential facility licensed under part VIII of ch. 400, F.S., rather than under ch. 393, F.S.

The bill does not have any fiscal impact to the state and provides an effective date of July 1, 2013.

[15] See sections 9 and 38 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:

In the past, the Department of Corrections (DOC or department), has indicated that the bill would require revisions to be made to the department's procedures, health services bulletins, and Offender Based Information System codes because they reference the standardized professional terminology and diagnostic codes set forth in the DSM-IV.[16] Other agencies may need to make similar changes. However, these changes will be required regardless of when the DSM-V manual is released with the revised definition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[16] Tommy Maggitas, Department of Corrections, *SB 460-Intellectual Disabilities* (Jan. 10, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 April 1, 2013:
Changed "2012" to "2013" on line 1635. This amendment corrected a technical problem with the date of the application of the new terms set forth in the bill (intellectual disability and intellectually disabled).

B. Amendments:

None.

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

769222

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete line 1635
4 and insert:
5 those terms were defined before July 1, 2013.

By Senator Altman

A bill to be entitled

An act relating to intellectual disabilities; amending s. 39.502, F.S.; substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; amending ss. 40.013, 86.041, 92.53, 92.54, and 92.55, F.S.; substituting the term "intellectual disability" for the term "mental retardation"; amending s. 320.10, F.S.; substituting the Arc of Florida for the Association for Retarded Citizens; amending ss. 383.14, 393.063, 393.11, and 394.455, F.S.; substituting the term "intellectual disability" for the term "mental retardation"; clarifying in s. 393.063, that the meaning of the terms "intellectual disability" or "intellectually disabled" is the same as the meaning of the terms "mental retardation," "retarded," and "mentally retarded" for purposes of matters relating to the criminal laws and court rules; amending s. 400.960, F.S.; revising definitions relating to intermediate care facilities for the developmentally disabled to delete unused terms; amending s. 408.032, F.S.; conforming a cross-reference; amending s. 409.908, F.S.; substituting the term "intellectually disabled" for the term "mentally retarded"; amending ss. 413.20, 440.49, and 499.0054, F.S.; substituting the term "intellectual disability" for the term "mental retardation"; amending s. 514.072, F.S.; conforming a cross-reference and deleting obsolete provisions; amending ss. 627.6041,

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

627.6615, 641.31, 650.05, 765.204, 849.04, 914.16, 914.17, 916.105, and 916.106, F.S.; substituting the term "intellectual disability" for the term "mental retardation"; amending s. 916.107, F.S.; substituting the term "intellectual disability" for the term "retardation"; providing a directive to the Division of Law Revision and Information; amending ss. 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 918.16, 921.137, 941.38, 944.602, 945.025, 945.12, 945.42, 947.185, 984.19, 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61, F.S.; clarifying in s. 921.137, F.S., that the terms "intellectual disability" or "intellectually disabled" are interchangeable with and have the same meaning as the terms "mental retardation," or "retardation" and "mentally retarded," as defined before the effective date of the act; substituting the term "intellectual disability" for the term "mental retardation"; expressing legislative intent; providing an effective date.

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

Section 1. Subsection (15) of section 39.502, Florida Statutes, is amended to read:

39.502 Notice, process, and service.—

(15) A party who is identified as a person who has a ~~with~~ mental illness or ~~with~~ a developmental disability must be informed by the court of the availability of advocacy services through the department, the Arc of Florida ~~Association for~~

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

59 ~~Retarded Citizens~~, or other appropriate mental health or
60 developmental disability advocacy groups and encouraged to seek
61 such services.
62 Section 2. Subsection (9) of section 40.013, Florida
63 Statutes, is amended to read:
64 40.013 Persons disqualified or excused from jury service.—
65 (9) Any person who is responsible for the care of a person
66 who, because of mental illness, intellectual disability ~~mental~~
67 ~~retardation~~, senility, or other physical or mental incapacity,
68 is incapable of caring for himself or herself shall be excused
69 from jury service upon request.
70 Section 3. Section 86.041, Florida Statutes, is amended to
71 read:
72 86.041 Actions by executors, administrators, trustees,
73 etc.—Any person interested as or through an executor,
74 administrator, trustee, guardian, or other fiduciary, creditor,
75 devisee, legatee, heir, next of kin, or cestui que trust, in the
76 administration of a trust, a guardianship, or ~~of~~ the estate of a
77 decedent, an infant, a mental incompetent, or insolvent may have
78 a declaration of rights or equitable or legal relations to ~~in~~
79 ~~respect thereto~~:
80 (1) ~~To~~ Ascertain any class of creditors, devisees,
81 legatees, heirs, next of kin, or others; ~~or~~
82 (2) ~~To~~ Direct the executor, administrator, or trustee to
83 refrain from doing any particular act in his or her fiduciary
84 capacity; or
85 (3) ~~To~~ Determine any question relating to ~~arising in~~ the
86 administration of the guardianship, estate, or trust, including
87 questions of construction of wills and other writings.

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

88
89 For the purpose of this section, a "mental incompetent" is one
90 who, because of mental illness, intellectual disability ~~mental~~
91 ~~retardation~~, senility, excessive use of drugs or alcohol, or
92 other mental incapacity, is incapable of ~~either~~ managing his or
93 her property or caring for himself or herself~~,~~ or both.
94 Section 4. Section 92.53, Florida Statutes, is amended to
95 read:
96 92.53 Videotaping the ~~of~~ testimony of a victim or witness
97 under age 16 or who has an intellectual disability ~~person with~~
98 ~~mental retardation~~.—
99 (1) On motion and hearing in camera and a finding that
100 there is a substantial likelihood that a victim or witness who
101 is under the age of 16 or who has an intellectual disability ~~is~~
102 ~~a person with mental retardation~~ as defined in s. 393.063 would
103 suffer at least moderate emotional or mental harm due to the
104 presence of the defendant if such victim or witness ~~the child or~~
105 ~~person with mental retardation~~ is required to testify in open
106 court, or ~~that such victim or witness~~ is ~~otherwise~~ unavailable
107 as defined in s. 90.804(1), the trial court may order the
108 videotaping of the testimony of the victim or witness in a case,
109 whether civil or criminal in nature, in which videotaped
110 testimony is to be used ~~utilized~~ at trial in lieu of trial
111 testimony in open court.
112 (2) The motion may be filed by:
113 (a) The victim or witness, or the victim's or witness's
114 attorney, parent, legal guardian, or guardian ad litem;
115 (b) A trial judge on his or her own motion;
116 (c) Any party in a civil proceeding; or

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(d) The prosecuting attorney or the defendant, or the defendant's counsel.

(3) The judge shall preside, or shall appoint a special master to preside, at the videotaping unless ~~the following conditions are met~~:

(a) The child or the person who has the intellectual disability ~~with mental retardation~~ is represented by a guardian ad litem or counsel;

(b) The representative of the victim or witness and the counsel for each party stipulate that the requirement for the presence of the judge or special master may be waived; and

(c) The court finds at a hearing on the motion that the presence of a judge or special master is not necessary to protect the victim or witness.

(4) The defendant and the defendant's counsel must ~~shall~~ be present at the videotaping~~,~~ unless the defendant has waived this right. The court may require the defendant to view the testimony from outside the presence of the child or the person who has an intellectual disability ~~with mental retardation~~ by means of a two-way mirror or another similar method that ensures ~~will ensure~~ that the defendant can observe and hear the testimony of the victim or witness in person, but ~~that~~ the victim or witness cannot hear or see the defendant. The defendant and the attorney for the defendant may communicate by any appropriate private method.

(5) Any party, or the court on its own motion, may request the aid of an interpreter, as provided in s. 90.606, to aid the parties in formulating methods of questioning the child or person who has the intellectual disability ~~with mental~~

~~retardation~~ and in interpreting the answers of the child or person during ~~with mental retardation throughout~~ proceedings conducted under this section.

(6) The motion referred to in subsection (1) may be made at any time with reasonable notice to each party to the cause, and videotaping of testimony may be made any time after the court grants the motion. The videotaped testimony is ~~shall be~~ admissible as evidence in the trial of the cause; however, such testimony is ~~shall~~ not ~~be~~ admissible in any trial or proceeding in which such witness testifies by use of closed circuit television pursuant to s. 92.54.

(7) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

Section 5. Section 92.54, Florida Statutes, is amended to read:

92.54 Use of closed circuit television in proceedings involving a victim or witness ~~victims or witnesses~~ under the age of 16 or who has an intellectual disability ~~persons with mental retardation~~.~~—~~

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that a victim or witness under the age of 16 or who has an intellectual disability ~~the child or person with mental retardation~~ will suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness ~~the child or person with mental retardation~~ is required to testify in open court, or ~~that such victim or witness~~ is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of the ~~a child under the age of 16 or person with mental retardation who~~

175 ~~is a~~ victim or witness be taken outside of the courtroom and
176 shown by means of closed circuit television.
177 (2) The motion may be filed by the victim or witness; the
178 attorney, parent, legal guardian, or guardian ad litem of the
179 victim or witness; the prosecutor; the defendant or the
180 defendant's counsel; or the trial judge on his or her own
181 motion.
182 (3) Only the judge, the prosecutor, the defendant, the
183 attorney for the defendant, the operators of the videotape
184 equipment, an interpreter, and some other person who, in the
185 opinion of the court, contributes to the well-being of the child
186 or the person who has an intellectual disability ~~with mental~~
187 ~~retardation~~ and who will not be a witness in the case may be in
188 the room during the recording of the testimony.
189 (4) During the victim's or witness's ~~child's or person's~~
190 ~~with mental retardation~~ testimony by closed circuit television,
191 the court may require the defendant to view the testimony from
192 the courtroom. In such a case, the court shall permit the
193 defendant to observe and hear the testimony of the victim or
194 witness ~~child or person with mental retardation~~, but must ~~shall~~
195 ensure that the victim or witness ~~child or person with mental~~
196 ~~retardation~~ cannot hear or see the defendant. The defendant's
197 right to assistance of counsel, which includes the right to
198 immediate and direct communication with counsel conducting
199 cross-examination, must be protected and, upon the defendant's
200 request, such communication must ~~shall~~ be provided by any
201 appropriate electronic method.
202 (5) The court shall make specific findings of fact, on the
203 record, as to the basis for its ruling under this section.

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204 Section 6. Section 92.55, Florida Statutes, is amended to
205 read:
206 92.55 Judicial or other proceedings involving victim or
207 witness under the age of 16 or person who has an intellectual
208 disability ~~with mental retardation~~; special protections; use of
209 registered service or therapy animals.—
210 (1) Upon motion of any party, upon motion of a parent,
211 guardian, attorney, or guardian ad litem for a victim or witness
212 ~~child~~ under the age of 16 or person who has an intellectual
213 disability ~~with mental retardation~~, or upon its own motion, the
214 court may enter any order necessary to protect such ~~a child~~
215 ~~under the age of 16 or person with mental retardation who is a~~
216 victim or witness in any judicial proceeding or other official
217 proceeding from severe emotional or mental harm due to the
218 presence of the defendant if the victim or witness ~~child or~~
219 ~~person with mental retardation~~ is required to testify in open
220 court. Such orders must ~~shall~~ relate to the taking of testimony
221 and ~~shall~~ include, but are not ~~be~~ limited to:
222 (a) Interviewing or the taking of depositions as part of a
223 civil or criminal proceeding.
224 (b) Examination and cross-examination for the purpose of
225 qualifying as a witness or testifying in any proceeding.
226 (c) The use of testimony taken outside of the courtroom,
227 including proceedings under ss. 92.53 and 92.54.
228 (2) In ruling upon the motion, the court shall consider
229 ~~take into consideration~~:
230 (a) The age of the child, the nature of the offense or act,
231 the relationship of the child to the parties in the case or to
232 the defendant in a criminal action, the degree of emotional

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233 trauma that will result to the child as a consequence of the
234 defendant's presence, and any other fact that the court deems
235 relevant; or
236 (b) The age of the person who has an intellectual
237 disability ~~with mental retardation~~, the functional capacity of
238 such ~~the~~ person ~~with mental retardation~~, the nature of the
239 offenses or act, the relationship of the person ~~with mental~~
240 ~~retardation~~ to the parties in the case or to the defendant in a
241 criminal action, the degree of emotional trauma that will result
242 to the person ~~with mental retardation~~ as a consequence of the
243 defendant's presence, and any other fact that the court deems
244 relevant.
245 (3) In addition to such other relief ~~as is~~ provided by law,
246 the court may enter orders limiting the number of times that a
247 child or a person who has an intellectual disability ~~with mental~~
248 ~~retardation~~ may be interviewed, prohibiting depositions of such
249 ~~a~~ child or person ~~with mental retardation~~, requiring the
250 submission of questions before the ~~prior to~~ examination of the ~~a~~
251 child or person ~~with mental retardation~~, setting the place and
252 conditions for interviewing the ~~a~~ child or person ~~with mental~~
253 ~~retardation~~ or for conducting any other proceeding, or
254 permitting or prohibiting the attendance of any person at any
255 proceeding. The court shall enter any order necessary to protect
256 the rights of all parties, including the defendant in any
257 criminal action.
258 (4) The court may set any other conditions it finds just
259 and appropriate when ~~on the~~ taking the ~~of~~ testimony of ~~by~~ a
260 child, including the use of a service or therapy animal that has
261 been evaluated and registered according to national standards,

262 in any proceeding involving a sexual offense. When deciding
263 whether to permit a child to testify with the assistance of a
264 registered service or therapy animal, the court shall consider
265 ~~take into consideration~~ the age of the child, the interests of
266 the child, the rights of the parties to the litigation, and any
267 other relevant factor that would facilitate the testimony by the
268 child.
269 Section 7. Subsection (1) of section 320.10, Florida
270 Statutes, is amended to read:
271 320.10 Exemptions.—
272 (1) The provisions of s. 320.08 do not apply to:
273 (a) Any motor vehicle or mobile home owned by, and operated
274 exclusively for the personal use of, any member of the United
275 States Armed Forces who is not a resident of this state and who
276 is stationed in the state while in compliance with military or
277 naval orders;
278 (b) Any motor vehicle owned or operated exclusively by the
279 Federal Government;
280 (c) Any motor vehicle owned and operated exclusively for
281 the benefit of the Boys' Clubs of America, the National Audubon
282 Society, the National Children's Cardiac Hospital, any humane
283 society, any nationally chartered veterans' organization that
284 maintains a state headquarters in this state, the Children's
285 Bible Mission, the Boy Scouts of America, the Girl Scouts of
286 America, the Salvation Army, the American National Red Cross,
287 the United Service Organization, any local member unit of the
288 National Urban League which provides free services to municipal
289 and county residents who are in need of such services, the Young
290 Men's Christian Association, the Young Men's Hebrew Association,

291 the Camp Fire Girls' Council, the Young Women's Christian
292 Association, the Young Women's Hebrew Association, any local
293 member unit of the Arc of Florida ~~Association for Retarded~~
294 ~~Citizens~~, the Children's Home Society of Florida, or the
295 Goodwill Industries. A not-for-profit organization named in this
296 paragraph and its local affiliate organizations is ~~shall be~~
297 eligible for the exemption if it ~~for so long as each~~ maintains
298 current articles of incorporation on file with the Department of
299 State and qualifies as a not-for-profit organization under s.
300 212.08;
301 (d) Any motor vehicle owned and operated by a church,
302 temple, or synagogue for exclusive use as a community service
303 van or to transport passengers without compensation to religious
304 services or for religious education;
305 (e) Any motor vehicle owned and operated by the Civil Air
306 Patrol or the United States Coast Guard Auxiliary;
307 (f) Any mobile blood bank unit when operated as a nonprofit
308 service by an organization;
309 (g) Any mobile X-ray unit or truck or bus used exclusively
310 for public health purposes;
311 (h) Any school bus owned and operated by a nonprofit
312 educational or religious corporation;
313 (i) Any vehicle used by any of the various search and
314 rescue units of the several counties for exclusive use as a
315 search and rescue vehicle; or ~~and~~
316 (j) Any motor vehicle used by a community transportation
317 coordinator or a transportation operator as defined in part I of
318 chapter 427, and which is used exclusively to transport
319 transportation disadvantaged persons.

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320 Section 8. Paragraph (d) of subsection (3) of section
321 383.14, Florida Statutes, is amended to read:
322 383.14 Screening for metabolic disorders, other hereditary
323 and congenital disorders, and environmental risk factors.—
324 (3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The department
325 shall administer and provide certain services to implement the
326 provisions of this section and shall:
327 (d) Maintain a confidential registry of cases, including
328 information of importance for the purpose of followup services
329 to prevent intellectual disabilities ~~mental retardation~~, to
330 correct or ameliorate physical disabilities ~~handicaps~~, and for
331 epidemiologic studies, if indicated. Such registry shall be
332 exempt from the provisions of s. 119.07(1).
333
334 All provisions of this subsection must be coordinated with the
335 provisions and plans established under this chapter, chapter
336 411, and Pub. L. No. 99-457.
337 Section 9. Subsection (9) and subsections (21) through (32)
338 of section 393.063, Florida Statutes, are reordered and amended
339 to read:
340 393.063 Definitions.—For the purposes of this chapter, the
341 term:
342 (9) "Developmental disability" means a disorder or syndrome
343 that is attributable to intellectual disability ~~retardation~~,
344 cerebral palsy, autism, spina bifida, or Prader-Willi syndrome;
345 that manifests before the age of 18; and that constitutes a
346 substantial handicap that can reasonably be expected to continue
347 indefinitely.
348 (22) ~~(21)~~ "Intermediate care facility for the

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349 developmentally disabled" or "ICF/DD" means a residential
350 facility licensed and certified under ~~pursuant to~~ part VIII of
351 chapter 400.
352 (23)~~(22)~~ "Medical/dental services" means medically
353 necessary services that ~~which~~ are provided or ordered for a
354 client by a person licensed under chapter 458, chapter 459, or
355 chapter 466. Such services may include, but are not limited to,
356 prescription drugs, specialized therapies, nursing supervision,
357 hospitalization, dietary services, prosthetic devices, surgery,
358 specialized equipment and supplies, adaptive equipment, and
359 other services as required to prevent or alleviate a medical or
360 dental condition.
361 (24)~~(23)~~ "Personal care services" means individual
362 assistance with or supervision of essential activities of daily
363 living for self-care, including ambulation, bathing, dressing,
364 eating, grooming, and toileting, and other similar services that
365 are incidental to the care furnished and essential to the
366 health, safety, and welfare of the client if ~~when there is~~ no
367 one else is available to perform those services.
368 (25)~~(24)~~ "Prader-Willi syndrome" means an inherited
369 condition typified by neonatal hypotonia with failure to thrive,
370 hyperphagia or an excessive drive to eat which leads to obesity
371 usually at 18 to 36 months of age, mild to moderate intellectual
372 disability ~~mental retardation~~, hypogonadism, short stature, mild
373 facial dysmorphism, and a characteristic neurobehavior.
374 (26)~~(25)~~ "Relative" means an individual who is connected by
375 affinity or consanguinity to the client and who is 18 years of
376 age or older.
377 (27)~~(26)~~ "Resident" means a ~~any~~ person who has a ~~with~~

378 developmental disability and resides ~~disabilities residing~~ at a
379 residential facility, whether or not such person is a client of
380 the agency.
381 (28)~~(27)~~ "Residential facility" means a facility providing
382 room and board and personal care for persons who have ~~with~~
383 developmental disabilities.
384 (29)~~(28)~~ "Residential habilitation" means supervision and
385 training with the acquisition, retention, or improvement in
386 skills related to activities of daily living, such as personal
387 hygiene skills, homemaking skills, and the social and adaptive
388 skills necessary to enable the individual to reside in the
389 community.
390 (30)~~(29)~~ "Residential habilitation center" means a
391 community residential facility licensed under this chapter which
392 provides habilitation services. The capacity of such a facility
393 may ~~shall~~ not be fewer than nine residents. After October 1,
394 1989, new residential habilitation centers may not be licensed
395 and the licensed capacity for any existing residential
396 habilitation center may not be increased.
397 (31)~~(30)~~ "Respite service" means appropriate, short-term,
398 temporary care that is provided to a person who has a ~~with~~
399 developmental disability in order ~~disabilities~~ to meet the
400 planned or emergency needs of the person or the family or other
401 direct service provider.
402 (32)~~(31)~~ "Restraint" means a physical device, method, or
403 drug used to control dangerous behavior.
404 (a) A physical restraint is any manual method or physical
405 or mechanical device, material, or equipment attached or
406 adjacent to an ~~the~~ individual's body so that he or she cannot

407 easily remove the restraint and which restricts freedom of
408 movement or normal access to one's body.
409 (b) A drug used as a restraint is a medication used to
410 control the person's behavior or to restrict his or her freedom
411 of movement and is not a standard treatment for the person's
412 medical or psychiatric condition. Physically holding a person
413 during a procedure to forcibly administer psychotropic
414 medication is a physical restraint.
415 (c) Restraint does not include physical devices, such as
416 orthopedically prescribed appliances, surgical dressings and
417 bandages, supportive body bands, or other physical holding ~~when~~
418 necessary for routine physical examinations and tests; for
419 purposes of orthopedic, surgical, or other similar medical
420 treatment; ~~when used~~ to provide support for the achievement of
421 functional body position or proper balance; or ~~when used~~ to
422 protect a person from falling out of bed.
423 (21) ~~(32)~~ "Intellectual disability" ~~"Retardation"~~ means
424 significantly subaverage general intellectual functioning
425 existing concurrently with deficits in adaptive behavior which
426 ~~that~~ manifests before the age of 18 and can reasonably be
427 expected to continue indefinitely. For the purposes of this
428 definition, the term:
429 (a) "Adaptive behavior" means the effectiveness or degree
430 with which an individual meets the standards of personal
431 independence and social responsibility expected of his or her
432 age, cultural group, and community.
433 (b) "Significantly subaverage general intellectual
434 functioning~~,~~" ~~for the purpose of this definition,~~ means
435 performance that ~~which~~ is two or more standard deviations from

436 the mean score on a standardized intelligence test specified in
437 the rules of the agency. ~~"Adaptive behavior," for the purpose of~~
438 ~~this definition, means the effectiveness or degree with which an~~
439 ~~individual meets the standards of personal independence and~~
440 ~~social responsibility expected of his or her age, cultural~~
441 ~~group, and community.~~
442
443 For purposes of the application of the criminal laws and
444 procedural rules of this state to matters relating to pretrial,
445 trial, sentencing, and any matters relating to the imposition
446 and execution of the death penalty, the terms "intellectual
447 disability" or "intellectually disabled" are interchangeable
448 with and have the same meaning as the terms "mental retardation"
449 or "retardation" and "mentally retarded" as defined in this
450 section before July 1, 2013.
451 Section 10. Subsection (1), paragraphs (c) and (d) of
452 subsection (2), paragraphs (b) through (d) of subsection (3),
453 paragraph (b) of subsection (4), paragraphs (b), (e), (f), and
454 (g) of subsection (5), subsection (6), paragraph (d) of
455 subsection (7), paragraph (b) of subsection (8), subsection
456 (10), and paragraph (b) of subsection (12) of section 393.11,
457 Florida Statutes, are amended to read:
458 393.11 Involuntary admission to residential services.—
459 (1) JURISDICTION.—If ~~When~~ a person has an intellectual
460 disability ~~is mentally retarded~~ and requires involuntary
461 admission to residential services provided by the agency, the
462 circuit court of the county in which the person resides has
463 ~~shall have~~ jurisdiction to conduct a hearing and enter an order
464 involuntarily admitting the person in order for ~~that~~ the person

465 to ~~may~~ receive the care, treatment, habilitation, and
466 rehabilitation that ~~which~~ the person needs. For the purpose of
467 identifying intellectual disability ~~mental retardation~~,
468 diagnostic capability shall be established by the agency. Except
469 as otherwise specified, the proceedings under this section are
470 ~~shall be~~ governed by the Florida Rules of Civil Procedure.
471 (2) PETITION.—
472 (c) The petition shall be verified and must ~~shall~~:
473 1. State the name, age, and present address of the
474 commissioners and their relationship to the person who has an
475 intellectual disability ~~with mental retardation~~ or autism;
476 2. State the name, age, county of residence, and present
477 address of the person who has an intellectual disability ~~with~~
478 ~~mental retardation~~ or autism;
479 3. Allege that the commission believes that the person
480 needs involuntary residential services and specify the factual
481 information on which the belief is based;
482 4. Allege that the person lacks sufficient capacity to give
483 express and informed consent to a voluntary application for
484 services and lacks the basic survival and self-care skills to
485 provide for the person's well-being or is likely to physically
486 injure others if allowed to remain at liberty; and
487 5. State which residential setting is the least restrictive
488 and most appropriate alternative and specify the factual
489 information on which the belief is based.
490 (d) The petition must ~~shall~~ be filed in the circuit court
491 of the county in which the person who has the intellectual
492 disability ~~with mental retardation~~ or autism resides.
493 (3) NOTICE.—

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494 (b) If ~~Whenever~~ a motion or petition has been filed
495 pursuant to s. 916.303 to dismiss criminal charges against a
496 defendant who has an intellectual disability ~~with retardation~~ or
497 autism, and a petition is filed to involuntarily admit the
498 defendant to residential services under this section, the notice
499 of the filing of the petition must ~~shall~~ also be given to the
500 defendant's attorney, the state attorney of the circuit from
501 which the defendant was committed, and the agency.
502 (c) The notice must ~~shall~~ state that a hearing shall be set
503 to inquire into the need of the person who has an intellectual
504 disability ~~with mental retardation~~ or autism for involuntary
505 residential services. The notice must ~~shall~~ also state the date
506 of the hearing on the petition.
507 (d) The notice must ~~shall~~ state that the individual who has
508 an intellectual disability ~~with mental retardation~~ or autism has
509 the right to be represented by counsel of his or her own choice
510 and that, if the person cannot afford an attorney, the court
511 shall appoint one.
512 (4) AGENCY PARTICIPATION.—
513 (b) Following examination, the agency shall file a written
514 report with the court at least ~~not less than~~ 10 working days
515 before the date of the hearing. The report must be served on the
516 petitioner, the person who has the intellectual disability ~~with~~
517 ~~mental retardation~~, and the person's attorney at the time the
518 report is filed with the court.
519 (5) EXAMINING COMMITTEE.—
520 (b) The court shall appoint at least ~~no fewer than~~ three
521 disinterested experts who have demonstrated to the court an
522 expertise in the diagnosis, evaluation, and treatment of persons

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523 who have intellectual disabilities ~~with mental retardation~~. The
524 committee must include at least one licensed and qualified
525 physician, one licensed and qualified psychologist, and one
526 qualified professional who, at ~~with~~ a minimum, has ~~of~~ a masters
527 degree in social work, special education, or vocational
528 rehabilitation counseling, to examine the person and to testify
529 at the hearing on the involuntary admission to residential
530 services.
531 (e) The committee shall prepare a written report for the
532 court. The report must explicitly document the extent that the
533 person meets the criteria for involuntary admission. The report,
534 and expert testimony, must include, but not be limited to:
535 1. The degree of the person's intellectual disability
536 ~~mental retardation~~ and whether, using diagnostic capabilities
537 established by the agency, the person is eligible for agency
538 services;
539 2. Whether, because of the person's degree of intellectual
540 disability ~~mental retardation~~, the person:
541 a. Lacks sufficient capacity to give express and informed
542 consent to a voluntary application for services pursuant to s.
543 393.065;
544 b. Lacks basic survival and self-care skills to such a
545 degree that close supervision and habilitation in a residential
546 setting is necessary and if not provided would result in a real
547 and present threat of substantial harm to the person's well-
548 being; or
549 c. Is likely to physically injure others if allowed to
550 remain at liberty.
551 3. The purpose to be served by residential care;

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552 4. A recommendation on the type of residential placement
553 which would be the most appropriate and least restrictive for
554 the person; and
555 5. The appropriate care, habilitation, and treatment.
556 (f) The committee shall file the report with the court at
557 least ~~not less than~~ 10 working days before the date of the
558 hearing. The report must ~~shall~~ be served on the petitioner, the
559 person who has the intellectual disability ~~with mental~~
560 ~~retardation~~, the person's attorney at the time the report is
561 filed with the court, and the agency.
562 (g) Members of the examining committee shall receive a
563 reasonable fee to be determined by the court. The fees shall ~~are~~
564 ~~to~~ be paid from the general revenue fund of the county in which
565 the person who has the intellectual disability ~~with mental~~
566 ~~retardation~~ resided when the petition was filed.
567 (6) COUNSEL; GUARDIAN AD LITEM.—
568 (a) The person who has the intellectual disability must
569 ~~with mental retardation shall~~ be represented by counsel at all
570 stages of the judicial proceeding. If ~~In the event~~ the person is
571 indigent and cannot afford counsel, the court shall appoint a
572 public defender at least ~~not less than~~ 20 working days before
573 the scheduled hearing. The person's counsel shall have full
574 access to the records of the service provider and the agency. In
575 all cases, the attorney shall represent the rights and legal
576 interests of the person ~~with mental retardation~~, regardless of
577 who initiates ~~may initiate~~ the proceedings or pays ~~pay~~ the
578 attorney's fee.
579 (b) If the attorney, during the course of his or her
580 representation, reasonably believes that the person who has the

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581 intellectual disability ~~with mental retardation~~ cannot
582 adequately act in his or her own interest, the attorney may seek
583 the appointment of a guardian ad litem. A prior finding of
584 incompetency is not required before a guardian ad litem is
585 appointed pursuant to this section.
586 (7) HEARING.—
587 (d) The person who has the intellectual disability must
588 ~~with mental retardation shall~~ be physically present throughout
589 the entire proceeding. If the person's attorney believes that
590 the person's presence at the hearing is not in his or her ~~the~~
591 ~~person's~~ best interest, the person's presence may be waived once
592 the court has seen the person and the hearing has commenced.
593 (8) ORDER.—
594 (b) An order of involuntary admission to residential
595 services may not be entered unless the court finds that:
596 1. The person is intellectually disabled ~~mentally retarded~~
597 or autistic;
598 2. Placement in a residential setting is the least
599 restrictive and most appropriate alternative to meet the
600 person's needs; and
601 3. Because of the person's degree of intellectual
602 disability ~~mental retardation~~ or autism, the person:
603 a. Lacks sufficient capacity to give express and informed
604 consent to a voluntary application for services pursuant to s.
605 393.065 and lacks basic survival and self-care skills to such a
606 degree that close supervision and habilitation in a residential
607 setting is necessary and, if not provided, would result in a
608 real and present threat of substantial harm to the person's
609 well-being; or

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610 b. Is likely to physically injure others if allowed to
611 remain at liberty.
612 (10) COMPETENCY.—
613 (a) The issue of competency is ~~shall be~~ separate and
614 distinct from a determination of the appropriateness of
615 involuntary admission to residential services due to
616 intellectual disability ~~for a condition of mental retardation~~.
617 (b) The issue of the competency of a person who has an
618 intellectual disability ~~with mental retardation~~ for purposes of
619 assigning guardianship shall be determined in a separate
620 proceeding according to the procedures and requirements of
621 chapter 744. The issue of the competency of a person who has an
622 intellectual disability ~~with mental retardation~~ or autism for
623 purposes of determining whether the person is competent to
624 proceed in a criminal trial shall be determined in accordance
625 with chapter 916.
626 (12) APPEAL.—
627 (b) The filing of an appeal by the person who has an
628 intellectual disability stays ~~with mental retardation shall stay~~
629 admission of the person into residential care. The stay remains
630 ~~shall remain~~ in effect during the pendency of all review
631 proceedings in Florida courts until a mandate issues.
632 Section 11. Subsection (18) of section 394.455, Florida
633 Statutes, is amended to read:
634 394.455 Definitions.—As used in this part, unless the
635 context clearly requires otherwise, the term:
636 (18) "Mental illness" means an impairment of the mental or
637 emotional processes that exercise conscious control of one's
638 actions or of the ability to perceive or understand reality,

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639 which impairment substantially interferes with the ~~a~~ person's
640 ability to meet the ordinary demands of living~~, regardless of~~
641 ~~etiology~~. For the purposes of this part, the term does not
642 include a ~~retardation or~~ developmental disability as defined in
643 chapter 393, intoxication, or conditions manifested only by
644 antisocial behavior or substance abuse impairment.
645 Section 12. Subsections (3) through (13) of section
646 400.960, Florida Statutes, are amended to read:
647 400.960 Definitions.—As used in this part, the term:
648 ~~(3) "Autism" has the same meaning as in s. 393.063.~~
649 ~~(4) "Cerebral palsy" has the same meaning as in s. 393.063.~~
650 (3)~~(5)~~ "Client" means any person determined by the Agency
651 for Persons with Disabilities to be eligible for developmental
652 services.
653 (4)~~(6)~~ "Developmentally disabled" ~~"developmental~~
654 ~~disability"~~ has the same meaning as "developmental disability"
655 as that term is defined in s. 393.063.
656 (5)~~(7)~~ "Direct service provider" means a person 18 years of
657 age or older who has direct contact with individuals who have
658 ~~with~~ developmental disabilities and who is unrelated to such ~~the~~
659 individuals ~~with developmental disabilities~~.
660 (6)~~(8)~~ "Intermediate care facility for the developmentally
661 disabled" means a residential facility licensed and certified in
662 accordance with state law, and certified by the Federal
663 Government, pursuant to the Social Security Act, as a provider
664 of Medicaid services to persons who have ~~with~~ developmental
665 disabilities.
666 ~~(9) "Prader-Willi syndrome" has the same meaning as in s.~~
667 ~~393.063.~~

668 (7)~~(10)(a)~~ "Restraint" means a physical device, method, or
669 drug used to control behavior.
670 (a) A physical restraint is any manual method or physical
671 or mechanical device, material, or equipment attached or
672 adjacent to the individual's body so that he or she cannot
673 easily remove the restraint and which restricts freedom of
674 movement or normal access to one's body.
675 (b) A drug used as a restraint is a medication used to
676 control the person's behavior or to restrict his or her freedom
677 of movement. Physically holding a person during a procedure to
678 forcibly administer psychotropic medication is a physical
679 restraint.
680 (c) Restraint does not include physical devices, such as
681 orthopedically prescribed appliances, surgical dressings and
682 bandages, supportive body bands, or other physical holding ~~when~~
683 necessary for routine physical examinations and tests; for
684 purposes of orthopedic, surgical, or other similar medical
685 treatment; ~~when used~~ to provide support for the achievement of
686 functional body position or proper balance; or ~~when used~~ to
687 protect a person from falling out of bed.
688 ~~(11) "Retardation" has the same meaning as in s. 393.063.~~
689 (8)~~(12)~~ "Seclusion" means the physical segregation of a
690 person in any fashion or the involuntary isolation of a person
691 in a room or area from which the person is prevented from
692 leaving. The prevention may be by physical barrier or by a staff
693 member who is acting in a manner, or who is physically situated,
694 so as to prevent the person from leaving the room or area. For
695 purposes of this part, the term does not mean isolation due to a
696 person's medical condition or symptoms.

697 ~~(13) "Spina bifida" has the same meaning as in s. 393.063.~~
698 Section 13. Subsection (12) of section 408.032, Florida
699 Statutes, is amended to read:
700 408.032 Definitions relating to Health Facility and
701 Services Development Act.—As used in ss. 408.031-408.045, the
702 term:
703 (12) "Intermediate care facility for the developmentally
704 disabled" means a residential facility licensed under part VIII
705 of chapter 400 ~~chapter 393 and certified by the Federal~~
706 ~~Government pursuant to the Social Security Act as a provider of~~
707 ~~Medicaid services to persons who are mentally retarded or who~~
708 ~~have a related condition~~.
709 Section 14. Subsection (8) of section 409.908, Florida
710 Statutes, is amended to read:
711 409.908 Reimbursement of Medicaid providers.—Subject to
712 specific appropriations, the agency shall reimburse Medicaid
713 providers, in accordance with state and federal law, according
714 to methodologies set forth in the rules of the agency and in
715 policy manuals and handbooks incorporated by reference therein.
716 These methodologies may include fee schedules, reimbursement
717 methods based on cost reporting, negotiated fees, competitive
718 bidding pursuant to s. 287.057, and other mechanisms the agency
719 considers efficient and effective for purchasing services or
720 goods on behalf of recipients. If a provider is reimbursed based
721 on cost reporting and submits a cost report late and that cost
722 report would have been used to set a lower reimbursement rate
723 for a rate semester, then the provider's rate for that semester
724 shall be retroactively calculated using the new cost report, and
725 full payment at the recalculated rate shall be effected

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726 retroactively. Medicare-granted extensions for filing cost
727 reports, if applicable, shall also apply to Medicaid cost
728 reports. Payment for Medicaid compensable services made on
729 behalf of Medicaid eligible persons is subject to the
730 availability of moneys and any limitations or directions
731 provided for in the General Appropriations Act or chapter 216.
732 Further, nothing in this section shall be construed to prevent
733 or limit the agency from adjusting fees, reimbursement rates,
734 lengths of stay, number of visits, or number of services, or
735 making any other adjustments necessary to comply with the
736 availability of moneys and any limitations or directions
737 provided for in the General Appropriations Act, provided the
738 adjustment is consistent with legislative intent.
739 (8) A provider of home-based or community-based services
740 rendered pursuant to a federally approved waiver shall be
741 reimbursed based on an established or negotiated rate for each
742 service. These rates shall be established according to an
743 analysis of the expenditure history and prospective budget
744 developed by each contract provider participating in the waiver
745 program, or under any other methodology adopted by the agency
746 and approved by the Federal Government in accordance with the
747 waiver. Privately owned and operated community-based residential
748 facilities which meet agency requirements and which formerly
749 received Medicaid reimbursement for the optional intermediate
750 care facility for the intellectually disabled ~~mentally retarded~~
751 service may participate in the developmental services waiver as
752 part of a home-and-community-based continuum of care for
753 Medicaid recipients who receive waiver services.
754 Section 15. Subsection (16) of section 413.20, Florida

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755 Statutes, is amended to read:
756 413.20 Definitions.—As used in this part, the term:
757 (16) "Person who has a significant disability" means an
758 individual who has a disability that is a severe physical or
759 mental impairment that seriously limits one or more functional
760 capacities, such as mobility, communication, self-care, self-
761 direction, interpersonal skills, work tolerance, or work skills,
762 in terms of an employment outcome; whose vocational
763 rehabilitation may be expected to require multiple vocational
764 rehabilitation services over an extended period of time; and who
765 has one or more physical or mental disabilities resulting from
766 amputation, arthritis, autism, blindness, burn injury, cancer,
767 cerebral palsy, cystic fibrosis, deafness, head injury, heart
768 disease, hemiplegia, hemophilia, respiratory or pulmonary
769 dysfunction, intellectual disability ~~mental retardation~~, mental
770 illness, multiple sclerosis, muscular dystrophy, musculoskeletal
771 disorder, neurological disorder, including stroke and epilepsy,
772 paraplegia, quadriplegia, or other spinal cord condition,
773 sickle-cell anemia, specific learning disability, end-stage
774 renal disease, or another disability or a combination of
775 disabilities that is determined, after an assessment for
776 determining eligibility and vocational rehabilitation needs, to
777 cause comparable substantial functional limitation.
778 Section 16. Paragraph (a) of subsection (6) of section
779 440.49, Florida Statutes, is amended to read:
780 440.49 Limitation of liability for subsequent injury
781 through Special Disability Trust Fund.—
782 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—
783 (a) Reimbursement is not allowed under this section unless

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784 it is established that the employer knew of the preexisting
785 permanent physical impairment prior to the occurrence of the
786 subsequent injury or occupational disease, and ~~that~~ the
787 permanent physical impairment is one of the following:
788 1. Epilepsy.
789 2. Diabetes.
790 3. Cardiac disease.
791 4. Amputation of foot, leg, arm, or hand.
792 5. Total loss of sight of one or both eyes or a partial
793 loss of corrected vision of more than 75 percent bilaterally.
794 6. Residual disability from poliomyelitis.
795 7. Cerebral palsy.
796 8. Multiple sclerosis.
797 9. Parkinson's disease.
798 10. Meniscectomy.
799 11. Patellectomy.
800 12. Ruptured cruciate ligament.
801 13. Hemophilia.
802 14. Chronic osteomyelitis.
803 15. Surgical or spontaneous fusion of a major weight-
804 bearing joint.
805 16. Hyperinsulinism.
806 17. Muscular dystrophy.
807 18. Thrombophlebitis.
808 19. Herniated intervertebral disk.
809 20. Surgical removal of an intervertebral disk or spinal
810 fusion.
811 21. One or more back injuries or a disease process of the
812 back resulting in disability over a total of 120 or more days,

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813 if substantiated by a doctor's opinion that there was a
814 preexisting impairment to the claimant's back.
815 22. Total deafness.
816 23. Intellectual disability if ~~Mental retardation, provided~~
817 the employee's intelligence quotient is such that she or he
818 falls within the lowest 2 percentile of the general population.
819 However, ~~it shall not be necessary for~~ the employer does not
820 need to know the employee's actual intelligence quotient or
821 actual relative ranking in relation to the intelligence quotient
822 of the general population.
823 24. Any permanent physical condition that ~~which~~, prior to
824 the industrial accident or occupational disease, constitutes a
825 20 percent ~~20-percent~~ impairment of a member or of the body as a
826 whole.
827 25. Obesity if~~, provided~~ the employee is 30 percent or more
828 over the average weight designated for her or his height and age
829 in the Table of Average Weight of Americans by Height and Age
830 prepared by the Society of Actuaries using data from the 1979
831 Build and Blood Pressure Study.
832 26. Any permanent physical impairment as provided ~~defined~~
833 in s. 440.15(3) which is a result of a prior industrial accident
834 with the same employer or the employer's parent company,
835 subsidiary, sister company, or affiliate located within the
836 geographical boundaries of this state.
837 Section 17. Paragraph (g) of subsection (1) of section
838 499.0054, Florida Statutes, is amended to read:
839 499.0054 Advertising and labeling of drugs, devices, and
840 cosmetics; exemptions.—
841 (1) It is a violation of the Florida Drug and Cosmetic Act

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842 to perform or cause the performance of any of the following
843 acts:
844 (g) The advertising of any drug or device represented to
845 have any effect in any of the following conditions, disorders,
846 diseases, or processes:
847 1. Blood disorders.
848 2. Bone or joint diseases.
849 3. Kidney diseases or disorders.
850 4. Cancer.
851 5. Diabetes.
852 6. Gall bladder diseases or disorders.
853 7. Heart and vascular diseases.
854 8. High blood pressure.
855 9. Diseases or disorders of the ear or auditory apparatus,
856 including hearing loss or deafness.
857 10. Mental disease or intellectual disability ~~mental~~
858 ~~retardation~~.
859 11. Paralysis.
860 12. Prostate gland disorders.
861 13. Conditions of the scalp affecting hair loss.
862 14. Baldness.
863 15. Endocrine disorders.
864 16. Sexual impotence.
865 17. Tumors.
866 18. Venereal diseases.
867 19. Varicose ulcers.
868 20. Breast enlargement.
869 21. Purifying blood.
870 22. Metabolic disorders.

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871 23. Immune system disorders or conditions affecting the
872 immune system.
873 24. Extension of life expectancy.
874 25. Stress and tension.
875 26. Brain stimulation or performance.
876 27. The body's natural defense mechanisms.
877 28. Blood flow.
878 29. Depression.
879 30. Human immunodeficiency virus or acquired immune
880 deficiency syndrome or related disorders or conditions.
881 Section 18. Section 514.072, Florida Statutes, is amended
882 to read:
883 514.072 Certification of swimming instructors for people
884 who have developmental disabilities ~~required~~.—Any person working
885 at a swimming pool who holds himself or herself out as a
886 swimming instructor specializing in training people who have
887 developmental disabilities, as defined in s. 393.063~~(9)~~, may be
888 certified by the Dan Marino Foundation, Inc., in addition to
889 being certified under s. 514.071. The Dan Marino Foundation,
890 Inc., must develop certification requirements and a training
891 curriculum for swimming instructors for people who have
892 developmental disabilities ~~and must submit the certification~~
893 ~~requirements to the Department of Health for review by January~~
894 ~~1, 2007~~. ~~A person certified under s. 514.071 before July 1,~~
895 ~~2007, must meet the additional certification requirements of~~
896 ~~this section before January 1, 2008.~~ A person certified under s.
897 514.071 ~~on or after July 1, 2007,~~ must meet the additional
898 certification requirements of this section within 6 months after
899 receiving certification under s. 514.071.

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900 Section 19. Section 627.6041, Florida Statutes, is amended
901 to read:
902 627.6041 ~~Handicapped~~ Children with disabilities;
903 continuation of coverage.—
904 (1) A hospital or medical expense insurance policy or
905 health care services plan contract that is delivered or issued
906 for delivery in this state and that provides that coverage of a
907 dependent child terminates ~~will terminate~~ upon attainment of the
908 limiting age for dependent children specified in the policy or
909 contract must ~~shall~~ also provide in substance that attainment of
910 the limiting age does not terminate the coverage of the child
911 while the child continues to be both:
912 (a) ~~(1)~~ Incapable of self-sustaining employment by reason of
913 an intellectual ~~mental retardation~~ or physical disability.
914 ~~handicap; and~~
915 (b) ~~(2)~~ Chiefly dependent upon the policyholder or
916 subscriber for support and maintenance.
917 (2) If a claim is denied under a policy or contract for the
918 stated reason that the child has attained the limiting age for
919 dependent children specified in the policy or contract, the
920 notice of denial must state that the policyholder has the burden
921 of establishing that the child continues to meet the criteria
922 specified in subsection ~~subsections~~ (1) ~~and (2)~~.
923 Section 20. Section 627.6615, Florida Statutes, is amended
924 to read:
925 627.6615 ~~Handicapped~~ Children with disabilities;
926 continuation of coverage under group policy.—
927 (1) A group health insurance policy or health care services
928 plan contract that is delivered or issued for delivery in this

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929 state and that provides that coverage of a dependent child of an
930 employee or other member of the covered group terminates ~~will~~
931 ~~terminate~~ upon attainment of the limiting age for dependent
932 children specified in the policy or contract must ~~shall~~ also
933 provide in substance that attainment of the limiting age does
934 not terminate the coverage of the child while the child
935 continues to be both:
936 (a) ~~(1)~~ Incapable of self-sustaining employment by reason of
937 an intellectual ~~mental retardation~~ or physical disability.
938 ~~handicap; and~~
939 (b) ~~(2)~~ Chiefly dependent upon the employee or member for
940 support and maintenance.
941 (2) If a claim is denied under a policy or contract for the
942 stated reason that the child has attained the limiting age for
943 dependent children specified in the policy or contract, the
944 notice of denial must state that the certificateholder or
945 subscriber has the burden of establishing that the child
946 continues to meet the criteria specified in subsection
947 ~~subsections~~ (1) ~~and (2)~~.
948 Section 21. Subsection (29) of section 641.31, Florida
949 Statutes, is amended to read:
950 641.31 Health maintenance contracts.—
951 (29) If a health maintenance contract provides that
952 coverage of a dependent child of the subscriber terminates ~~will~~
953 ~~terminate~~ upon attainment of the limiting age for dependent
954 children which is specified in the contract, the contract must
955 also provide in substance that attainment of the limiting age
956 does not terminate the coverage of the child while the child
957 continues to be both:

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958 (a) Incapable of self-sustaining employment by reason of an
959 intellectual ~~mental retardation~~ or physical disability.
960 ~~handicap, and~~
961 (b) Chiefly dependent upon the employee or member for
962 support and maintenance.
963
964 If the claim is denied under a contract for the stated reason
965 that the child has attained the limiting age for dependent
966 children specified in the contract, the notice or denial must
967 state that the subscriber has the burden of establishing that
968 the child continues to meet the criteria specified in this
969 subsection ~~paragraphs (a) and (b)~~.
970 Section 22. Subsection (4) of section 650.05, Florida
971 Statutes, is amended to read:
972 650.05 Plans for coverage of employees of political
973 subdivisions.—
974 (4) ~~(a)~~ Notwithstanding any other provision of this chapter,
975 effective January 1, 1972, all state political subdivisions
976 receiving financial aid which ~~that~~ provide social security
977 coverage for their employees pursuant to ~~the provisions of~~ this
978 chapter and the ~~provisions of the~~ various retirement systems as
979 authorized by law shall, in addition to other purposes, use
980 ~~utilize~~ all grants-in-aid and other revenue received from the
981 state to pay the employer's share of social security cost.
982 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~
983 ~~paragraph (a)~~ specifically include, but are not limited to,
984 minimum foundation program grants to public school districts and
985 community colleges; gasoline, motor fuel, cigarette, racing, and
986 insurance premium taxes distributed to political subdivisions;

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987 and amounts specifically appropriated as grants-in-aid for
988 mental health, intellectual disabilities ~~mental retardation~~, and
989 mosquito control programs.
990 Section 23. Subsection (1) of section 765.204, Florida
991 Statutes, is amended to read:
992 765.204 Capacity of principal; procedure.—
993 (1) A principal is presumed to be capable of making health
994 care decisions for herself or himself unless she or he is
995 determined to be incapacitated. Incapacity may not be inferred
996 from the person's voluntary or involuntary hospitalization for
997 mental illness or from her or his intellectual disability ~~mental~~
998 ~~retardation~~.
999 Section 24. Section 849.04, Florida Statutes, is amended to
1000 read:
1001 849.04 Permitting minors and persons under guardianship to
1002 gamble.~~—Whoever being~~ The proprietor, owner, or keeper of any E.
1003 O., keno or pool table, or billiard table, wheel of fortune, or
1004 other game of chance~~,~~ kept for the purpose of betting, who
1005 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is
1006 mentally incompetent or under guardianship to play at such game
1007 or to bet on such game of chance; or whoever aids or abets or
1008 otherwise encourages such playing or betting of any money or
1009 other valuable thing upon the result of such game of chance by a
1010 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under
1011 guardianship, commits ~~shall be guilty of~~ a felony of the third
1012 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1013 775.084. For the purpose of this section, the term ~~a~~ "person who
1014 is mentally incompetent ~~person~~" means a person ~~is one~~ who
1015 because of mental illness, intellectual disability ~~mental~~

1016 ~~retardation~~, senility, excessive use of drugs or alcohol, or
1017 other mental incapacity is incapable of ~~either~~ managing his or
1018 her property or caring for himself or herself or both.
1019 Section 25. Section 914.16, Florida Statutes, is amended to
1020 read:
1021 914.16 Child abuse and sexual abuse of victims under age 16
1022 or who have an intellectual disability ~~persons with mental~~
1023 ~~retardation~~; limits on interviews.—The chief judge of each
1024 judicial circuit, after consultation with the state attorney and
1025 the public defender for the judicial circuit, the appropriate
1026 chief law enforcement officer, and any other person deemed
1027 appropriate by the chief judge, shall ~~provide by~~ order
1028 reasonable limits on the number of interviews which ~~that~~ a
1029 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.
1030 847.0135(5) who is under 16 years of age or a victim of a
1031 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who
1032 has an intellectual disability ~~is a person with mental~~
1033 ~~retardation~~ as defined in s. 393.063 must submit to for law
1034 enforcement or discovery purposes. ~~The order shall,~~ To the
1035 extent possible, the order must protect the victim from the
1036 psychological damage of repeated interrogations while preserving
1037 the rights of the public, the victim, and the person charged
1038 with the violation.
1039 Section 26. Section 914.17, Florida Statutes, is amended to
1040 read:
1041 914.17 Appointment of advocate for victims or witnesses who
1042 are minors or intellectually disabled ~~persons with mental~~
1043 ~~retardation~~.—
1044 (1) A guardian ad litem or other advocate shall be

1045 appointed by the court to represent a minor in any criminal
1046 proceeding if the minor is a victim of or witness to child abuse
1047 or neglect, ~~or if the minor is~~ a victim of a sexual offense, or
1048 a witness to a sexual offense committed against another minor.
1049 The court may appoint a guardian ad litem or other advocate in
1050 any other criminal proceeding in which a minor is involved as
1051 ~~either~~ a victim or a witness. The guardian ad litem or other
1052 advocate shall have full access to all evidence and reports
1053 introduced during the proceedings, may interview witnesses, may
1054 make recommendations to the court, shall be noticed and have the
1055 right to appear on behalf of the minor at all proceedings, and
1056 may request additional examinations by medical doctors,
1057 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian
1058 ad litem or other advocate shall ~~to perform the following~~
1059 ~~services~~:
1060 (a) ~~To~~ Explain, in language understandable to the minor,
1061 all legal proceedings in which the minor is ~~shall be~~ involved;
1062 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1063 whenever appropriate, of the minor's ability to understand and
1064 cooperate with any court proceeding; and
1065 (c) ~~To~~ Assist the minor and the minor's family in coping
1066 with the emotional effects of the crime and subsequent criminal
1067 proceedings in which the minor is involved.
1068 (2) An advocate shall be appointed by the court to
1069 represent a person who has an intellectual disability ~~with~~
1070 ~~mental retardation~~ as defined in s. 393.063 in any criminal
1071 proceeding if the person ~~with mental retardation~~ is a victim of
1072 or witness to abuse or neglect, ~~or if the person with mental~~
1073 ~~retardation is~~ a victim of a sexual offense, or a witness to a

1074 sexual offense committed against a minor or person who has an
1075 intellectual disability ~~with mental retardation~~. The court may
1076 appoint an advocate in any other criminal proceeding in which
1077 such ~~a~~ person ~~with mental retardation~~ is involved as ~~either~~ a
1078 victim or a witness. The advocate shall have full access to all
1079 evidence and reports introduced during the proceedings, may
1080 interview witnesses, may make recommendations to the court,
1081 shall be noticed and have the right to appear on behalf of the
1082 person ~~with mental retardation~~ at all proceedings, and may
1083 request additional examinations by medical doctors,
1084 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate
1085 shall ~~to perform the following services~~:
1086 (a) ~~To~~ Explain, in language understandable to the person
1087 ~~with mental retardation~~, all legal proceedings in which the
1088 person is ~~shall be~~ involved;
1089 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1090 whenever appropriate, of the person's ~~person with mental~~
1091 ~~retardation's~~ ability to understand and cooperate with any court
1092 proceedings; and
1093 (c) ~~To~~ Assist the person ~~with mental retardation~~ and the
1094 person's family in coping with the emotional effects of the
1095 crime and subsequent criminal proceedings in which the person
1096 ~~with mental retardation~~ is involved.
1097 (3) Any person participating in a judicial proceeding as a
1098 guardian ad litem or other advocate is ~~shall be~~ presumed prima
1099 facie to be acting in good faith and in so doing is ~~shall be~~
1100 immune from any liability, civil or criminal, which ~~that~~
1101 ~~otherwise~~ might be incurred or imposed.
1102 Section 27. Subsections (1), (2), and (3) of section

1103 916.105, Florida Statutes, are amended to read:
1104 916.105 Legislative intent.—
1105 (1) It is the intent of the Legislature that the Department
1106 of Children and Family Services and the Agency for Persons with
1107 Disabilities, as appropriate, establish, locate, and maintain
1108 separate and secure forensic facilities and programs for the
1109 treatment or training of defendants who have been charged with a
1110 felony and who have been found to be incompetent to proceed due
1111 to their mental illness, intellectual disability ~~mental~~
1112 ~~retardation~~, or autism, or who have been acquitted of a felony
1113 by reason of insanity, and who, while still under the
1114 jurisdiction of the committing court, are committed to the
1115 department or agency under ~~the provisions of~~ this chapter. Such
1116 facilities must ~~shall~~ be sufficient to accommodate the number of
1117 defendants committed under the conditions noted above. Except
1118 for those defendants found by the department or agency to be
1119 appropriate for treatment or training in a civil facility or
1120 program pursuant to subsection (3), forensic facilities must
1121 ~~shall~~ be designed and administered so that ingress and egress,
1122 together with other requirements of this chapter, may be
1123 strictly controlled by staff responsible for security in order
1124 to protect the defendant, facility personnel, other clients, and
1125 citizens in adjacent communities.
1126 (2) It is the intent of the Legislature that treatment or
1127 training programs for defendants who are found to have mental
1128 illness, intellectual disability ~~mental retardation~~, or autism
1129 and are involuntarily committed to the department or agency, and
1130 who are still under the jurisdiction of the committing court, be
1131 provided in a manner, subject to security requirements and other

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1132 mandates of this chapter, which ensures ~~as to ensure~~ the rights
1133 of the defendants as provided in this chapter.
1134 (3) It is the intent of the Legislature that evaluation and
1135 services to defendants who have mental illness, intellectual
1136 disability ~~mental retardation~~, or autism be provided in
1137 community settings, in community residential facilities, or in
1138 civil facilities, whenever this is a feasible alternative to
1139 treatment or training in a state forensic facility.
1140 Section 28. Subsections (1), (10), (11), (12), and (17) of
1141 section 916.106, Florida Statutes, are amended, and subsections
1142 (13) through (15) of that section are reordered and amended, to
1143 read:
1144 916.106 Definitions.—For the purposes of this chapter, the
1145 term:
1146 (1) "Agency" means the Agency for Persons with
1147 Disabilities. The agency is responsible for training forensic
1148 clients who are developmentally disabled due to intellectual
1149 disability ~~mental retardation~~ or autism and have been determined
1150 incompetent to proceed.
1151 (10) "Forensic facility" means a separate and secure
1152 facility established within the department or agency to serve
1153 forensic clients. A separate and secure facility means a
1154 security-grade building for the purpose of separately housing
1155 persons who have mental illness from persons who have
1156 intellectual disabilities ~~with retardation~~ or autism and
1157 separately housing persons who have been involuntarily committed
1158 pursuant to this chapter from nonforensic residents.
1159 (11) "Incompetent to proceed" means unable to proceed at
1160 any material stage of a criminal proceeding, which includes the

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1161 ~~shall include~~ trial of the case, pretrial hearings involving
1162 questions of fact on which the defendant might be expected to
1163 testify, entry of a plea, proceedings for violation of probation
1164 or violation of community control, sentencing, and hearings on
1165 issues regarding a defendant's failure to comply with court
1166 orders or conditions or other matters in which the mental
1167 competence of the defendant is necessary for a just resolution
1168 of the issues being considered.
1169 (12) "Institutional security personnel" means the staff of
1170 forensic facilities who meet or exceed the requirements of s.
1171 943.13 and who are responsible for providing security,
1172 protecting clients and personnel, enforcing rules, preventing
1173 and investigating unauthorized activities, and safeguarding the
1174 interests of residents ~~citizens~~ in the surrounding communities.
1175 (14) ~~(13)~~ "Mental illness" means an impairment of the
1176 emotional processes that exercise conscious control of one's
1177 actions, or of the ability to perceive or understand reality,
1178 which impairment substantially interferes with the ~~a~~ defendant's
1179 ability to meet the ordinary demands of living. For the purposes
1180 of this chapter, the term does not apply to defendants who have
1181 only an intellectual disability ~~with only mental retardation~~ or
1182 autism and does not include intoxication or conditions
1183 manifested only by antisocial behavior or substance abuse
1184 impairment.
1185 (15) ~~(14)~~ "Restraint" means a physical device, method, or
1186 drug used to control dangerous behavior.
1187 (a) A physical restraint is any manual method or physical
1188 or mechanical device, material, or equipment attached or
1189 adjacent to a person's body so that he or she cannot easily

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1190 remove the restraint and that restricts freedom of movement or
1191 normal access to one's body.
1192 (b) A drug used as a restraint is a medication used to
1193 control the person's behavior or to restrict his or her freedom
1194 of movement and not part of the standard treatment regimen of
1195 the person with a diagnosed mental illness who is a client of
1196 the department. Physically holding a person during a procedure
1197 to forcibly administer psychotropic medication is a physical
1198 restraint.
1199 (c) Restraint does not include physical devices, such as
1200 orthopedically prescribed appliances, surgical dressings and
1201 bandages, supportive body bands, or other physical holding ~~when~~
1202 necessary for routine physical examinations and tests; for
1203 purposes of orthopedic, surgical, or other similar medical
1204 treatment; ~~when used~~ to provide support for the achievement of
1205 functional body position or proper balance; or ~~when used~~ to
1206 protect a person from falling out of bed.
1207 (13) ~~(15)~~ "Intellectual disability" ~~"Retardation"~~ has the
1208 same meaning as in s. 393.063.
1209 (17) "Social service professional" means a person whose
1210 minimum qualifications include a bachelor's degree and at least
1211 2 years of social work, clinical practice, special education,
1212 habilitation, or equivalent experience working directly with
1213 persons who have intellectual disabilities ~~with retardation~~,
1214 autism, or other developmental disabilities.
1215 Section 29. Paragraph (a) of subsection (1) and paragraph
1216 (a) of subsection (3) of section 916.107, Florida Statutes, are
1217 amended to read:
1218 916.107 Rights of forensic clients.—

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1219 (1) RIGHT TO INDIVIDUAL DIGNITY.—
1220 (a) The policy of the state is that the individual dignity
1221 of the client shall be respected at all times and upon all
1222 occasions, including any occasion when the forensic client is
1223 detained, transported, or treated. Clients with mental illness,
1224 intellectual disability ~~retardation~~, or autism and who are
1225 charged with committing felonies shall receive appropriate
1226 treatment or training. In a criminal case involving a client who
1227 has been adjudicated incompetent to proceed or not guilty by
1228 reason of insanity, a jail may be used as an emergency facility
1229 for up to 15 days following the date the department or agency
1230 receives a completed copy of the court commitment order
1231 containing all documentation required by the applicable Florida
1232 Rules of Criminal Procedure. For a forensic client who is held
1233 in a jail awaiting admission to a facility of the department or
1234 agency, evaluation and treatment or training may be provided in
1235 the jail by the local community mental health provider for
1236 mental health services, by the developmental disabilities
1237 program for persons with intellectual disability ~~retardation~~ or
1238 autism, the client's physician or psychologist, or any other
1239 appropriate program until the client is transferred to a civil
1240 or forensic facility.
1241 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—
1242 (a) A forensic client shall be asked to give express and
1243 informed written consent for treatment. If a client refuses such
1244 treatment as is deemed necessary and essential by the client's
1245 multidisciplinary treatment team for the appropriate care of the
1246 client, such treatment may be provided under the following
1247 circumstances:

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1248 1. In an emergency situation in which there is immediate
1249 danger to the safety of the client or others, such treatment may
1250 be provided upon the written order of a physician for a period
1251 not to exceed 48 hours, excluding weekends and legal holidays.
1252 If, after the 48-hour period, the client has not given express
1253 and informed consent to the treatment initially refused, the
1254 administrator or designee of the civil or forensic facility
1255 shall, within 48 hours, excluding weekends and legal holidays,
1256 petition the committing court or the circuit court serving the
1257 county in which the facility is located, at the option of the
1258 facility administrator or designee, for an order authorizing the
1259 continued treatment of the client. In the interim, the need for
1260 treatment shall be reviewed every 48 hours and may be continued
1261 without the consent of the client upon the continued written
1262 order of a physician who has determined that the emergency
1263 situation continues to present a danger to the safety of the
1264 client or others.
1265 2. In a situation other than an emergency situation, the
1266 administrator or designee of the facility shall petition the
1267 court for an order authorizing necessary and essential treatment
1268 for the client. The order shall allow such treatment for a
1269 period not to exceed 90 days following the date of the entry of
1270 the order. Unless the court is notified in writing that the
1271 client has provided express and informed consent in writing or
1272 that the client has been discharged by the committing court, the
1273 administrator or designee shall, before ~~prior to~~ the expiration
1274 of the initial 90-day order, petition the court for an order
1275 authorizing the continuation of treatment for another 90-day
1276 period. This procedure shall be repeated until the client

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1277 provides consent or is discharged by the committing court.
1278 3. At the hearing on the issue of whether the court should
1279 enter an order authorizing treatment for which a client was
1280 unable to or refused to give express and informed consent, the
1281 court shall determine by clear and convincing evidence that the
1282 client has mental illness, intellectual disability ~~retardation~~,
1283 or autism, that the treatment not consented to is essential to
1284 the care of the client, and that the treatment not consented to
1285 is not experimental and does not present an unreasonable risk of
1286 serious, hazardous, or irreversible side effects. In arriving at
1287 the substitute judgment decision, the court must consider at
1288 least the following factors:
1289 a. The client's expressed preference regarding treatment;
1290 b. The probability of adverse side effects;
1291 c. The prognosis without treatment; and
1292 d. The prognosis with treatment.
1293
1294 The hearing shall be as convenient to the client as may be
1295 consistent with orderly procedure and shall be conducted in
1296 physical settings not likely to be injurious to the client's
1297 condition. The court may appoint a general or special magistrate
1298 to preside at the hearing. The client or the client's guardian,
1299 and the representative, shall be provided with a copy of the
1300 petition and the date, time, and location of the hearing. The
1301 client has the right to have an attorney represent him or her at
1302 the hearing, and, if the client is indigent, the court shall
1303 appoint the office of the public defender to represent the
1304 client at the hearing. The client may testify or not, as he or
1305 she chooses, and has the right to cross-examine witnesses and

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1306 may present his or her own witnesses.
1307 Section 30. The Division of Law Revision and Information is
1308 requested to rename part III of chapter 916, Florida Statutes,
1309 consisting of ss. 916.301-916.304, as "Forensic Services for
1310 Persons who are Intellectually Disabled or Autistic."
1311 Section 31. Subsections (1) and (2) of section 916.301,
1312 Florida Statutes, are amended to read:
1313 916.301 Appointment of experts.—
1314 (1) All evaluations ordered by the court under this part
1315 must be conducted by qualified experts who have expertise in
1316 evaluating persons who have an intellectual disability ~~with~~
1317 ~~retardation~~ or autism. The agency shall maintain and provide the
1318 courts annually with a list of available ~~retardation and autism~~
1319 professionals who are appropriately licensed and qualified to
1320 perform evaluations of defendants alleged to be incompetent to
1321 proceed due to intellectual disability ~~retardation~~ or autism.
1322 The courts may use professionals from this list when appointing
1323 experts and ordering evaluations under this part.
1324 (2) If a defendant's suspected mental condition is
1325 intellectual disability ~~retardation~~ or autism, the court shall
1326 appoint the following:
1327 (a) At least one, or at the request of any party, two
1328 experts to evaluate whether the defendant meets the definition
1329 of intellectual disability ~~retardation~~ or autism and, if so,
1330 whether the defendant is competent to proceed; and
1331 (b) A psychologist selected by the agency who is licensed
1332 or authorized by law to practice in this state, with experience
1333 in evaluating persons suspected of having an intellectual
1334 disability ~~retardation~~ or autism, and a social service

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1335 professional, with experience in working with persons who have
1336 an intellectual disability ~~with retardation~~ or autism.
1337 1. The psychologist shall evaluate whether the defendant
1338 meets the definition of intellectual disability ~~retardation~~ or
1339 autism and, if so, whether the defendant is incompetent to
1340 proceed due to intellectual disability ~~retardation~~ or autism.
1341 2. The social service professional shall provide a social
1342 and developmental history of the defendant.
1343 Section 32. Subsections (1), (2), and (4) of section
1344 916.3012, Florida Statutes, are amended to read:
1345 916.3012 Mental competence to proceed.—
1346 (1) A defendant whose suspected mental condition is
1347 intellectual disability ~~retardation~~ or autism is incompetent to
1348 proceed within the meaning of this chapter if the defendant does
1349 not have sufficient present ability to consult with the
1350 defendant's lawyer with a reasonable degree of rational
1351 understanding or if the defendant has no rational, as well as
1352 factual, understanding of the proceedings against the defendant.
1353 (2) Experts in intellectual disability ~~retardation~~ or
1354 autism appointed pursuant to s. 916.301 shall first consider
1355 whether the defendant meets the definition of intellectual
1356 disability ~~retardation~~ or autism and, if so, consider the
1357 factors related to the issue of whether the defendant meets the
1358 criteria for competence to proceed as described in subsection
1359 (1).
1360 (4) If the experts ~~should~~ find that the defendant is
1361 incompetent to proceed, the experts shall report on any
1362 recommended training for the defendant to attain competence to
1363 proceed. In considering the issues relating to training, the

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1364 examining experts shall specifically report on:
1365 (a) The intellectual disability ~~retardation~~ or autism
1366 causing the incompetence;
1367 (b) The training appropriate for the intellectual
1368 disability ~~retardation~~ or autism of the defendant and an
1369 explanation of each of the possible training alternatives in
1370 order of choices;
1371 (c) The availability of acceptable training and, if
1372 training is available in the community, the expert shall so
1373 state in the report; and
1374 (d) The likelihood of the defendant's attaining competence
1375 under the training recommended, an assessment of the probable
1376 duration of the training required to restore competence, and the
1377 probability that the defendant will attain competence to proceed
1378 in the foreseeable future.
1379 Section 33. Subsection (1), paragraphs (a) and (b) of
1380 subsection (2), and paragraph (a) of subsection (3) of section
1381 916.302, Florida Statutes, are amended to read:
1382 916.302 Involuntary commitment of defendant determined to
1383 be incompetent to proceed.—
1384 (1) CRITERIA.—Every defendant who is charged with a felony
1385 and who is adjudicated incompetent to proceed due to
1386 intellectual disability ~~retardation~~ or autism may be
1387 involuntarily committed for training upon a finding by the court
1388 of clear and convincing evidence that:
1389 (a) The defendant has an intellectual disability
1390 ~~retardation~~ or autism;
1391 (b) There is a substantial likelihood that in the near
1392 future the defendant will inflict serious bodily harm on himself

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1393 or herself or another person, as evidenced by recent behavior
1394 causing, attempting, or threatening such harm;
1395 (c) All available, less restrictive alternatives, including
1396 services provided in community residential facilities or other
1397 community settings, which would offer an opportunity for
1398 improvement of the condition have been judged to be
1399 inappropriate; and
1400 (d) There is a substantial probability that the
1401 intellectual disability ~~retardation~~ or autism causing the
1402 defendant's incompetence will respond to training and the
1403 defendant will regain competency to proceed in the reasonably
1404 foreseeable future.
1405 (2) ADMISSION TO A FACILITY.—
1406 (a) A defendant who has been charged with a felony and who
1407 is found to be incompetent to proceed due to intellectual
1408 disability ~~retardation~~ or autism, and who meets the criteria for
1409 involuntary commitment to the agency under ~~the provisions of~~
1410 this chapter, shall be committed to the agency, and the agency
1411 shall retain and provide appropriate training for the defendant.
1412 Within ~~No later than~~ 6 months after the date of admission or at
1413 the end of any period of extended commitment or at any time the
1414 administrator or designee determines ~~shall have determined~~ that
1415 the defendant has regained competency to proceed or no longer
1416 meets the criteria for continued commitment, the administrator
1417 or designee shall file a report with the court pursuant to this
1418 chapter and the applicable Florida Rules of Criminal Procedure.
1419 (b) A defendant determined to be incompetent to proceed due
1420 to intellectual disability ~~retardation~~ or autism may be ordered
1421 by a circuit court into a forensic facility designated by the

1422 agency for defendants who have an intellectual disability ~~mental~~
1423 ~~retardation~~ or autism.
1424 (3) PLACEMENT OF DUALLY DIAGNOSED DEFENDANTS.—
1425 (a) If a defendant has both an intellectual disability
1426 ~~mental retardation~~ or autism and ~~has~~ a mental illness,
1427 evaluations must address which condition is primarily affecting
1428 the defendant's competency to proceed. Referral of the defendant
1429 should be made to a civil or forensic facility most appropriate
1430 to address the symptoms that are the cause of the defendant's
1431 incompetence.
1432 Section 34. Subsection (1) of section 916.3025, Florida
1433 Statutes, is amended to read:
1434 916.3025 Jurisdiction of committing court.—
1435 (1) The committing court shall retain jurisdiction in the
1436 case of any defendant found to be incompetent to proceed due to
1437 intellectual disability ~~retardation~~ or autism and ordered into a
1438 forensic facility designated by the agency for defendants who
1439 have intellectual disabilities ~~mental retardation~~ or autism. A
1440 defendant may not be released except by the order of the
1441 committing court. An administrative hearing examiner does not
1442 have jurisdiction to determine issues of continuing commitment
1443 or release of any defendant involuntarily committed pursuant to
1444 this chapter.
1445 Section 35. Section 916.303, Florida Statutes, is amended
1446 to read:
1447 916.303 Determination of incompetency ~~due to retardation or~~
1448 ~~autism~~; dismissal of charges.—
1449 (1) The charges against any defendant found to be
1450 incompetent to proceed due to intellectual disability

1451 ~~retardation~~ or autism shall be dismissed without prejudice to
1452 the state if the defendant remains incompetent to proceed within
1453 a reasonable time after such determination, not to exceed 2
1454 years, unless the court in its order specifies its reasons for
1455 believing that the defendant will become competent to proceed
1456 within the foreseeable future and specifies the time within
1457 which the defendant is expected to become competent to proceed.
1458 The charges may be refiled by the state if the defendant is
1459 declared competent to proceed in the future.
1460 (2) If the charges are dismissed and if the defendant is
1461 considered to lack sufficient capacity to give express and
1462 informed consent to a voluntary application for services and
1463 lacks the basic survival and self-care skills to provide for his
1464 or her well-being or is likely to physically injure himself or
1465 herself or others if allowed to remain at liberty, the agency,
1466 the state attorney, or the defendant's attorney shall apply to
1467 the committing court to involuntarily admit the defendant to
1468 residential services pursuant to s. 393.11.
1469 (3) If the defendant is considered to need involuntary
1470 residential services for reasons described in subsection (2)
1471 and, further, there is a substantial likelihood that the
1472 defendant will injure another person or continues to present a
1473 danger of escape, and all available less restrictive
1474 alternatives, including services in community residential
1475 facilities or other community settings, which would offer an
1476 opportunity for improvement of the condition have been judged to
1477 be inappropriate, the agency, the state attorney, or the
1478 defendant's counsel may request the committing court to continue
1479 the defendant's placement in a secure facility pursuant to this

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1480 part. Any placement so continued ~~under this subsection~~ must be
1481 reviewed by the court at least annually at a hearing. The annual
1482 review and hearing must ~~shall~~ determine whether the defendant
1483 continues to meet the criteria described in this subsection and,
1484 if so, whether the defendant still requires involuntary
1485 placement in a secure facility and whether the defendant is
1486 receiving adequate care, treatment, habilitation, and
1487 rehabilitation, including psychotropic medication and behavioral
1488 programming. Notice of the annual review and review hearing
1489 shall be given to the state attorney and the defendant's
1490 attorney. ~~In no instance may~~ A defendant's placement in a secure
1491 facility may not exceed the maximum sentence for the crime for
1492 which the defendant was charged.
1493 Section 36. Subsection (1) of section 916.304, Florida
1494 Statutes, is amended to read:
1495 916.304 Conditional release.—
1496 (1) Except for an inmate currently serving a prison
1497 sentence, the committing court may order a conditional release
1498 of any defendant who has been found to be incompetent to proceed
1499 due to intellectual disability ~~retardation~~ or autism, based on
1500 an approved plan for providing community-based training. The
1501 committing criminal court may order a conditional release of any
1502 defendant to a civil facility in lieu of an involuntary
1503 commitment to a forensic facility pursuant to s. 916.302. Upon a
1504 recommendation that community-based training for the defendant
1505 is appropriate, a written plan for community-based training,
1506 including recommendations from qualified professionals, may be
1507 filed with the court, with copies to all parties. Such a plan
1508 may also be submitted by the defendant and filed with the court,

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1509 with copies to all parties. The plan must include:
1510 (a) Special provisions for residential care and adequate
1511 supervision of the defendant, including recommended location of
1512 placement.
1513 (b) Recommendations for auxiliary services such as
1514 vocational training, psychological training, educational
1515 services, leisure services, and special medical care.
1516
1517 In its order of conditional release, the court shall specify the
1518 conditions of release based upon the release plan and shall
1519 direct the appropriate agencies or persons to submit periodic
1520 reports to the courts regarding the defendant's compliance with
1521 the conditions of the release and progress in training, with
1522 copies to all parties.
1523 Section 37. Section 918.16, Florida Statutes, is amended to
1524 read:
1525 918.16 Sex offenses; testimony of person under age 16 or
1526 who has an intellectual disability ~~person with mental~~
1527 ~~retardation~~; testimony of victim; courtroom cleared;
1528 exceptions.—
1529 (1) Except as provided in subsection (2), in the trial of
1530 any case, civil or criminal, if ~~when~~ any person under the age of
1531 16 or any person with an intellectual disability ~~mental~~
1532 ~~retardation~~ as defined in s. 393.063 is testifying concerning
1533 any sex offense, the court shall clear the courtroom of all
1534 persons except parties to the cause and their immediate families
1535 or guardians, attorneys and their secretaries, officers of the
1536 court, jurors, newspaper reporters or broadcasters, court
1537 reporters, and, at the request of the victim, victim or witness

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1538 advocates designated by the state attorney's office.
1539 (2) If ~~When~~ the victim of a sex offense is testifying
1540 concerning that offense in any civil or criminal trial, the
1541 court shall clear the courtroom of all persons upon the request
1542 of the victim, regardless of the victim's age or mental
1543 capacity, except that parties to the cause and their immediate
1544 families or guardians, attorneys and their secretaries, officers
1545 of the court, jurors, newspaper reporters or broadcasters, court
1546 reporters, and, at the request of the victim, victim or witness
1547 advocates designated by the state attorney may remain in the
1548 courtroom.
1549 Section 38. Section 921.137, Florida Statutes, is amended
1550 to read:
1551 921.137 Imposition of the death sentence upon an
1552 intellectually disabled ~~a~~ defendant ~~with mental retardation~~
1553 prohibited.—
1554 (1) As used in this section, the term "intellectually
1555 disabled" or "intellectual disability" ~~"mental retardation"~~
1556 means significantly subaverage general intellectual functioning
1557 existing concurrently with deficits in adaptive behavior and
1558 manifested during the period from conception to age 18. The term
1559 "significantly subaverage general intellectual functioning," for
1560 the purpose of this section, means performance that is two or
1561 more standard deviations from the mean score on a standardized
1562 intelligence test specified in the rules of the Agency for
1563 Persons with Disabilities. The term "adaptive behavior," for the
1564 purpose of this definition, means the effectiveness or degree
1565 with which an individual meets the standards of personal
1566 independence and social responsibility expected of his or her

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1567 age, cultural group, and community. The Agency for Persons with
1568 Disabilities shall adopt rules to specify the standardized
1569 intelligence tests as provided in this subsection.
1570 (2) A sentence of death may not be imposed upon a defendant
1571 convicted of a capital felony if it is determined in accordance
1572 with this section that the defendant is intellectually disabled
1573 ~~has mental retardation~~.
1574 (3) A defendant charged with a capital felony who intends
1575 to raise intellectual disability ~~mental retardation~~ as a bar to
1576 the death sentence must give notice of such intention in
1577 accordance with the rules of court governing notices of intent
1578 to offer expert testimony regarding mental health mitigation
1579 during the penalty phase of a capital trial.
1580 (4) After a defendant who has given notice of his or her
1581 intention to raise intellectual disability ~~mental retardation~~ as
1582 a bar to the death sentence is convicted of a capital felony and
1583 an advisory jury has returned a recommended sentence of death,
1584 the defendant may file a motion to determine whether the
1585 defendant is intellectually disabled ~~has mental retardation~~.
1586 Upon receipt of the motion, the court shall appoint two experts
1587 in the field of intellectual disabilities ~~mental retardation~~ who
1588 shall evaluate the defendant and report their findings to the
1589 court and all interested parties prior to the final sentencing
1590 hearing. Notwithstanding s. 921.141 or s. 921.142, the final
1591 sentencing hearing shall be held without a jury. At the final
1592 sentencing hearing, the court shall consider the findings of the
1593 court-appointed experts and consider the findings of any other
1594 expert which is offered by the state or the defense on the issue
1595 of whether the defendant has an intellectual disability ~~mental~~

1596 ~~retardation~~. If the court finds, by clear and convincing
1597 evidence, that the defendant has an intellectual disability
1598 ~~mental retardation~~ as defined in subsection (1), the court may
1599 not impose a sentence of death and shall enter a written order
1600 that sets forth with specificity the findings in support of the
1601 determination.
1602 (5) If a defendant waives his or her right to a recommended
1603 sentence by an advisory jury following a plea of guilt or nolo
1604 contendere to a capital felony and adjudication of guilt by the
1605 court, or following a jury finding of guilt of a capital felony,
1606 upon acceptance of the waiver by the court, a defendant who has
1607 given notice as required in subsection (3) may file a motion for
1608 a determination of intellectual disability ~~mental retardation~~.
1609 Upon granting the motion, the court shall proceed as provided in
1610 subsection (4).
1611 (6) If, following a recommendation by an advisory jury that
1612 the defendant be sentenced to life imprisonment, the state
1613 intends to request the court to order that the defendant be
1614 sentenced to death, the state must inform the defendant of such
1615 request if the defendant has notified the court of his or her
1616 intent to raise intellectual disability ~~mental retardation~~ as a
1617 bar to the death sentence. After receipt of the notice from the
1618 state, the defendant may file a motion requesting a
1619 determination by the court of whether the defendant is
1620 intellectually disabled ~~has mental retardation~~. Upon granting
1621 the motion, the court shall proceed as provided in subsection
1622 (4).
1623 (7) Pursuant to s. 924.07, the state may appeal~~, pursuant~~
1624 ~~to s. 924.07,~~ a determination of intellectual disability ~~mental~~

1625 ~~retardation~~ made under subsection (4).
1626 (8) This section does not apply to a defendant who was
1627 sentenced to death before June 12, 2001 ~~prior to the effective~~
1628 ~~date of this act~~.
1629 (9) For purposes of the application of the criminal laws
1630 and procedural rules of this state to any matters relating to
1631 the imposition and execution of the death penalty, the terms
1632 "intellectual disability" or "intellectually disabled" are
1633 interchangeable with and have the same meaning as the terms
1634 "mental retardation" or "retardation" and "mentally retarded" as
1635 those terms were defined before July 1, 2012.
1636 Section 39. Paragraph (b) of subsection (2) of section
1637 941.38, Florida Statutes, is amended to read:
1638 941.38 Extradition of persons alleged to be of unsound
1639 mind.—
1640 (2) For the purpose of this section:
1641 (b) A "mentally incompetent person" is one who because of
1642 mental illness, intellectual disability ~~mental retardation~~,
1643 senility, excessive use of drugs or alcohol, or other mental
1644 incapacity is incapable of ~~either~~ managing his or her property
1645 or caring for himself or herself or both.
1646 Section 40. Section 944.602, Florida Statutes, is amended
1647 to read:
1648 944.602 Agency notification before release of
1649 intellectually disabled ~~mentally retarded~~ inmates.—Before the
1650 release by parole, release by reason of gain-time allowances
1651 provided for in s. 944.291, or expiration of sentence of any
1652 inmate who has been diagnosed as having an intellectual
1653 disability ~~mentally retarded~~ as defined in s. 393.063, the

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1654 Department of Corrections shall notify the Agency for Persons
1655 with Disabilities in order that sufficient time be allowed to
1656 notify the inmate or the inmate's representative, in writing, at
1657 least 7 days before ~~prior to~~ the inmate's release, of available
1658 community services.
1659 Section 41. Subsection (2) of section 945.025, Florida
1660 Statutes, is amended to read:
1661 945.025 Jurisdiction of department.—
1662 (2) In establishing, operating, and using ~~utilizing~~ these
1663 facilities, the department shall attempt, whenever possible, to
1664 avoid the placement of nondangerous offenders who have potential
1665 for rehabilitation with repeat offenders or dangerous offenders.
1666 Medical, mental, and psychological problems must ~~shall~~ be
1667 diagnosed and treated whenever possible. The Department of
1668 Children and Family Services and the Agency for Persons with
1669 Disabilities shall cooperate to ensure the delivery of services
1670 to persons under the custody or supervision of the department.
1671 If ~~When it is the intent of~~ the department intends to transfer a
1672 ~~mentally ill or retarded~~ prisoner who has a mental illness or
1673 intellectual disability to the Department of Children and Family
1674 Services or the Agency for Persons with Disabilities, an
1675 involuntary commitment hearing shall be held in accordance with
1676 ~~according to the provisions of~~ chapter 393 or chapter 394.
1677 Section 42. Subsection (5) of section 945.12, Florida
1678 Statutes, is amended to read:
1679 945.12 Transfers for rehabilitative treatment.—
1680 (5) When the department plans to release an offender who is
1681 ~~a~~ mentally ill or intellectually disabled ~~retarded offender~~, an
1682 involuntary commitment hearing shall be held as soon as possible

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1683 before ~~prior to~~ his or her release in accordance with~~, according~~
1684 ~~to the provisions of~~ chapter 393 or chapter 394.
1685 Section 43. Subsection (9) of section 945.42, Florida
1686 Statutes, is amended to read:
1687 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
1688 945.40-945.49, the following terms shall have the meanings
1689 ascribed to them, unless the context shall clearly indicate
1690 otherwise:
1691 (9) "Mentally ill" means an impairment of the mental or
1692 emotional processes that~~, of the ability to~~ exercise conscious
1693 control of one's actions~~,~~ or of the ability to perceive or
1694 understand reality, which impairment substantially interferes
1695 with the ~~a~~ person's ability to meet the ordinary demands of
1696 living. However, ~~regardless of etiology, except that,~~ for the
1697 purposes of transferring ~~transfer of~~ an inmate to a mental
1698 health treatment facility, the term does not include a
1699 ~~retardation or~~ developmental disability as defined in s. 393.063
1700 ~~chapter 393~~, simple intoxication, or conditions manifested only
1701 by antisocial behavior or substance abuse addiction. However, an
1702 individual who is ~~mentally retarded or~~ developmentally disabled
1703 may also have a mental illness.
1704 Section 44. Section 947.185, Florida Statutes, is amended
1705 to read:
1706 947.185 Application for intellectual disability ~~mental~~
1707 ~~retardation~~ services as condition of parole.—The Parole
1708 Commission may require as a condition of parole that any inmate
1709 who has been diagnosed as having an intellectual disability
1710 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,
1711 apply for services from the Agency for Persons with

1712 Disabilities.
1713 Section 45. Subsection (4) of section 984.19, Florida
1714 Statutes, is amended to read:
1715 984.19 Medical screening and treatment of child;
1716 examination of parent, guardian, or person requesting custody.—
1717 (4) A judge may order that a child alleged to be or
1718 adjudicated a child in need of services be treated by a licensed
1719 health care professional. The judge may also order such child to
1720 receive mental health or intellectual disability ~~retardation~~
1721 services from a psychiatrist, psychologist, or other appropriate
1722 service provider. If it is necessary to place the child in a
1723 residential facility for such services, ~~then~~ the procedures and
1724 criteria established in s. 394.467 or chapter 393 shall be used,
1725 as ~~whichever is~~ applicable. A child may be provided ~~mental~~
1726 ~~health or retardation~~ services in emergency situations~~,~~ pursuant
1727 to the procedures and criteria contained in s. 394.463(1) or
1728 chapter 393, as ~~whichever is~~ applicable.
1729 Section 46. Paragraph (a) of subsection (3) of section
1730 985.14, Florida Statutes, is amended to read:
1731 985.14 Intake and case management system.—
1732 (3) The intake and case management system shall facilitate
1733 consistency in the recommended placement of each child, and in
1734 the assessment, classification, and placement process, with the
1735 following purposes:
1736 (a) An individualized, multidisciplinary assessment process
1737 that identifies the priority needs of each ~~individual~~ child for
1738 rehabilitation and treatment and identifies any needs of the
1739 child's parents or guardians for services that would enhance
1740 their ability to provide adequate support, guidance, and

1741 supervision for the child. The ~~This~~ process begins ~~shall begin~~
1742 with the detention risk assessment instrument and decision,
1743 includes ~~shall include~~ the intake preliminary screening and
1744 comprehensive assessment for substance abuse treatment services,
1745 mental health services, intellectual disability ~~retardation~~
1746 services, literacy services, and other educational and treatment
1747 services as components, additional assessment of the child's
1748 treatment needs, and classification regarding the child's risks
1749 to the community. The completed multidisciplinary assessment
1750 process must ~~shall~~ result in the predisposition report.
1751 Section 47. Paragraph (g) of subsection (1) and subsection
1752 (5) of section 985.145, Florida Statutes, are amended to read:
1753 985.145 Responsibilities of juvenile probation officer
1754 during intake; screenings and assessments.—
1755 (1) The juvenile probation officer shall serve as the
1756 primary case manager for the purpose of managing, coordinating,
1757 and monitoring the services provided to the child. Each program
1758 administrator within the Department of Children and Family
1759 Services shall cooperate with the primary case manager in
1760 carrying out the duties and responsibilities described in this
1761 section. In addition to duties specified in other sections and
1762 through departmental rules, the assigned juvenile probation
1763 officer shall be responsible for the following:
1764 (g) *Comprehensive assessment.*—The juvenile probation
1765 officer, pursuant to uniform procedures established by the
1766 department and upon determining that the report, affidavit, or
1767 complaint is complete, shall:
1768 1. Perform the preliminary screening and make referrals for
1769 a comprehensive assessment regarding the child's need for

1770 substance abuse treatment services, mental health services,
1771 intellectual disability ~~retardation~~ services, literacy services,
1772 or other educational or treatment services.
1773 2. If ~~When~~ indicated by the preliminary screening, provide
1774 for a comprehensive assessment of the child and family for
1775 substance abuse problems, using community-based licensed
1776 programs with clinical expertise and experience in the
1777 assessment of substance abuse problems.
1778 3. If ~~When~~ indicated by the preliminary screening, provide
1779 for a comprehensive assessment of the child and family for
1780 mental health problems, using community-based psychologists,
1781 psychiatrists, or other licensed mental health professionals who
1782 have clinical expertise and experience in the assessment of
1783 mental health problems.
1784 (5) If the screening and assessment indicate that the
1785 interests of the child and the public will be best served
1786 ~~thereby~~, the juvenile probation officer, with the approval of
1787 the state attorney, may refer the child for care, diagnostic,
1788 and evaluation services; substance abuse treatment services;
1789 mental health services; intellectual disability ~~retardation~~
1790 services; a diversionary, arbitration, or mediation program;
1791 community service work; or other programs or treatment services
1792 voluntarily accepted by the child and the child's parents or
1793 legal guardian. If ~~Whenever~~ a child volunteers to participate in
1794 any work program under this chapter or volunteers to work in a
1795 specified state, county, municipal, or community service
1796 organization supervised work program or to work for the victim,
1797 the child is ~~shall be~~ considered an employee of the state for
1798 the purposes of liability. In determining the child's average

1799 weekly wage, unless otherwise determined by a specific funding
1800 program, all remuneration received from the employer is
1801 considered a gratuity, and the child is not entitled to any
1802 benefits otherwise payable under s. 440.15~~,~~ regardless of
1803 whether the child may be receiving wages and remuneration from
1804 other employment with another employer and regardless of the
1805 child's future wage-earning capacity.
1806 Section 48. Subsections (2) and (6) of section 985.18,
1807 Florida Statutes, are amended to read:
1808 985.18 Medical, psychiatric, psychological, substance
1809 abuse, and educational examination and treatment.—
1810 (2) If ~~Whenever~~ a child has been found to have committed a
1811 delinquent act, or before such finding with the consent of any
1812 parent or legal custodian of the child, the court may order the
1813 child to be treated by a physician. The court may also order the
1814 child to receive mental health, substance abuse, or intellectual
1815 disability ~~retardation~~ services from a psychiatrist,
1816 psychologist, or other appropriate service provider. If it is
1817 necessary to place the child in a residential facility for such
1818 services, the procedures and criteria established in chapter
1819 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,
1820 must ~~shall~~ be used. After a child has been adjudicated
1821 delinquent, if an educational needs assessment by the district
1822 school board or the Department of Children and Family Services
1823 has been ~~previously~~ conducted, the court shall order the report
1824 ~~of such needs assessment~~ included in the child's court record in
1825 lieu of a new assessment. For purposes of this section, an
1826 educational needs assessment includes, but is not limited to,
1827 reports of intelligence and achievement tests, screening for

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1828 learning and other disabilities ~~and other handicaps~~, and
1829 screening for the need for alternative education.
1830 (6) A physician must ~~shall~~ be immediately notified by the
1831 person taking the child into custody or the person having
1832 custody if there are indications of physical injury or illness,
1833 or the child shall be taken to the nearest available hospital
1834 for emergency care. A child may be provided mental health,
1835 substance abuse, or intellectual disability ~~retardation~~
1836 services~~,~~ in emergency situations~~,~~ pursuant to chapter 393,
1837 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a
1838 hearing, the court may order the custodial parent or parents,
1839 guardian, or other custodian, if found able to do so, to
1840 reimburse the county or state for the expense involved in such
1841 emergency treatment or care.
1842 Section 49. Paragraph (e) of subsection (1), subsections
1843 (2) through (4), and paragraph (a) of subsection (6) of section
1844 985.19, Florida Statutes, are amended to read:
1845 985.19 Incompetency in juvenile delinquency cases.—
1846 (1) If, at any time prior to or during a delinquency case,
1847 the court has reason to believe that the child named in the
1848 petition may be incompetent to proceed with the hearing, the
1849 court on its own motion may, or on the motion of the child's
1850 attorney or state attorney must, stay all proceedings and order
1851 an evaluation of the child's mental condition.
1852 (e) For incompetency evaluations related to intellectual
1853 disability ~~mental retardation~~ or autism, the court shall order
1854 the Agency for Persons with Disabilities to examine the child to
1855 determine if the child meets the definition of "intellectual
1856 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,

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1857 whether the child is competent to proceed with delinquency
1858 proceedings.
1859 (2) A child who is adjudicated incompetent to proceed, and
1860 who has committed a delinquent act or violation of law, either
1861 of which would be a felony if committed by an adult, must be
1862 committed to the Department of Children and Family Services for
1863 treatment or training. A child who has been adjudicated
1864 incompetent to proceed because of age or immaturity, or for any
1865 reason other than for mental illness, intellectual disability,
1866 ~~or retardation~~ or autism, must not be committed to the
1867 department or to the Department of Children and Family Services
1868 for restoration-of-competency treatment or training services.
1869 For purposes of this section, a child who has committed a
1870 delinquent act or violation of law, either of which would be a
1871 misdemeanor if committed by an adult, may not be committed to
1872 the department or to the Department of Children and Family
1873 Services for restoration-of-competency treatment or training
1874 services.
1875 (3) If the court finds that a child has mental illness,
1876 intellectual disability ~~mental retardation~~, or autism and
1877 adjudicates the child incompetent to proceed, the court must
1878 also determine whether the child meets the criteria for secure
1879 placement. A child may be placed in a secure facility or program
1880 if the court makes a finding by clear and convincing evidence
1881 that:
1882 (a) The child has mental illness, intellectual disability
1883 ~~mental retardation~~, or autism and because of the mental illness,
1884 intellectual disability ~~mental retardation~~, or autism:
1885 1. The child is manifestly incapable of surviving with the

1886 help of willing and responsible family or friends, including
1887 available alternative services, and without treatment or
1888 training the child is likely to ~~either~~ suffer from neglect or
1889 refuse to care for self, and such neglect or refusal poses a
1890 real and present threat of substantial harm to the child's well-
1891 being; or
1892 2. There is a substantial likelihood that in the near
1893 future the child will inflict serious bodily harm on self or
1894 others, as evidenced by recent behavior causing, attempting, or
1895 threatening such harm; and
1896 (b) All available less restrictive alternatives, including
1897 treatment or training in community residential facilities or
1898 community settings which would offer an opportunity for
1899 improvement of the child's condition, are inappropriate.
1900 (4) A child who is determined to have mental illness,
1901 intellectual disability ~~mental retardation~~, or autism, who has
1902 been adjudicated incompetent to proceed, and who meets the
1903 criteria set forth in subsection (3), must be committed to the
1904 Department of Children and Family Services and receive treatment
1905 or training in a secure facility or program that is the least
1906 restrictive alternative consistent with public safety. Any
1907 placement of a child to a secure residential program must be
1908 separate from adult forensic programs. If the child attains
1909 competency, ~~then~~ custody, case management, and supervision of
1910 the child shall ~~will~~ be transferred to the department in order
1911 to continue delinquency proceedings; however, the court retains
1912 authority to order the Department of Children and Family
1913 Services to provide continued treatment or training to maintain
1914 competency.

1915 (a) A child adjudicated incompetent due to intellectual
1916 disability ~~mental retardation~~ or autism may be ordered into a
1917 secure program or facility designated by the Department of
1918 Children and Family Services for children who have intellectual
1919 disabilities ~~with mental retardation~~ or autism.
1920 (b) A child adjudicated incompetent due to mental illness
1921 may be ordered into a secure program or facility designated by
1922 the Department of Children and Family Services for children
1923 having mental illnesses.
1924 (c) If ~~Whenever~~ a child is placed in a secure residential
1925 facility, the department shall ~~will~~ provide transportation to
1926 the secure residential facility for admission and from the
1927 secure residential facility upon discharge.
1928 (d) The purpose of the treatment or training is the
1929 restoration of the child's competency to proceed.
1930 (e) The service provider must file a written report with
1931 the court pursuant to the applicable Florida Rules of Juvenile
1932 Procedure within ~~not later than~~ 6 months after the date of
1933 commitment, or at the end of any period of extended treatment or
1934 training, and at any time the Department of Children and Family
1935 Services, through its service provider, determines the child has
1936 attained competency or no longer meets the criteria for secure
1937 placement, or at such shorter intervals as ordered by the court.
1938 A copy of a written report evaluating the child's competency
1939 must be filed by the provider with the court and with the state
1940 attorney, the child's attorney, the department, and the
1941 Department of Children and Family Services.
1942 (6)(a) If a child is determined to have mental illness,
1943 intellectual disability ~~mental retardation~~, or autism and is

1944 found to be incompetent to proceed but does not meet the
1945 criteria set forth in subsection (3), the court shall commit the
1946 child to the Department of Children and Family Services and
1947 ~~shall~~ order the Department of Children and Family Services to
1948 provide appropriate treatment and training in the community. The
1949 purpose of the treatment or training is the restoration of the
1950 child's competency to proceed.
1951 Section 50. Section 985.195, Florida Statutes, is amended
1952 to read:
1953 985.195 Transfer to other treatment services.—Any child
1954 committed to the department may be transferred to intellectual
1955 disability ~~retardation~~, mental health, or substance abuse
1956 treatment facilities for diagnosis and evaluation pursuant to
1957 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~
1958 applicable, for up to ~~a period not to exceed~~ 90 days.
1959 Section 51. Paragraph (b) of subsection (1) of section
1960 985.61, Florida Statutes, is amended to read:
1961 985.61 Early delinquency intervention program; criteria.—
1962 (1) The Department of Juvenile Justice shall, contingent
1963 upon specific appropriation and with the cooperation of local
1964 law enforcement agencies, the judiciary, district school board
1965 personnel, the office of the state attorney, the office of the
1966 public defender, the Department of Children and Family Services,
1967 and community service agencies that work with children,
1968 establish an early delinquency intervention program, the
1969 components of which shall include, but not be limited to:
1970 (b) Treatment modalities, including substance abuse
1971 treatment services, mental health services, and ~~retardation~~
1972 services for intellectual disabilities.

1973 Section 52. It is the intent of the Legislature that this
1974 act not expand or contract the scope or application of any
1975 provision of the Florida Statutes. This act may not be construed
1976 to change the application of any provision of Florida Statutes
1977 to any person.
1978 Section 53. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR THAD ALTMAN
16th District

March 14, 2013

The Honorable Greg Evers
Senate Committee on Criminal Justice, Chair
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that SB 142, related to *Intellectual Disabilities,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/rk

CC: Amanda Cannon, Staff Director, 510 Knott Building

REPLY TO:
❒ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
❒ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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)

4-1-13
Meeting Date

Topic: Intellectual Disability Waiver

Bill Number: SB 142 *(if applicable)*

Name: Margaret S. Hooper

Amendment Barcode: *(if applicable)*

Job Title: Public Policy Coordinator

Address: 4279 Four Oaks Blvd
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 921-7263

E-mail: Hooper.Mg@gmail.com

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

Representing: Florida Developmental Disabilities Council

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)

4-1-13
Meeting Date

Topic: Intellectual Disabilities

Bill Number: SB 142 *(if applicable)*

Name: Dixie Sansom

Amendment Barcode: _____ *(if applicable)*

Job Title: Lobbyist

Address: PO Box 98
Street

Cocoa, FL 32923
City *State* *Zip*

Phone: 321-543-7195

E-mail: dixiesansom@aol.com

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

Representing: The Arc 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

APPEARANCE RECORD

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

9.1.13
Meeting Date

Topic: Intellectual Disabilities

Bill Number: SB 142 *(if applicable)*

Name: Deborah Linton

Amendment Barcode: — *(if applicable)*

Job Title: Executive Director

Address: 2898 Mahan Dr., Suite 1
Street

Tallahassee, FL
City *State* *Zip*

Phone: 850-921-0460

E-mail: deborah@arcflorida.org

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

Representing: The Arc 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 454

INTRODUCER: Education Committee and Senator Benacquisto

SUBJECT: Florida College System Police Officers

DATE: March 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Klebacha	ED	**Fav/CS**
2.	Erickson	Cannon	CJ	**Favorable**
3.				
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 454 expands the jurisdiction of Florida College System (FCS) institution police officers to enforce the law, consistent with the same authority that is provided to state university police officers. In particular, the bill authorizes college police officers to:

- Enforce laws within defined jurisdictional areas as agreed upon in a mutual aid agreement with another law enforcement agency;
- Enforce traffic laws when the violations occur within 1,000 feet of any college owned or controlled property or facilities;
- Enforce traffic laws beyond the 1,000-foot threshold when hot pursuit originates on college property or within 1,000 feet of college owned or controlled property or facilities, or as agreed upon in accordance with a mutual aid agreement;
- Arrest persons for violations of state law or applicable county or city ordinances if the violation occurs on or within 1,000 feet of college owned or controlled property or facilities; and
- Arrest persons for violations of state law or applicable county or city ordinances beyond the 1,000-foot threshold when hot pursuit originates on college property or within 1,000 feet of

college owned or controlled property or facilities, or as agreed upon in accordance with a mutual aid agreement.

The bill will take effect July 1, 2013.

The bill amends sections 23.1225, 316.640, and 1012.88, Florida Statutes.

II. Present Situation:

Florida College System Institution Police and University Police

"Florida College System" (FCS) institution refers to any public college, state college, or community college in the state of Florida.[1] Currently, FCS and "State University System" (SUS) institutions[2] are allowed to employ police officers.[3] Each police officer of an FCS or SUS institution is considered a law enforcement officer of the state and must meet the minimum standards established by ch. 943, F.S., and the Criminal Justice Standards and Training Commission.[4]

FCS institution police officers may arrest any person for a violation of state law or an applicable county or city ordinance when the violation occurs on the property or facilities of the officer's employing FCS institution or on the property or facilities of a direct-support organization of the FCS institution. FCS institution police officers may also arrest a person off campus for a violation that occurred on campus if hot pursuit began on their property or facilities.[5] In regard to traffic violations, s. 316.640, F.S., authorizes FCS institution police officers to enforce traffic law violations when the violations occur on any property or facility under the guidance, supervision, regulation, or control of an FCS institution.[6]

Prior to 2009, SUS police officers generally had the same arrest and traffic enforcement authority as that currently given to FCS institution police officers. However, in 2009, the Legislature passed Senate Bill 554, expanding this authority.[7] Currently, SUS police officers are authorized to:

- Make arrests for violations of state law or city or county ordinances that occur:
  - On or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of the state university, a direct-support organization of the university, or any other organization controlled by the state university; or
  - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.[8]

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[1] The term includes public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institutions. For a list of institutions, *see* ss. 1000.21(3) and 1004.66, F.S.
[2] The term includes institutions and any branch campuses, centers, or other affiliates of the institutions. For a list of institutions, see s. 1000.21(6), F.S.
[3] Sections 1012.88 and 1012.97, F.S.
[4] *Id.*
[5] Section 1012.88(2), F.S.
[6] Section 316.640(1)(a)c., F.S.
[7] Chapter 2009-216, L.O.F.
[8] See discussion of this statute in the analysis, *supra*.

- Make an off campus arrest when hot pursuit begins on or within 1,000 feet of university property or facilities;
- Enforce all of the traffic laws of this state when violations occur:
  - On or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of the state university, or any other organization controlled by the state university or a direct-support organization of the state university; or
  - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.
- Enforce traffic laws off campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.[9]

Due to the 2009 legislation, SUS institution police officers currently have greater authority to make arrests and enforce traffic violations than FCS institution police officers.

According to the Department of Education, as of February 4, 2013, there were five Florida College System institutions with a police force: Pensacola State College, Tallahassee Community College, Santa Fe College, Miami Dade College, and Edison State College.[10]

All state universities listed in s. 1000.21(6), F.S., have police departments, except for Florida Polytechnic University.[11]

Mutual Aid Agreements

Section 23.1225, F.S., defines "mutual aid agreement," as one of the following types of agreement:

- A voluntary cooperation written agreement between two or more law enforcement agencies, which agreement permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines. The agreement must specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and for authorizing assistance, the agency or entity that has command and supervisory responsibility, a time limit for the agreement, the amount of any compensation or reimbursement to the assisting agency or entity, and any other terms and conditions necessary to give it effect. Examples of law enforcement activities that may be addressed in a voluntary cooperation written agreement include, but are not limited to, establishing a joint city-county task force on narcotics smuggling, authorizing school safety officers to enforce laws in an area within 1,000 feet of a school or school board property, authorizing state university police officers to enforce laws within a specified jurisdictional area as agreed upon in the voluntary cooperation written agreement, or establishing a joint city-county traffic enforcement task force.

[9] *See* ss. 1012.97(2) and 316.640(1)(a)1.b., F.S.
[10] Florida Department of Education bill analysis for SB 454 (on file with the Senate Education Committee).
[11] Information provided by FDLE staff.

- A requested operational assistance written agreement between two or more law enforcement agencies, which agreement is for the rendering of assistance in a law enforcement emergency. The agreement must specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and for authorizing assistance, the agency or entity that has command and supervisory responsibility, a time limit for the agreement, the amount of any compensation or reimbursement to the assisting agency or entity, and any other terms and conditions necessary to give it effect. An example of the use of a requested operational assistance written agreement is to meet a request for assistance due to a civil disturbance or other emergency as defined in s. 252.34, F.S.
- A combination of the agreements previously described.[12]

As used in s. 23.1225, F.S., "law enforcement agency" means any agency or unit of government that has authority to employ or appoint law enforcement officers, as defined in s. 943.10(1), F.S.[13]

Pursuant to s. 23.1225, F.S., a mutual aid agreement may allow for discretion by the parties as to when, whether, and to what extent assistance will be available.[14] The mutual aid agreement may be entered into by a law enforcement agency through a written agreement executed by the chief executive officer of the agency, who is authorized to contractually bind the agency.[15] A copy of a mutual aid agreement must be filed with the Florida Department of Law Enforcement (FDLE) within 14 days after it is signed.[16]

In the event of a disaster or emergency such that a state of emergency is declared by the Governor pursuant to ch. 252, F.S., the requirement that a requested operational assistance agreement be a written agreement for rendering of assistance in a law enforcement emergency may be waived by the participating agencies for a period of up to 90 days from the declaration of the disaster.[17] When a law enforcement agency lends assistance under the emergency provision of this section, all powers, privileges, and immunities listed in s. 23.127, F.S., except with regard to interstate mutual aid agreements, apply to the agency or entity, if the law enforcement employees rendering services are being requested and coordinated by the affected local law enforcement executive in charge of law enforcement operations.[18] A listing of such agencies or entities and the officers and employees of such agencies or entities rendering assistance pursuant to this emergency provision must be maintained by the agency or entity requesting such assistance and filed at the end of the 90-day period with the FDLE.[19]

The 2009 legislation authorized state university police officers to enforce laws within a specified jurisdictional area as agreed upon in the voluntary cooperation written agreement.[20]

---

[12] Section 23.1225(1)(a)-c), F.S.
[13] Section 23.1225(1)(d), F.S.
[14] Section 23.1225(2), F.S.
[15] Section 23.1225(3), F.S.
[16] Section 23.1225(4), F.S.
[17] Section 23.1225(5), F.S.
[18] Section 23.1225(5)(a), F.S.
[19] Section 23.1225(5)(b), F.S.
[20] Chapter 2009-216, L.O.F.; s. 23.1225(1)(a), F.S.

III. Effect of Proposed Changes:

The bill aligns the jurisdictional authority of FCS institution police officers with the same statutory authorities established for SUS police. Specifically, the bill authorizes FCS institution police officers to:

- Enforce laws within defined jurisdictional areas as agreed upon in a mutual aid agreement with another law enforcement agency;
- Enforce traffic laws when the violations occur within 1,000 feet of any college owned or controlled property or facilities;
- Enforce traffic laws beyond the 1,000-foot threshold when hot pursuit originates on college property or within 1,000 feet of college owned or controlled property or facilities, or as agreed upon in accordance with a mutual aid agreement;
- Arrest persons for violations of state law or applicable county or city ordinances if the violation occurs on, or within 1,000 feet of, college owned or controlled property, and or facilities; and
- Arrest persons for violations of state law or applicable county or city ordinances beyond the 1,000-foot threshold when hot pursuit originates on college property or within 1,000 feet of college owned or controlled property or facilities, or as agreed upon in accordance with a mutual aid agreement.

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 Board of Governors reviewed the original bill and did not find at the time of its analysis that the bill has an impact on the State University System.[21] At the time this analysis was completed no information was available regarding impact, if any, on the Florida College System.

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 Education on March 12, 2013:
The Committee Substitute provides consistent terminology to clarify that college police officers are employed by a Florida College System institution, not by the Florida College System.

B. Amendments:

None.

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

[21] Senate Fiscal Note, Senate Bill 434 and 454, Board of Governors (January 25, 2013) (on file with the Committee on Criminal Justice).

By the Committee on Education; and Senator Benacquisto

A bill to be entitled

An act relating to Florida College System institution police officers; amending s. 23.1225, F.S.; providing for mutual aid agreements involving Florida College System institution police officers; amending s. 316.640, F.S.; providing for enforcement of traffic laws in certain areas by Florida College System institution police officers; amending s. 1012.88, F.S.; revising provisions relating to the jurisdictional authority of Florida College System institution police officers; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 23.1225, Florida Statutes, is amended to read:

23.1225 Mutual aid agreements.—

(1) The term "mutual aid agreement," as used in this part, refers to one of the following types of agreement:

(a) A voluntary cooperation written agreement between two or more law enforcement agencies, which agreement permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines. The agreement must specify the nature of the law enforcement assistance to be rendered, the agency or entity that shall bear any liability arising from acts undertaken under the agreement, the procedures for requesting and for authorizing assistance, the agency or entity that has command and supervisory responsibility, a time

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

limit for the agreement, the amount of any compensation or reimbursement to the assisting agency or entity, and any other terms and conditions necessary to give it effect. Examples of law enforcement activities that may be addressed in a voluntary cooperation written agreement include, but are not limited to, establishing a joint city-county task force on narcotics smuggling, authorizing school safety officers to enforce laws in an area within 1,000 feet of a school or school board property, authorizing state university or Florida College System institution police officers to enforce laws within a specified jurisdictional area as agreed upon in a ~~the~~ voluntary cooperation written agreement, or establishing a joint city-county traffic enforcement task force.

Section 2. Paragraph (a) of subsection (1) of section 316.640, Florida Statutes, is amended to read:

316.640 Enforcement.—The enforcement of the traffic laws of this state is vested as follows:

(1) STATE.—

(a)1.a. The Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles; the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; and the agents, inspectors, and officers of the Department of Law Enforcement each have authority to enforce all of the traffic laws of this state on all the streets and highways thereof and elsewhere throughout the state wherever the public has a right to travel by motor vehicle.

b. University police officers may enforce all of the traffic laws of this state when violations occur on or within 1,000 feet of any property or facilities that are under the

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

59 guidance, supervision, regulation, or control of a state
60 university, a direct-support organization of such state
61 university, or any other organization controlled by the state
62 university or a direct-support organization of the state
63 university, or when such violations occur within a specified
64 jurisdictional area as agreed upon in a mutual aid agreement
65 entered into with a law enforcement agency pursuant to s.
66 23.1225(1). Traffic laws may also be enforced off-campus when
67 hot pursuit originates on or within 1,000 feet of any such
68 property or facilities, or as agreed upon in accordance with the
69 mutual aid agreement.
70 c. Florida ~~Community~~ College System institution police
71 officers may enforce all the traffic laws of this state only
72 when such violations occur on or within 1,000 feet of any
73 property or facilities that are under the guidance, supervision,
74 regulation, or control of the Florida College System
75 institution, or when such violations occur within a specified
76 jurisdictional area as agreed upon in a mutual aid agreement
77 entered into with a law enforcement agency pursuant to s.
78 23.1225. Traffic laws may also be enforced off-campus when hot
79 pursuit originates on or within 1,000 feet of any such property
80 or facilities, or as agreed upon in accordance with the mutual
81 aid agreement ~~community college system~~.
82 d. Police officers employed by an airport authority may
83 enforce all of the traffic laws of this state only when such
84 violations occur on any property or facilities that are owned or
85 operated by an airport authority.
86 (I) An airport authority may employ as a parking
87 enforcement specialist any individual who successfully completes

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

88 a training program established and approved by the Criminal
89 Justice Standards and Training Commission for parking
90 enforcement specialists but who does not otherwise meet the
91 uniform minimum standards established by the commission for law
92 enforcement officers or auxiliary or part-time officers under s.
93 943.12. This sub-sub-subparagraph may not be construed to permit
94 the carrying of firearms or other weapons, nor shall such
95 parking enforcement specialist have arrest authority.
96 (II) A parking enforcement specialist employed by an
97 airport authority may enforce all state, county, and municipal
98 laws and ordinances governing parking only when such violations
99 are on property or facilities owned or operated by the airport
100 authority employing the specialist, by appropriate state,
101 county, or municipal traffic citation.
102 e. The Office of Agricultural Law Enforcement of the
103 Department of Agriculture and Consumer Services may enforce
104 traffic laws of this state.
105 f. School safety officers may enforce all of the traffic
106 laws of this state when such violations occur on or about any
107 property or facilities that are under the guidance, supervision,
108 regulation, or control of the district school board.
109 2. An agency of the state as described in subparagraph 1.
110 is prohibited from establishing a traffic citation quota. A
111 violation of this subparagraph is not subject to the penalties
112 provided in chapter 318.
113 3. Any disciplinary action taken or performance evaluation
114 conducted by an agency of the state as described in subparagraph
115 1. of a law enforcement officer's traffic enforcement activity
116 must be in accordance with written work-performance standards.

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

117 Such standards must be approved by the agency and any collective
118 bargaining unit representing such law enforcement officer. A
119 violation of this subparagraph is not subject to the penalties
120 provided in chapter 318.
121 4. The Division of the Florida Highway Patrol may employ as
122 a traffic accident investigation officer any individual who
123 successfully completes instruction in traffic accident
124 investigation and court presentation through the Selective
125 Traffic Enforcement Program as approved by the Criminal Justice
126 Standards and Training Commission and funded through the
127 National Highway Traffic Safety Administration or a similar
128 program approved by the commission, but who does not necessarily
129 meet the uniform minimum standards established by the commission
130 for law enforcement officers or auxiliary law enforcement
131 officers under chapter 943. Any such traffic accident
132 investigation officer who makes an investigation at the scene of
133 a traffic accident may issue traffic citations, based upon
134 personal investigation, when he or she has reasonable and
135 probable grounds to believe that a person who was involved in
136 the accident committed an offense under this chapter, chapter
137 319, chapter 320, or chapter 322 in connection with the
138 accident. This subparagraph does not permit the officer to carry
139 firearms or other weapons, and such an officer does not have
140 authority to make arrests.
141 Section 3. Subsection (2) of section 1012.88, Florida
142 Statutes, is amended to read:
143 1012.88 Florida College System institution police.—
144 (2) Each Florida College System institution police officer
145 is a law enforcement officer of the state and a conservator of

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

146 the peace who has the authority to arrest, in accordance with
147 the laws of this state, any person for a violation of state law
148 or applicable county or municipal ordinance if that violation
149 occurs on or in any property or facilities or within 1,000 feet
150 of any property of the Florida College System institution by
151 which he or she is employed or any property or facilities of a
152 direct-support organization of such Florida College System
153 institution or any other organization controlled by the Florida
154 College System institution, or when such violations occur within
155 a specified jurisdictional area as agreed upon in a mutual aid
156 agreement entered into with a law enforcement agency pursuant to
157 s. 23.1225. A Florida College System institution police officer
158 may also arrest a person off campus for a violation committed on
159 campus after a hot pursuit of that person that began on or
160 within 1,000 feet of any such property or facilities. A Florida
161 College System institution police officer may bear arms in the
162 performance of his or her duties and carry out a search pursuant
163 to a search warrant on the campus where he or she is employed.
164 Florida College System institution police, upon request of the
165 sheriff or local police authority, may serve subpoenas or other
166 legal process and may make arrests of persons against whom
167 arrest warrants have been issued or against whom charges have
168 been made for violations of federal or state laws or county or
169 municipal ordinances.
170 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

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

SENATOR LIZBETH BENACQUISTO
Majority Leader
30th District

March 14, 2013

The Honorable Greg Evers
Senate Criminal Justice, Chair
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 454 – Relating to Florida State College System Police

Dear Mr. Chairman:

Please allow this letter to serve as my respectful request to agenda SB 454, Florida State College System Police, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 30

Cc: Amanda Cannon

REPLY TO:
❒ 1926 Victoria Ave, 2nd Floor, Fort Myers, Florida 33901 (239) 338-2570
❒ 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

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)

01 April 2013
Meeting Date

Topic: FL College System Law Enforcement

Bill Number: 454 *(if applicable)*

Name: Matthew Holliday

Amendment Barcode: _____ *(if applicable)*

Job Title: Dir. Governmental Relations

Address: 8099 College Parkway
Street

Ft. Myers, FL 33919
City, State, Zip

Phone: 239-826-7864

E-mail: mholliday@edison.edu

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

Representing: Edison State College

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)

4 / 1 /2013
Meeting Date

Topic _____ Bill Number 454 *(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

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 496

INTRODUCER: Judiciary Committee and Senator Dean

SUBJECT: Marshal of the Supreme Court

DATE: March 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	**Fav/CS**
2.	Cellon	Cannon	CJ	**Favorable**
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/SB 496 amends ss. 25.251 and 25.271, F.S., concerning the Office of the Marshal of the Supreme Court to:

- Require that the marshal and his or her assistants, redesignated as deputies under the bill, be law enforcement officers as defined under s. 943.10(1), F.S.;
- Give the marshal and his or her deputies statewide authority to bear arms and perform and make arrests in connection with their official duties for the Supreme Court;
- Specify that the marshal and his or her deputies must comply with s. 943.13, F.S., relating to the qualifications and training of law enforcement officers; and
- Remove the requirement that they complete a minimum standards training program by the Criminal Justice Standards Training Commission since the marshal and deputies are required to comply with all of the provisions in s. 943.13, F.S., to be certified as law enforcement officers.

This bill substantially amends sections 25.251 and 25.271 of the Florida Statutes:

II. Present Situation:

Article V, section 3 of the Florida Constitution directs the Florida Supreme Court to appoint a marshal. Section 25.251, F.S., codifies this requirement and creates the Office of the Marshal of the Florida Supreme Court. The marshal's primary role, as specified in s. 25.271, F.S., is to provide safety and security for the justices, employees, and facilities of the Supreme Court and be conservators of the peace in any building in which the Supreme Court is sitting.[1] In the course of carrying out those duties, a marshal, or his or her assistant, may apprehend any person disturbing the peace and deliver that person to the appropriate law enforcement officer.[2] Section 25.271, F.S., also requires that the marshal keep the grounds of the Supreme Court Building clean and free of trespassers.[3]

A marshal, and his or her assistants, is required to attend and complete a minimum standards training program by the Criminal Justice Standards Training Commission (CJSTC), which is housed within the Florida Department of Law Enforcement (FDLE).[4] From 1983 until 2002, marshals and their assistants received training from the United States Marshals service which was approved by the CJSTC.[5] However, in 2002, the FDLE advised that they lacked statutory authority to approve training programs not developed by the FDLE. This left only the basic recruit training offered by the FDLE.[6]

In addition to completion of the basic recruit training, s. 943.13, F.S., also requires that a person seeking certification as a law enforcement officer:

(1) Be at least 19 years of age.
(2) Be a citizen of the United States, notwithstanding any law of the state to the contrary.
(3) Be a high school graduate or its "equivalent" as the commission has defined the term by rule.
(4) Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication. Notwithstanding this subsection, any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.
(5) Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training

[1] Section 25.271, F.S.
[2] *Id*.; The Office of the Marshal is concerned that s. 25.271(2), F.S., restricts him or her from keeping the peace and providing security for justices and other court personnel at off-site locations when the justices are not sitting as the Supreme Court. Office of the State Courts Administrator, *Revised Proposed Legislative Issue, Supreme Court Marshal Requirements and Authority*, January 16, 2013 (on file with Senate Committee on Judiciary).
[3] Section 25.271(1), F.S.
[4] Section 25.251, F.S.
[5] Office of the State Courts Administrator, *supra* note 2.
[6] The current practice of the Court is for the marshal to fill any vacancies among his or her assistants with certified law enforcement officers. *Id*.

Commission. … The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section and report to the employing agency any arrest records that are identified with the retained employee's fingerprints. …
(6) Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission. …
(7) Have a good moral character as determined by a background investigation under procedures established by the commission.
(8) Execute and submit to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity an affidavit-of-applicant form, adopted by the commission, attesting to his or her compliance with subsections (1)-(7). …
(9) Complete a commission-approved basic recruit training program for the applicable criminal justice discipline, unless exempt under this subsection. An applicant who has:
(a) Completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and
(b) Served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section,

is exempt in accordance with s. 943.131(2) from completing the commission-approved basic recruit training program.
(10) Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.
(11) Comply with the continuing training or education requirements of s. 943.135.

These statutory requirements are more extensive than current law requires of the Marshal and his or her assistants.

III. Effect of Proposed Changes:

This bill requires that the marshal of the Supreme Court and his or her assistants be law enforcement officers as defined under s. 943.10(1), F.S. The specific provisions of the bill:

- Redesignate the Marshal's assistants as deputies in s. 25.251, F.S.
- Amend s. 25.251, F.S., to give a Marshal and his or her deputies' statewide authority to bear arms and make arrests in connection with their official duties for the Supreme Court.
- Require the Marshal and his or her deputies to comply with s. 943.13, F.S., relating to the qualifications of law enforcement officers. This conforms to the current practice of the Supreme Court to fill any vacancies in the Marshal's office with certified law enforcement officers.
- Amend s. 25.271, F.S., to remove subsection (2). This has the effect of consolidating provisions governing security and arrest authority of the Marshal and his or her deputies along with the authority to create the office of the Marshal in s. 25.251, F.S. Section 25.271, F.S., now solely addresses the Marshal's duty to maintain the Supreme Court Building and grounds.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is not expected to have a fiscal impact on the Florida Supreme Court as the court is currently hiring certified law enforcement officers to serve in the Marshal's Office.[7]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 12, 2013:

[7] Office of the State Courts Administrator, *Revised Proposed Legislative Issue, Supreme Court Marshal Requirements and Authority*, January 16, 2013 (on file with Senate Committee on Judiciary).

The CS provides that the marshal and his or her deputies are law enforcement officers as defined under s. 943.10(1), F.S., and are authorized to make arrests in connection with their official duties for the Supreme Court.

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 the Committee on Judiciary; and Senator Dean

590-02268-13 2013496c1

A bill to be entitled

An act relating to the marshal of the Supreme Court; amending s. 25.251, F.S.; revising terminology; requiring the marshal and his or her deputies to comply with specified requirements for law enforcement officers; specifying that the marshal and his or her deputies are law enforcement officers with full powers to bear arms and make arrests under certain conditions; limiting the use of those powers to performance of official duties for the Supreme Court; amending s. 25.271, F.S.; deleting provisions relating to the marshal and his or her deputies being conservators of the peace; providing an effective date.

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

Section 1. Section 25.251, Florida Statutes, is amended to read:

25.251 Marshal of Supreme Court; appointment; qualification; authority ~~training~~.—

(1) The Supreme Court shall appoint a marshal who shall hold office during the pleasure of the court.

(2) The marshal and his or her deputies must comply with s. 943.13 relating to requirements for law enforcement officers in this state ~~assistants shall attend and successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement~~.

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

590-02268-13 2013496c1

(3) The marshal and his or her deputies shall be law enforcement officers as defined in s. 943.10(1), under the direction and control of the Supreme Court with full powers to bear arms and make arrests in accordance with the laws of this state. In performance of their official duties for the Supreme Court, they may apprehend without warrant a person disturbing the peace and deliver that person to the appropriate law enforcement officer of the municipality or county in which further proceedings may be held according to law. The powers granted in this section may be exercised only in furtherance of and in connection with performance of official duties for the Supreme Court.

Section 2. Section 25.271, Florida Statutes, is amended to read:

25.271 Custody of Supreme Court Building and grounds.—

~~(1)~~ The ~~said~~ marshal shall, under the direction of the Supreme Court, be custodian of the Supreme Court Building and grounds and shall keep the same clean, sanitary, and free of trespassers and marauders and shall maintain the same in good state of repair and cause the grounds to be beautified and preserved against depredations and trespasses.

~~(2) The marshal and his or her assistants shall be conservators of the peace in the Supreme Court Building, or in any building in which the Supreme Court is sitting, and shall apprehend without warrant any person disturbing the peace and deliver that person to the appropriate law enforcement officer of the municipality or county in which further proceedings may be held according to law.~~

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:
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 13, 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 496, relating to Marshal of the Supreme Court, 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)

4/1/13
Meeting Date

Topic: Marshal of Supreme Court

Bill Number: 496 *(if applicable)*

Name: Eric Maclure

Amendment Barcode: *(if applicable)*

Job Title: Intergov. Relations, Office of State Courts Administrator

Address: 500 South Duval St.
Street

Tallahassee, FL 32399
City *State* *Zip*

Phone: 850-922-5692

E-mail: maclureE@flcourts.org

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

Representing: State Courts System

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)

4 / 1 / 2013
Meeting Date

Topic _____

Bill Number 486 *(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)

4/1/13
Meeting Date

Topic: Marshal of Supreme Court

Bill Number: 496 (if applicable)

Name: Silvester Dawson

Amendment Barcode: (if applicable)

Job Title: Marshal of Supreme Court

Address: 500 South Duval Street
Street

Tallahassee, FL 32399
City State Zip

Phone: (850) 488-8845

E-mail: dawson@flcourts.org

Speaking: ☐ For ☐ Against ☑ Information

Representing: Supreme Court, Office of the Marshal

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 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.

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

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

APPEARANCE RECORD

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

April 1, 2013
Meeting Date

Topic _____

Bill Number 812 *(if applicable)*

Name Nancy Daniels

Amendment Barcode _____ *(if applicable)*

Job Title Public Defender

Address 301 South Monroe Street
Street

Tallahassee, FL 32302
City *State* *Zip*

Phone 488-1010

E-mail nancy.daniels@flpd2.com

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

Representing Florida Public Defender 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)

4/1/13
Meeting Date

Topic: Youth in Solitary Confinement

Bill Number: 812 *(if applicable)*

Name: Sheila Hopkins

Amendment Barcode: *(if applicable)*

Job Title: Director of Social Concerns/Respect Life

Address: 201 W. Park Ave.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 205-6826

E-mail: shopkins@flacathconf.org

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

Representing: Fl. Conference of Catholic Bishops

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)

4-1-13
Meeting Date

Topic: OPEN PARTIES

Bill Number: SB 812 *(if applicable)*

Name: MARK P. FONTAINE

Amendment Barcode: *(if applicable)*

Job Title: Executive Director

Address: 2868 Mahan Drive
Street

TALLAHASSEE FL 32308
City *State* *Zip*

Phone: 878-2196

E-mail:

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

Representing: Florida Alcohol + Drug Abuse 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

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) 359-2532
☐ 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

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 874

INTRODUCER: Criminal Justice Committee; Regulated Industries Committee; and Senator Galvano

SUBJECT: Open Parties

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Fav/CS**
2.	Dugger	Cannon	CJ	**Fav/CS**
3.			JU	
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 874 amends s. 856.015, F.S., relating to Open House Parties. The bill expands the provisions of the section to include "property" as defined as "a residence, structure, or open acreage with or without a structure." The bill provides that it is a violation of the section if a person who has control of the property fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor when the minor is lawfully on the property. The person must have actual knowledge that the minor possesses or is consuming the alcoholic beverages or drugs.

The bill maintains the current penalty for violation of the section as a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding $500 and a first degree misdemeanor punishable by up to one year in jail and a fine not exceeding $1,000 for a second and subsequent offense.

The bill provides a July 1, 2013 effective date.

The bill substantially amends section 856.015, Florida Statutes.

II. Present Situation:

Section 856.015, F.S., addresses social gatherings at a residence, defined as "open house" parties at a residence. Residence is defined as a home, apartment, condominium or other dwelling unit. A person 18 years of age or older having control of any residence may not allow an open house party to take place if he or she knows that any alcoholic beverage or drug is possessed or consumed at the residence by any minor not legally permitted by reason of age to possess alcoholic beverages. Actual knowledge is defined as "direct and clear knowledge."[1]

Failure to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug constitutes a second degree misdemeanor, with any subsequent violation treated more severely as a first degree misdemeanor. Conviction of a second degree misdemeanor is punishable by up to 60 days in jail and a fine not exceeding $500, and a first degree misdemeanor is punishable by up to one year in jail and a fine not exceeding $1,000.

A person convicted of a second degree misdemeanor may be sentenced to imprisonment not exceeding 60 days and a $500 fine; a person convicted of a first degree misdemeanor may be sentenced to imprisonment not exceeding 1 year and or a fine of $1000.[2]

In upholding the statute against a constitutional challenge for vagueness, the Florida Supreme Court held that the statute "prohibits an adult, who is in control of the premises, from having a party and knowingly permitting a minor to continue to consume or possess alcoholic beverages or drugs on the premises. That adult may avoid liability by terminating the party or taking some other reasonable action to prevent the consumption or possession after learning thereof."[3]

Section 856.015, F.S., does not apply to use of alcoholic beverages at legally protected religious observances or activities.

A prior version of the open house party law was challenged in 1995 on the basis that the phrase "reasonable steps" to be taken by the person in control of the residence was ambiguous. The Florida Supreme Court held that the Legislature has indirectly ceded discretion to the courts by employing language in legislation that commonly requires judicial construction.[4]

III. Effect of Proposed Changes:

The bill deletes the definitions of "open house party" and "residence" in s. 856.015, F.S. The bill broadens the definition of "property" to include "a residence, structure, or open acreage with or without a structure."

The bill provides that it is a violation of the section if a person who has control of the property fails to take reasonable steps to prevent the possession or consumption of alcoholic beverages or drugs by a minor when the minor is lawfully on the property.

---

[1] Black's Law Dictionary (9th ed. 2009), knowledge (actual knowledge).
[2] *See* s. 775.082 and s. 775.083, F.S.
[3] *See State v. Manfredonia*, 649 So.2d 1388, 1391 (Fla. 1995).
[4] *See Bunkley v. State*, 882 So.2d 890 at 915 (Fla. 2004)

The bill amends the provision concerning control of the property where the party is located and imposes a requirement that a person who has control of the property have "actual knowledge" that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the property.

The bill has an effective date of 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:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on jails as a result of the expanded locations where a violation of the section may occur.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may give prosecutors clarification of the conduct being regulated, by imposing the standard of "actual knowledge" by the person who has control of a property.

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 April 1, 2013:
Deletes "vacant" from the definition of "property."

CS by Regulated Industries on March 7, 2013:
The committee substitute provides that a property owner is subject to criminal penalties only when the owner has actual knowledge that a minor is in possession of or consuming alcoholic beverages or drugs on the property, and the minor is lawfully on the property.

B. Amendments:

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

125780

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete lines 30 - 31
4 and insert:
5
6 (f) "Property" means a residence, structure, or open
7 acreage with or without a structure.

By the Committee on Regulated Industries; and Senator Galvano

580-02034-13 2013874c1

A bill to be entitled

An act relating to open parties; amending s. 856.015, F.S.; revising definitions; prohibiting a person from allowing a party to take place if a minor is in possession of or consuming alcohol or drugs; revising an exemption; providing criminal penalties; conforming provisions; providing an effective date.

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

Section 1. Section 856.015, Florida Statutes, is amended to read:

856.015 Open ~~house~~ parties.—

(1) Definitions.—As used in this section:

(a) "Alcoholic beverage" means distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume is ~~shall be~~ determined in accordance with ~~the provisions of~~ s. 561.01(4)(b).

(b) "Control" means the authority or ability to regulate, direct, or dominate.

(c) "Drug" means a controlled substance, as that term is defined in ss. 893.02(4) and 893.03.

(d) "Minor" means an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562.

~~(e) "Open house party" means a social gathering at a residence.~~

(e) ~~(f)~~ "Person" means an individual 18 years of age or older.

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

580-02034-13 2013874c1

(f) "Property" means a residence, vacant structure, or open acreage with or without a structure.

~~(g) "Residence" means a home, apartment, condominium, or other dwelling unit.~~

(2) A person who has ~~having~~ control of any property and who has actual knowledge ~~residence may not allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at the residence by any minor where the person knows~~ that an alcoholic beverage or drug is in the possession of or being consumed by a minor lawfully at the property, ~~residence~~ and ~~where~~ the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug commits a violation of this section.

(3) ~~The provisions of~~ This section does ~~shall~~ not apply to the use of alcoholic beverages at legally protected religious observances or activities.

(4) A ~~Any~~ person who violates ~~any of the provisions of~~ subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates subsection (2) a second or subsequent time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

59 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

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

March 7, 2013

Senator Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that CS/SB 874, Open Parties, be scheduled for a hearing in the Committee on Criminal Justice at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Amanda Cannon
Sue Arnold

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
❒ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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)

Meeting Date: _____

Topic: OPEN PARTIES

Bill Number: 874 (if applicable)

Name: Beth LABASKY

Amendment Barcode: _____ (if applicable)

Job Title: Consultant

Address: 13211 Boney Rd
Street

JACKSONVILLE FLA 32226
City State Zip

Phone: 850-3227335

E-mail: bethlabasky@aol.com

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

Representing: INFORMED FAMILIES 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 890

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: False Personation

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	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 890 provides for various penalties for false personation of a firefighter.

The bill also punishes owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department (e.g., marked with the words “fire department”) with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by the agency, the fire department authorizes the use of the vehicle, or the person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

This bill substantially amends the following sections of the Florida Statutes: 843.08; 843.085; and 921.0022.

II. Present Situation:

False Personation of Law Enforcement Officers and Other Specified Officers/Positions (s. 843.08, F.S.)

Section 843.08, F.S., punishes false personation of a law enforcement officer and other specified persons. A person commits this false personation offense if he or she falsely assumes or pretends to be any of the following officers/positions and takes upon himself or herself to act as such or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer/position:

- A sheriff.
- Officer of the Florida Highway Patrol.
- Officer of the Fish and Wildlife Conservation Commission.
- Officer of the Department of Transportation.
- Officer of the Department of Financial Services.
- Officer of the Department of Corrections.
- Correctional probation officer.
- Deputy sheriff.
- State attorney or assistant state attorney.
- Statewide prosecutor or assistant statewide prosecutor.
- State attorney investigator.
- Coroner.
- Police officer.
- Lottery special agent or lottery investigator.
- Beverage enforcement agent.
- Watchman.
- Any member of the Parole Commission and any administrative aide or supervisor employed by the commission.
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE).
- A federal law enforcement officer as defined in s. 901.1505, F.S.

It is a third degree felony to commit this offense.[1] However, a person who falsely personates any such officer/position during the course of the commission of a felony commits a second degree felony[2] or, if the commission of the felony results in the death or personal injury of another human being, a first degree felony.[3]

[1] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S.
[2] A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.
[3] A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.

Unlawful Marking of a Motor Vehicle (s. 843.085, F.S.)

Section 843.085(2), F.S., provides that it is unlawful for a person to own or operate a motor vehicle marked or identified in any manner or combination by the word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff," or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as defined in s. 943.045, F.S., which could deceive a reasonable person into believing that such vehicle is authorized by any of these agencies for use by the person operating the motor vehicle, unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency authorizes the use of such vehicle or unless the person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

This offense is punishable as a first degree misdemeanor.[4] Section 843.085, F.S., is cumulative to any law now in force in the state

In *Sult v. State*, 906 So.2d 1013 (Fla. 2005), the Florida Supreme Court held that s. 843.085, F.S., (2001), is unconstitutional as overbroad and vague, and also violates the right to substantive due process. The Court only discusses subsection (1) of this statute but the intent language the Court found objectionable also appears in subsections (2) and (3) of the statute.[5]

III. Effect of Proposed Changes:

The bill amends s. 843.08, F.S., to provide for various penalties (see "Present Situation" section of this analysis) for false personation of a firefighter.[6]

The bill also amends s. 843.085, F.S., to punish owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department (e.g., marked with the words "fire department") with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by the agency, the fire department authorizes the use of the vehicle, or the person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

The inclusion of specific intent language is intended to address the case of *Sult v. State, supra*, and, if constitutionally sufficient, would make s. 843.085(2), F.S., enforceable both for unlawfully owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department and for owning or operating a motor vehicle

[4] A first degree misdemeanor is punishable by up to 1 year in a county jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.
[5] The bill does not amend current intent language in s. 843.085(2), F.S.
[6] The bill does not define "firefighter by reference to any specific definition of the term in the Florida Statutes. However, most of the descriptive terms for officers/positions listed in the statute are not defined by reference to a statutory definition (e.g., "police officer"). Statutory definitions of "firefighter" vary. *See e.g.*, ss. 633.30(1), 633.802(1), and 784.07(1)(b), F.S.

marked or identified with various indicia indicating the vehicle is used by a law enforcement agency.

The bill also amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical, corrective change to descriptive language regarding the current ranking of false personation under s. 843.08, F.S.

The effective date of the bill is 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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimated that the original bill would have an insignificant prison bed impact. The penalty provisions of the bill are only modified by the committee substitute to the extent that they apply to false personation of firefighters only (original bill also included various “criminal justice agency” personnel).

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 April 1, 2013:

- Punishes only false personation of a firefighter (original bill also included various "criminal justice agency" personnel).
- Punishes owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department (e.g., marked with the words "fire department") with the intent to mislead or cause another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency, unless the vehicle is owned or operated by the appropriate agency and its use is authorized by the agency, the fire department authorizes the use of the vehicle, or the person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

B. Amendments:

None.

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

553140

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 33 - 37
4 and insert:
5
6 of the Department of Law Enforcement, or a federal law
7
8 ========== T I T L E A M E N D M E N T ==========
9 And the title is amended as follows:
10 Delete lines 4 - 5
11 and insert:
12

553140

13 personating a firefighter if his or her action could
14 deceive a

493598

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 65 - 72
4 and insert:
5 used by a fire department with the intent to mislead or cause
6 another person to believe that such vehicle is an official
7 vehicle of that agency and is authorized to be used by that
8 agency ~~which could deceive a reasonable person into believing~~
9 ~~that such vehicle is authorized by any of the agencies described~~
10 ~~above for use by the person operating the motor vehicle~~, unless
11 such vehicle is owned or operated by the appropriate agency and
12 its use is authorized by such agency, ~~or~~ the local law

493598

13 enforcement agency or fire department authorizes the use of such
14 vehicle, or ~~unless~~ the person is appointed by the Governor
15 pursuant to chapter 354.
16
17 ========== T I T L E A M E N D M E N T ==========
18 And the title is amended as follows:
19 Delete lines 9 - 10
20 and insert:
21 falsely marked with the intent to mislead or cause
22 another person to believe the vehicle that such
23 vehicle is

By Senator Braynon

36-00993-13 2013890__

A bill to be entitled

An act relating to false personation; amending s. 843.08, F.S.; prohibiting a person from falsely personating a firefighter or certain law enforcement officers if his or her action could deceive a reasonable person into believing that he or she was a bona fide official; amending s. 843.085, F.S.; prohibiting operation or ownership of a motor vehicle falsely marked in a way which could deceive a reasonable person into believing that such vehicle is authorized by a fire department for use by the person operating it; providing an exception; amending s. 921.0022, 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:

Section 1. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation ~~Falsely personating officer, etc.~~—A person who falsely assumes or pretends to be a firefighter, sheriff, officer of the Florida Highway Patrol, officer of the Fish and Wildlife Conservation Commission, officer of the Department of Transportation, officer of the Department of Financial Services, officer of the Department of Corrections, correctional probation officer, deputy sheriff, state attorney or assistant state attorney, statewide prosecutor or assistant statewide prosecutor, state attorney investigator, coroner, police officer, lottery special agent or lottery investigator,

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beverage enforcement agent, or watchman, or any member of the Parole Commission and any administrative aide or supervisor employed by the commission, or any personnel or representative of the Department of Law Enforcement or any other criminal justice agency as defined in s. 943.045, whether federal, state, local, municipal, tribal, or territorial, if his or her action could deceive a reasonable person into believing that he or she was a bona fide law enforcement official, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Subsections (2) and (4) of section 843.085, Florida Statutes, are amended to read:

843.085 Unlawful use of police badges or other indicia of authority.—It is unlawful for any person:

(2) To own or operate a motor vehicle marked or identified in any manner or combination by the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” ~~or~~ “bailiff,” or “fire

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department," or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle used by a fire department which could deceive a reasonable person into believing that such vehicle is authorized by any of the agencies described in this subsection ~~above~~ for use by the person operating the motor vehicle, unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, or the local law enforcement agency or fire department authorizes the use of such vehicle or unless the person is appointed by the Governor pursuant to chapter 354.

(4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, from using the following words, in any manner or in any combination, if those words appear in the official name of the organization or association: "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~ "bailiff,~~.~~" or "fire department."

Section 3. Paragraph (b) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.

806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.

817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks,

		drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation ~~Falsely impersonating an officer~~.
893.13(2)(a)2.	3rd	Purchase of any 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 other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II
Democratic Whip
36th District

March 12, 2013

Senator Greg Evers, Chair
Criminal Justice
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Evers:

This letter is to request that **Senate Bill # 890**, relating to ***False Personation*** be placed on the agenda of the next scheduled meeting of the committee.

SB 890 Prohibiting a person from falsely personating a firefighter or certain law enforcement officers if his or her action could deceive a reasonable person into believing that he or she was a bona fide official; prohibiting operation or ownership of a motor vehicle falsely marked in a way which could deceive a reasonable person into believing that such vehicle is authorized by a fire department for use by the person operating it; providing an exception, etc.

Thank you for consideration of this request.

Sincerely,

Senator Braynon
District 36

cc. *Amanda Cannon, Staff Director,*
Sue Arnold, Committee Administrative Assistant, ***Room 510K***

REPLY TO:
❒ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
❒ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

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: CS/SB 964

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

SUBJECT: Termination of Parental Rights

DATE: March 26, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Clodfelter	Cannon	CJ	**Favorable**
3.			JU	
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 964 provides that a father's parental rights may be terminated if the court determines by clear and convincing evidence that the child was conceived during an act of sexual battery committed in violation of s. 794.001, F.S., or a similar law of another jurisdiction. A presumption is created that such termination is in the child's best interests. The bill also provides that a petition for termination of parental rights under these circumstances may be filed at any time.

This bill conforms a cross reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent.

This bill is expected to have no fiscal impact on the state, has an effective date of July 1, 2013, and provides for retroactive application.

This bill substantially amends sections 39.806 and 39.811 of the Florida Statutes.

II. Present Situation:

Parental Rights

In the United States, the right to have and raise a family is a fundamental right grounded in the 14th Amendment.[1] Because parental rights are fundamental, parents are not easily deprived of these rights. Courts presume that parents have parental rights to their biological children and to overcome this presumption and deprive a parent of parental rights, there must be "grave and weighty reasons" for such deprivation.[2] Parental rights allow for significant involvement in a child's life. These rights include the right to custody of the child, visitation with the child, and notice and/or consent for adoption.[3]

In most states two types of custody are referred to: physical and legal. Physical custody is when a parent has the right and obligation to provide a physical home for the child and to make day-to-day decisions concerning the child. Legal custody is when a parent has the right to make important decisions about a child's welfare, including but not limited to decisions related to education and healthcare.[4]

Custody can also be sole or joint, with joint custody becoming more common. Such custody necessarily entails significant contact and communication between parents. For example, parents may have to communicate with each other about the child's health, the child's progress in school, and what activities the child is permitted to engage in. Joint custody can even restrict either parent from relocating if the relocation puts the child too far away from one of the parents.[5]

In cases in which the parents of a child have never been married, are separated, or are divorced, Florida courts are required to order that parental responsibility for the child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28, F.S., and ch. 775, F.S., or meets the criteria of s. 39.806(1)(d), F.S., for termination of parental rights, creates a rebuttable presumption that shared parental responsibility would be detrimental to the child. If the convicted parent does not rebut the presumption after the court advises him or her of its existence, shared parental responsibility (including time-sharing with the child and decisions made regarding the child) may not be granted to the convicted parent. However, preclusion from shared parental responsibility does not relieve the convicted parent of any obligation to provide financial support.[6]

A parent who does not have physical custody will normally have visitation rights. The right to visitation is strong and, absent exceptional circumstances, courts will not deny parents these

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[1] *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).
[2] Kara N. Bitar. *The Parental Rights of Rapists.* DUKE JOURNAL OF GENDER LAW & POLICY. 19:275 (2012).
[3] *Id*.
[4] Florida has moved away from using the terms custody and visitation and instead the statutes refer to shared parental responsibility, sole parental responsibility, and time sharing. Chapter 2008-61, L.O.F.
[5] Section 61.13001, F.S.
[6] Section 61.13(2)(c)2., F.S.

rights. In Florida, if the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan to best protect the child or abused spouse from further harm. Even if there is not a conviction for domestic violence or child abuse or an injunction for protection against domestic violence, the court must consider evidence of domestic violence or child abuse as evidence of detriment to the child.[7]

In addition to rights to custody and visitation, fathers normally must be provided notice if the mother wants to place the child for adoption and, under certain circumstances, must consent to the adoption. Notice and consent requirements vary by state. In Florida, the Legislature has found:

> … that the interests of the state, the mother, the child, and the adoptive parents outweigh the interest of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter. An unmarried biological father has the primary responsibility to protect his rights and is presumed to know that his child may be adopted without his consent unless he strictly complies with this chapter and demonstrates a prompt and full commitment to his parental responsibilities.[8,9]

A biological father's rights to notice and consent for adoption can affect women who want to place their newborn child for adoption as well as women who have decided to raise their child and want their spouse or significant other to adopt the child.[10]

Parental rights can also play a role when one parent is seeking public assistance. For instance, under the current welfare system, a single mother will not receive assistance unless she agrees to cooperate with the state in locating the father and obtaining child support from him.[11] In Florida, cooperation includes:

- Assisting in identifying and locating a parent who does not live in the same home as the child and providing complete and accurate information on that parent;
- Assisting in establishing paternity; and
- Assisting in establishing, modifying, or enforcing a support order with respect to a child of a family member.[12]

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[7] *Id*.
[8] Section 63.053, F.S.
[9] In order to preserve the right to notice and consent to an adoption under Florida law, an unmarried biological father must file a notarized claim of paternity form with the Florida Putative Father Registry maintained by the Office of Vital Statistics of the Department of Health. The form includes confirmation of the father's willingness and intent to support the child for whom paternity is claimed in accordance with state law. Section 63.054, F.S.
[10] See generally Chapter 63, L.O.F.
[11] Section 414.095(6), F.S.
[12] *Id*. These requirements do not apply if the Department of Revenue determines that the parent or caretaker relative has good cause for failing to cooperate.

In sum, parental rights give parents the right to a substantial role in their children's lives. These rights are fundamental and courts will not readily terminate them. As such, a rapist who fathers a child, absent legislation to the contrary, would have rights to the child.

Termination of Parental Rights in General

Florida courts have long recognized the "fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of government paternalism."[13] This fundamental parental right is not absolute, but is limited only by the principle that the welfare or best interest of the child is paramount.[14]

Although a parent's interest in maintaining parental ties is essential, a child's entitlement to a safe environment is more essential.[15] Because the state has a compelling interest in protecting its children, it may permanently and involuntarily terminate parental rights only after showing by clear and convincing evidence that the parent "poses a substantial risk of significant harm to the child."[16] Florida courts have also held that, because termination of parental rights implicates a fundamental liberty interest, termination must be the least restrictive means of protecting the child.[17]

Relying on these constitutional principles, the framework for terminating parental rights in Florida requires the state to establish with clear and convincing evidence:[18]

- The existence of statutory grounds;
- That termination is in the child's best interests; and
- That termination is the least restrictive means of protecting the child.[19]

The "least restrictive means" analysis is not defined by statute. However, Florida courts have found that the least restrictive means test "requires the court to utilize measures short of termination if such measures can permit a safe re-establishment of the parent-child bond."[20]

Grounds for Termination of Parental Rights in Florida

A proceeding to terminate parental rights may be initiated by the department, the guardian ad litem, or any other interested person.[21] The petition for termination must include allegations that one of the grounds for termination has been met, that the parents were informed of their right to counsel, and that termination is in the best interest of the child.[22]

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[13] *Padgett v. Department of Health and Rehabilitative Services*, 577 So. 2d 565, 570 (Fla. 1991).
[14] *Id*.
[15] *Id*.
[16] *Id*. at 571.
[17] *Id*.
[18] Section 39.809(1), F.S.
[19] *T.C. v. Department of Children and Families*, 961 So. 2d 1060, 1061 (Fla. 4th DCA 2007).
[20] *L.D. v. Department of Children and Family Services*, 957 So. 2d 1203, 1206 (Fla. 3d DCA 2007) (quoting *E.R. v. Department of Children and Family Services*, 937 So. 2d 1196, 1199 (Fla. 3d DCA 2006).
[21] Section 39.802(1), F.S.
[22] Section 39.802(4), F.S.

Unless certain exceptions apply, the department is mandated to file a petition to terminate parental rights if:

- At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;
- A child has been in out-of-home care under the responsibility of the state for 15 of the most recent 22 months;
- A parent has been convicted of murder or manslaughter of the other parent, aiding, abetting, conspiracy, or solicitation to murder the other parent, or of a felony battery that resulted in serious bodily injury to the child or to any other child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.[23]

In Florida, grounds for the termination of parental rights may be established under the following circumstances:[24]

(a) Voluntary surrender of the child by the parent or parents;
(b) Abandonment;
(c) Conduct that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, wellbeing, or physical, mental, or emotional health of the child, irrespective of the provision of services;
(d) Incarceration under certain circumstances;[25]
(e) Failure to comply with the case plan;
(f) Egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling;
(g) Aggravated child abuse, sexual battery or sexual abuse, or chronic abuse;
(h) Murder, voluntary manslaughter, or felony assault of the child or another child;
(i) Parental rights to a sibling have been terminated involuntarily;
(j) Parents have a history of extensive, abusive and chronic use of alcohol or controlled substances;
(k) A test administered at birth that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances under certain circumstances; and

[23] Section 39.8055, F.S.
[24] Section 39.806(1), F.S.
[25] The circumstances include: (1) The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years; (2) The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, F.S., a habitual violent felony offender as defined in s. 775.084, F.S., or a sexual predator as defined in s. 775.21, F.S., has been convicted of first degree or second degree murder in violation of s. 782.04, F.S., or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011, F.S., or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or (3) The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(l) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

Reasonable efforts to preserve and reunify families are not required if a court determines that any of the events described in (b)-(d) or (f)-(l) above, has occurred.[26]

In determining the best interests of the child, the court must consider and evaluate all relevant factors, including:

- Availability of a permanent custody arrangement with a relative of the child;
- Ability of the parent to provide for the child;
- Capacity of the parent to care for the child;
- Mental and physical health needs of the child;
- Love, affection, and other emotional ties existing between the child and the parent;
- Likelihood of an older child remaining in long-term foster care upon termination;
- Child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination;
- Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- Depth of the relationship existing between the child and the present custodian;
- Reasonable preferences and wishes of the child; and
- Recommendations for the child provided by the child's guardian ad litem or legal representative.[27]

Section 39.811(6), F.S., provides that the parental rights of one parent may be severed without severing the parental rights of the other parent only under certain, specified circumstances, one of which is if the parent whose rights are being terminated meets any of the grounds specified in s. 39.806(1)(d) and (f)-(l), F.S.

Grounds for Termination of Parental Rights in Other States

At least 19 states, including Alaska, Connecticut, Idaho, Louisiana, Maine, Missouri, Montana, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin, allow for the termination of parental rights in cases where the parent is the father of a child conceived as a result of rape, sexual assault, or incest.[28]

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[26] Section 39.806(2), F.S. See also s. 39.521(1)(f), F.S.
[27] Section 39.810, F.S.
[28] See, for example, AL. s. 25.23.180(c)(3); CT. GEN. STAT. ss. 17a-112(j)(3)(G) and 45a-717(g)(2)(G); ID. CODE ANN. s. 16-2005(2)(a); LA. Child. CODE ANN. art. 1015; ME. REV. STAT. ANN. Tit. 19-A, s. 1658; MO. REV. STAT. ANN. s. 211.447; MT. CODE ANN. s. 41-3-609(1)(c); OK. STAT. ANN. Tit. 10, s. 7006-1.1; PA. CONS. STAT. ANN. s. 2511(a)(7); TX. Fam. CODE ANN. s. 161.007; WA. REV. CODE ANN. s. 13.34.132; WI. STAT. ANN. s. 48.415(9)(a).

In other states, consent to adoption is not required from a biological father if the child who is the subject of the adoption proceeding was conceived as the result of criminal sexual assault or abuse.[29] In Nevada and New Jersey, a person convicted of sexual assault has no right to custody or visitation with a child who is born because of the assault.[30]

At least one court has considered the constitutional implications of terminating parental rights to a child born as the result of illegal sexual intercourse. In *Pena v. Mattox*, the United States Court of Appeals for the Seventh Circuit considered the argument made by a biological father who conceived a child during statutory rape that he had a constitutionally protected right to parent the child.[31] The court noted that the United States Constitution does indeed forbid a state from depriving parents of their children without good reason, but went on to say:

> It is not the brute biological fact of parentage, but the existence of an actual or potential relationship that society recognizes as worthy of respect and protection, that activates the constitutional claim. …
>
> [N]o court has gone so far as to hold that the mere fact of fatherhood, consequent upon a criminal act … creates an interest that the Constitution protects in the name of liberty. … The criminal does not acquire constitutional rights by his crime other than the procedural rights that the Constitution confers on criminal defendants. Pregnancy is an aggravating circumstance of a sexual offense, not a mitigating circumstance. The criminal should not be rewarded for having committed the aggravated form of the offense by receiving parental rights which he may be able to swap for the agreement of the victim's family not to press criminal charges. …
>
> The Constitution does not forbid the states to penalize the father's illicit and harmful conduct by refusing to grant him parental rights that he can use to block an adoption or simply enjoy as the fruit of his crime. …
>
> The maxim that a wrongdoer shall not profit from his wrong is deeply inscribed in the Anglo-American legal tradition. …
>
> [A] state has discretion to decide whether it is better to encourage the kind of conduct in which the plaintiff engaged by giving him parental rights or discourage it by refusing to bestow legal protection on the relationship between father and child. The interest asserted by the plaintiff is not so compelling as to warrant our overriding the state's choice in the name of the Constitution.[32]

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[29] See 750 Ill. Comp. Stat. 50/8(a)(5); IN. CODE 31-19-9-8(a)(4); NY. Domestic Relations Laws. 111-a(1); S.C. CODE ANN. s. 20-7-1734.
[30] See NV. REV. STAT. s. 125C.210; NJ. STAT. ANN. 9:2-4.1.
[31] *Pena v. Mattox*, 84 F.3d 894 (7th Cir. 1996).
[32] Id. at 899-902.

Paternity Establishment in Florida

Unmarried fathers in Florida must legally establish paternity in order to claim their paternal rights.[33] Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings to determine the paternity of the child when paternity has not been established by law or otherwise.[34]

Except as provided in chs. 39 and 63, F.S., primary jurisdiction and procedures for the determination of paternity for children born out of wedlock is provided under ch. 742, F.S. Paternity is considered to have been established if:

- The establishment of paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers' compensation or similar compensation programs;
- An affidavit acknowledging paternity or a stipulation of paternity is executed by both parties and filed with the clerk of the court;
- An affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as provided for in s. 382.013, F.S., or s. 382.016, F.S., is executed by both parties; or
- Paternity is adjudicated by the Department of Revenue as provided in s. 409.256, F.S.[35]

Sexual Battery

Section 794.011(1)(h), F.S., defines sexual battery as "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." Section 794.011, F.S., provides various levels of penalties for the commission of sexual battery, depending on the age of the victim and the circumstances of the offense, with the most serious offenses punishable by life in prison.

In 2011, there were 9,880 reported forcible sex offenses in Florida, including 5,273 forcible rapes.[36] One author reports that:

> Pregnancy from rape occurs with "significant frequency." Of the estimated 12 percent of adult women in the United States that have experienced at least one rape in their lifetime, 4.7 percent of these rapes result in pregnancy. Therefore, based on a 1990 study estimating that 683,000 women over the age of eighteen were raped in that year, conceivably 32,000 rape-related pregnancies occur annually. A separate study conducted in 2000 estimated that, given the decline in the incidence of rape, 25,000 pregnancies following the rape of adult women

[33] A man who is or may be the biological father of a child whose paternity has not been established and whose mother was unmarried when the child was conceived and born is known as a "putative father." Section 409.256, F.S.
[34] Section 742.011. F.S.
[35] Section 742.10, F.S.
[36] Florida Department of Law Enforcement, *Crime in Florida. 2011. available at* http://www.fdle.state.fl.us/Content/getdoc/594fa00a-35bb-4e79-ad95-ba8bb0fc67f5/CIF_Annual11.aspx. (last visited Mar. 7, 2013).

> occur annually. It is difficult to determine with certainty the outcome of the approximately 25,000 to 32,000 rape-related pregnancies that occur in the United States each year. One study found that 50 percent of women who became pregnant by rape underwent abortions, 5.9 percent placed their infants for adoptions, and 32.3 percent of raped women kept their infants. Another study, conducted in a separate year, found markedly different results, concluding that 26 percent of women pregnant through rape underwent abortions. Of the 73 percent of women who carried their pregnancies to term, 36 percent placed their infants for adoption, and 64 percent raised the children they conceived through rape.[37]

Section 804.04(4), F.S., prohibits lewd and lascivious battery, a similar offense that prohibits sexual activity with a child who is older than 12 years old but younger than 16 years old regardless of whether the child victim consented to the activity.[38] Lewd and lascivious battery is a second degree felony, punishable by up to 15 years in prison.

Restitution in Florida

Unless a court finds clear and compelling reasons not to order restitution, it must order the defendant to make restitution to a victim in a criminal proceeding for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.[39]

The term "victim" as used in the provisions of law relating to restitution means "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense."[40]

The court may require that the defendant make restitution within a specified period or in specified installments, but the end of the specified period or the last installment cannot be later then:

- The end of the period of probation if probation is ordered;
- Five years after the end of the term of imprisonment if the court does not order probation; or
- Five years after the date of sentencing in any other case.[41]

If a defendant is placed on probation or paroled, complete satisfaction of any restitution ordered

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[37] Shauna R. Prewitt. *Giving Birth to a "Rapist's Child":A Discussion and Analysis of the Limited Legal Protections Afforded to Women Who Become Mothers Through Rape.* THE GEORGETOWN LAW JOURNAL 98:827 (2010).
[38] The definitions of "sexual activity" in s. 800.04(1)(a), F.S., and of "sexual battery" in s. 794.011(1)(h), F.S., are identical. Consensual or non-consensual sexual activity with a child under 12 years of age is sexual battery in violation of s. 794.011(2), F.S. Sexual battery of a child under 12 is punishable by a mandatory sentence of life in prison if the offender was an adult and a minimum of 30 years in prison if the offender was a juvenile tried as an adult.
[39] Section 775.089(1)(a), F.S.
[40] Section 775.089(1)(c), F.S.
[41] Section 775.089(3), F.S.

must be a condition of the probation or parole. The court may revoke probation, and the Parole Commission may revoke parole, if the defendant fails to comply with the restitution order.[42]

Pursuant to s. 775.089(11), F.S., the court may order the clerk of the court or the Department of Corrections (DOC) to collect and disburse restitution payments. In addition, an order of restitution may be enforced by the state or by a victim in the same manner as a judgment in a civil action.[43]

Child Support in Florida

The Department of Revenue (DOR) Child Support Enforcement Program (CSE) obtains court or administrative orders for child support, using guidelines provided in s. 61.30, F.S., to establish the amount of the obligation. The child support guidelines are based on the number of children and the combined income of the parents. The child support obligation is divided between the parents in direct proportion to their income or earning capacity. The parent with whom the child lives most of the time is paid the established support by the other parent. In most cases, a child support obligation continues until a child reaches 18 years of age.[44]

As required by federal law,[45] the child support enforcement program shall not disclose information on the whereabouts of one party or the child to the other party against whom a protective order with respect to the former party or the child has been entered, nor shall the program disclose information on the whereabouts of one party or the child to another person if the program has reason to believe that the release of information to that person may result in physical or emotional harm to the party or the child.[46]

III. Effect of Proposed Changes:

The bill substantially changes Florida's termination of parental rights standard to include harm not done to the child as stated in s. 39.806(1) F.S., but towards the mother of a child, as a result of a sexual battery that resulted in the birth of a child.

Section 1 of the bill provides that a father's parental rights may be terminated if the court determines by clear and convincing evidence that the child was conceived during an act of sexual battery pursuant to s. 794.001, F.S., or a similar law of another jurisdiction. This means that the father does not have to be convicted of sexual battery under the criminal standard of proof beyond a reasonable doubt in order to have his parental rights terminated. If the father was convicted of sexual battery, in many cases termination of parental rights could currently be grounded on the fact of the conviction and the circumstance of lengthy incarceration pursuant to s. 39.806(1)(d), F.S.

[42] Sections 775.089(4), F.S.
[43] Section 775.089(5), F.S.
[44] Section 61.30(1)(a), F.S.
[45] 42 U.S.C. s. 654 (26).
[46] Section 409.2579, F.S.

The bill creates a presumption that termination of parental rights because the child was conceived as the result of sexual battery is in the child's best interests. It also provides that a petition for termination of parental rights under these circumstances may be filed at any time.

Section 2 of the bill conforms a cross reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent.

Section 3 of the bill provides an effective date of July 1, 2013, and provides for retroactive application.

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:

The bill potentially implicates Article 1, Section 23, of the State Constitution relating to privacy rights.[47] Parents have a right to raise their children free from governmental intrusion, unless the state can show harm to the child.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be costs to mothers who are petitioning the court to terminate parental rights under the newly created grounds for termination.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reported that the addition of two new grounds for termination of parental rights could increase judicial workload because

[47] FLA. CONST. art. 1, s. 23 provides that every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

there would be more grounds for petitions to be filed. However, it is not known in how many instances the new grounds would be applied. Also, if the additional grounds apply to cases in which other grounds already exist, there could be little effect on workload (at least in those cases) because the petition would already be filed alleging other grounds.[48]

The fiscal impact on expenditures of the state courts system cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.[49]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill contains no provisions related to lewd or lascivious battery under s. 800.04, F.S., similar to the sexual battery offense already covered by the provisions of the bill. That offense may result in a pregnancy as well.

The addition of two new grounds for termination of parental rights under s. 39.806(1) F.S., does not guarantee that the court will terminate the parental rights of an individual who has committed sexual battery and the crime resulted in the conception of a child. The section states that "grounds for termination of parental rights **may** be established under any of the following circumstances:

If the court does not terminate parental rights under the new grounds created by this bill, there is no safety net for the mother of the child related to contact with the father of the child except what is currently provided for in s. 61.13, F.S. Current law provides a specific reference to victims of domestic violence in relation to shared parental responsibility and time-sharing that provides that the court shall consider evidence of domestic violence as evidence of detriment to the child. The same consideration may need to be given to victims of sexual assault who decide to raise their children.

Creating alternate protection under ch. 61, F.S., may be particularly important because the termination of parental rights implicates a fundamental liberty interest, which must be the least restrictive means of protecting the child.[50] Prohibiting time-sharing under ch. 61, F.S., may well be considered by a court as a least restrictive means of protecting the child.[51]

Also, if the court does not terminate parental rights under the new grounds, and orders sole parental responsibility for the mother with no time sharing for the father, the court may still order the father of the child to pay child support. Without some statutory provision, the father of the child may have access to the mother's location information. Again, current law shields that information in cases involving victims of domestic violence.

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[48] Florida Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 964* (Mar. 8, 2013).
[49] I*d*.
[50] Padgett, 577 So.2d at 571 (Fla. 1991).
[51] Section 61.13(2), F.S.

If parental rights are terminated under the provisions of this bill, no child support would be ordered, and some mothers who have chosen to raise their children may be left without the financial means to do so. Some type of financial support in the form of restitution specific to these types of cases may need to be considered:

> For example, the state of Washington provides that restitution for the crime of rape of a child in which the child becomes pregnant shall include (1) all medical expenses associated with the rape and the pregnancy, and (2) child support for the child born as a result of the rape, as ordered pursuant to a separate child support order. The Washington statute requires that restitution payments made in these circumstances be processed through the state's child support registry and that identifying information about the victim and the victim's child shall not be included in the order. The statute provides that the offender shall remain under the criminal court's jurisdiction until the child support obligation is satisfied or for 25 years, whichever is longer.[52]

If parental rights are terminated under the provisions of this bill and the mother of the child must apply for public assistance, absent additional statutory provisions, the mother would be required to cooperate with the child support enforcement program. This would include helping identify and locate the father of the child.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on March 12, 2013:

- Provides that a father's parental rights may be terminated if the court determines, by clear and convincing evidence that the child was conceived during an act of sexual battery pursuant to s. 794.001, F.S., or a similar law of another jurisdiction;
- Provides that a petition for termination of parental rights under these circumstances may be filed at any time;
- Conforms a cross reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent; and
- Provides for retroactive application.

B. Amendments:

None.

[52] WA. REV. CODE ANN. ss. 9.94A.753(6) and 9.94A.760 (4).

By the Committee on Children, Families, and Elder Affairs; and Senator Abruzzo

586-02278-13 2013964c1

A bill to be entitled

An act relating to termination of parental rights; amending s. 39.806, F.S.; providing that a parent's rights may be terminated if the court determines, by clear and convincing evidence, that the child was conceived during an act of unlawful sexual battery; creating a presumption that termination of parental rights is in the best interest of the child if the child was conceived as a result of an unlawful sexual battery; providing that a petition to terminate parental rights may be filed at any time; amending s. 39.811, F.S.; providing for termination of parental rights of only one parent if conception was the result of an unlawful sexual battery; providing for retroactive application; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (1) of section 39.806, Florida Statutes, and subsection (2) of that section is amended, to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(m) The court determines by clear and convincing evidence that the child was conceived as a result of an act of sexual battery made unlawful pursuant to s. 794.011, or pursuant to a similar law of another state, territory, possession, or Native American tribe where the offense occurred. It is presumed that

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

586-02278-13 2013964c1

termination of parental rights is in the best interest of the child if the child was conceived as a result of the unlawful sexual battery. A petition for termination of parental rights under this paragraph may be filed at any time.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or paragraphs (1)(f)-(m) ~~(f)-(l)~~ have occurred.

Section 2. Subsection (6) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(6) The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

(a) If the child has only one surviving parent;

(b) If the identity of a prospective parent has been established as unknown after sworn testimony;

(c) If the parent whose rights are being terminated became a parent through a single-parent adoption;

(d) If the protection of the child demands termination of the rights of a single parent; or

(e) If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(d) and (f)-(m) ~~(f)-(l)~~.

Section 3. This act shall take effect July 1, 2013, and applies to all unlawful acts of sexual battery occurring before, on, or after that date.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Vice Chair*
Environmental Preservation and Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO
25th District

March 12, 2013

Senator Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Evers:

I respectfully request that Senate Bill 964, relating to Termination of Parental Rights for Rapists, be placed on the Criminal Justice committee agenda. This legislation will provide necessary safeguards for victims of sexual battery. Due to the fact that parental rights are fundamental rights, courts are not likely to terminate these rights without direction in state law. Florida is one of about 31 states that do not have laws to fully protect these victims.

Thank you for your consideration. Please let me know if I can provide further information.

Sincerely,

Senator Joseph Abruzzo

REPLY TO:
❒ 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
❒ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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)

4 / 1 /2013
Meeting Date

Topic _____ Bill Number 964 *(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

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 1000

INTRODUCER: Criminal Justice Committee and Senator Gibson

SUBJECT: Purchase of Firearms by Mentally Ill Persons

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Fav/CS**
2.			JU	
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/SB 1000 amends the definition of "committed to a mental institution" in s. 790.065, F.S., to include persons who have been found by an examining physician and a court to qualify for involuntary treatment but who decides, after the finding, to voluntarily admit him or herself for treatment. This includes inpatient and outpatient treatment.

The court's order finding that the voluntary patient meets the criteria for involuntary placement (because the patient presents an imminent danger to him or herself or others) will be added to the state and national databases which are checked before a firearm can be purchased by the patient. Additionally, the patient's ability to lawfully carry a concealed weapon in Florida will be withheld, suspended, or revoked.

Current law allows for a person to petition the court to have the firearm restrictions removed upon a finding by the court that the person will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.[1]

[1] s. 790.065(2)(a)4.d., F.S.

This bill substantially amends section 790.065 of the Florida Statutes.

II. Present Situation:

Florida Firearms Law

In accordance with the federal Brady Handgun Violence Prevention Act,[2] Florida law requires federal firearms licensees (FFLs)[3] to request background checks on individuals attempting to purchase a firearm.

Created in 1989, the Firearms Purchase Program (FPP) operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.[4] Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving such request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm would violate federal or state law, and provides a response to the FFL.[5]

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms[6] to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.[7]

Florida defines "adjudicated mentally defective" as:

> A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.[8]

The term "committed to a mental institution" is defined as:

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[2] Pub. L. No. 103-159 (1993).
[3] 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.
[4] Section 790.065, F.S.
[5] *Id*.
[6] "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."
[7] Section 790.065(1) and (2)(a)4., F.S. *see also* 18 U.S.C. § 922(d), which states that "it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person "has been adjudicated as a mental defective or has been committed to any mental institution."
[8] Section 790.065(2)(a)4.a., F.S. Note that "incapacitated person" is defined as a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person. s. 744.102(12), F.S.

> Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.[9]

To help ensure that the above-described persons are not able to purchase a firearm, FDLE created the Mental Competency (MECOM) database. Codified in s. 790.065(2)(a), F.S., the MECOM database is an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. According to FDLE, there are currently more than 120,000 mental health orders relating to nearly 87,000 persons in the MECOM database.

The statute requires clerks of court to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment.[10] These records are then uploaded into the MECOM database,[11]and are accessed by the FPP as part of the screening of potential firearm purchasers. FDLE is authorized to disclose the data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license.[12]

Concealed Weapons Permits

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants that qualify.[13] Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.[14]

According to the FY 2011-2012 statistics, the DACS received 151,883 new licensure applications and 66,974 requests for licensure renewal during that time period.[15]

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

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[9] Section 790.065(2)(a)4.b., F.S.
[10] Section 790.065(2)(a)4.c., F.S.
[11] FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).
[12] Section 790.065(2)(a)4.f., F.S.
[13] Section 790.06(1), F.S.
[14] *Id.*
[15] http://licgweb.doacs.state.fl.us/stats/07012011_06302012_cw_annual.pdf last visited March 27, 2013.

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.[16]

Most pertinent to this bill, the applicant must attest that he or she is in compliance with the criteria contained in subsection (2) of s. 790.06, F.S., which requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.[17]

The DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in subsection (2);

[16] Section 790.06(1)-(5), F.S.
[17] Section 790.06(2), F.S.

- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.[18]

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.[19] Failure to have proper documentation and display it upon demand is a second degree misdemeanor.[20]

Florida's Mental Health Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.[21] Codified in Part I of Chapter 394, F.S., the Baker Act provides the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination, or the person is unable to determine for himself or herself whether examination is necessary; and
  - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
  - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

A patient must be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay.[22] In no case may a patient be held in a receiving facility for involuntary examination longer than 72 hours.[23] Within the 72-hour examination period, one of the following actions must be taken, based on the individual needs of the patient:

[18] Section 790.06(10), F.S.
[19] Section 790.790.06(1), F.S.
[20] Section 790.06(1), F.S.
[21] Chapter 71-131, L.O.F.
[22] Section 394.463(2)(f), F.S.
[23] *Id*.

- The patient must be released, unless he or she is charged with a crime, in which case the patient must be returned to the custody of a law enforcement officer;
- The patient must be released (unless charged with a crime) for voluntary outpatient treatment;
- The patient (unless charged with a crime) must be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in the circuit court when outpatient or inpatient treatment is deemed necessary.[24]

III. Effect of Proposed Changes:

The bill amends the definition of "committed to a mental institution" in s. 790.065(2)(a)4.b., F.S., to include persons who have had an involuntary examination under the Baker Act and who have then voluntarily admitted themselves for outpatient or inpatient treatment so long as all of the requirements below are satisfied:

- An examining physician found that the person is an imminent danger to himself or herself or others;
- The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(i)4. F.S., or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing in the petition;
- Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledged such notice in writing, in substantially the following form:

> "I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

- A judge or a magistrate has reviewed the record classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to FDLE.

[24] Section 394.463(2)(i), F.S.

Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgement must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, F.S., with the clerk of the court for the county in which the involuntary examination under s. 394.463, F.S., occurred. No fee may be charged for such filing. The clerk must present the record to a judge or magistrate within 24 hours after receipt. The judge or magistrate is required to review the record ex parte (in private) and, if he or she determines that the record supports the classifying of the person as an imminent danger to themselves or others, to order that the record be submitted to FDLE. If so ordered, the record must be submitted to FDLE within 24 hours.

The new definition of "committed to a mental institution" and the procedure created for the examining physician, receiving or treatment facility, and the court to follow will allow the court order and records to be transmitted to FDLE to be included in the MECOM and NICS databases.

Because the records are a part of the databases, the person will not be able to purchase a firearm or receive a concealed weapons permit, and if he or she possesses a concealed weapons permit, it will be suspended or revoked. The firearm and concealed weapons restrictions will remain effective until the person is ready to avail him or herself of the process under current law for having these restrictions lifted.[25]

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:

Persons who are the subject of the procedure created by the bill would lose his or her ability to purchase a firearm or to lawfully carry a concealed weapon until he or she has successfully petitioned the court for relief from these firearm disabilities.[26]

[25] s. 790.065(2)(a)4.d., F.S.
[26] *Id.*

C. Government Sector Impact:

The DACS Division of Licensing reports that the fiscal concerns related to the original version of the bill have been eliminated by the committee substitute adopted on April 1, 2013.[27]

FDLE reports that CS/SB 1000 will have minimal fiscal impact to the department.[28]

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 April 1, 2013:

- Contains none of the original bill language.
- Includes within the definition of "committed to a mental institution" in s. 790.065, F.S., persons who have undergone an involuntary examination pursuant to s. 394.463, F.S., and who has been found by the examining physician to present an imminent danger to him or herself or others and who therefore meets the criteria for involuntary treatment; and
  - The physician certifies that a petition for involuntary treatment either was filed or would have been filed with the court but the person chose to enter treatment voluntarily; and
  - prior to agreeing to voluntary treatment the person was given written notice of the physician's finding and certification as well as written notice that he or she may not be able to purchase a firearm or lawfully carry a concealed weapon as a result of entering voluntary treatment; and
  - a judge or magistrate reviewed all of the documentation provided to the court and ordered that the record be sent to the Department of Law Enforcement (FDLE).
- The administrator of the receiving facility must submit the records to the clerk of court within 24 hours of the person agreeing to voluntary admission to treatment.
- The clerk must submit the records to the judge or magistrate within 24 hours of receiving the records.
- If the judge or magistrate enters the order that the records should be submitted to FDLE that submission must occur within 24 hours of the order.
- Clerks of court are required to submit the records to FDLE pursuant to the court's order.

[27] Correspondence received on April 1, 2013, on file with Senate Criminal Justice Committee Staff.
[28] FDLE Bill Analysis, March 29, 2013, on file with Senate Criminal Justice Committee Staff.

B. Amendments:

None.

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

210760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (a) of subsection (2) of section
6 790.065, Florida Statutes, is amended to read:
7 790.065 Sale and delivery of firearms.—
8 (2) Upon receipt of a request for a criminal history record
9 check, the Department of Law Enforcement shall, during the
10 licensee’s call or by return call, forthwith:
11 (a) Review any records available to determine if the
12 potential buyer or transferee:

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13 1. Has been convicted of a felony and is prohibited from
14 receipt or possession of a firearm pursuant to s. 790.23;
15 2. Has been convicted of a misdemeanor crime of domestic
16 violence, and therefore is prohibited from purchasing a firearm;
17 3. Has had adjudication of guilt withheld or imposition of
18 sentence suspended on any felony or misdemeanor crime of
19 domestic violence unless 3 years have elapsed since probation or
20 any other conditions set by the court have been fulfilled or
21 expunction has occurred; or
22 4. Has been adjudicated mentally defective or has been
23 committed to a mental institution by a court or as provided in
24 sub-sub-subparagraph b. (II), and as a result is prohibited by
25 state or federal law from purchasing a firearm.
26 a. As used in this subparagraph, "adjudicated mentally
27 defective" means a determination by a court that a person, as a
28 result of marked subnormal intelligence, or mental illness,
29 incompetency, condition, or disease, is a danger to himself or
30 herself or to others or lacks the mental capacity to contract or
31 manage his or her own affairs. The phrase includes a judicial
32 finding of incapacity under s. 744.331(6)(a), an acquittal by
33 reason of insanity of a person charged with a criminal offense,
34 and a judicial finding that a criminal defendant is not
35 competent to stand trial.
36 b. As used in this subparagraph, "committed to a mental
37 institution" means:
38 (I) Involuntary commitment, commitment for mental
39 defectiveness or mental illness, and commitment for substance
40 abuse. The phrase includes involuntary inpatient placement as
41 defined in s. 394.467, involuntary outpatient placement as

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42 defined in s. 394.4655, involuntary assessment and stabilization
43 under s. 397.6818, and involuntary substance abuse treatment
44 under s. 397.6957, but does not include a person in a mental
45 institution for observation or discharged from a mental
46 institution based upon the initial review by the physician or a
47 voluntary admission to a mental institution; or~~.~~
48 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
49 admission to a mental institution for outpatient or inpatient
50 treatment of a person who had an involuntary examination under
51 s. 394.463, where each of the following conditions have been
52 met:
53 (A) An examining physician found that the person is an
54 imminent danger to himself or herself or others.
55 (B) The examining physician certified that if the person
56 did not agree to voluntary treatment, a petition for involuntary
57 outpatient or inpatient treatment would have been filed under s.
58 394.463(2)(i)4., or the examining physician certified that a
59 petition was filed and the person subsequently agreed to
60 voluntary treatment prior to a court hearing on the petition.
61 (C) Before agreeing to voluntary treatment, the person
62 received written notice of that finding and certification, and
63 written notice that as a result of such finding, he or she may
64 be prohibited from purchasing a firearm, and may not be eligible
65 to apply for or retain a concealed weapon or firearms license
66 under s. 790.06 and the person acknowledged such notice in
67 writing, in substantially the following form:
68
69 "I understand that the doctor who examined me believes I am a
70 danger to myself or to others. I understand that if I do not

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71 agree to voluntary treatment, a petition will be filed in court
72 to require me to receive involuntary treatment. I understand
73 that if that petition is filed, I have the right to contest it.
74 In the event a petition has been filed, I understand that I can
75 subsequently agree to voluntary treatment prior to a court
76 hearing. I understand that by agreeing to voluntary treatment in
77 either of these situations, I may be prohibited from buying
78 firearms and from applying for or retaining a concealed weapons
79 or firearms license until I apply for and receive relief from
80 that restriction under Florida law."
81 (D) A judge or a magistrate has, pursuant to sub-sub-
82 subparagraph c.(II), reviewed the record of the finding,
83 certification, notice, and written acknowledgement classifying
84 the person as an imminent danger to himself or herself or
85 others, and ordered that such record be submitted to the
86 department.
87 c. In order to check for these conditions, the department
88 shall compile and maintain an automated database of persons who
89 are prohibited from purchasing a firearm based on court records
90 of adjudications of mental defectiveness or commitments to
91 mental institutions.
92 (I) Except as provided in sub-sub-subparagraph (II), clerks
93 of court shall submit these records to the department within 1
94 month after the rendition of the adjudication or commitment.
95 Reports shall be submitted in an automated format. The reports
96 must, at a minimum, include the name, along with any known alias
97 or former name, the sex, and the date of birth of the subject.
98 (II) For persons committed to a mental institution pursuant
99 to sub-sub-subparagraph b.(II), within 24 hours after the

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100 person's agreement to voluntary admission, a record of the
101 finding, certification, notice, and written acknowledgement must
102 be filed by the administrator of the receiving or treatment
103 facility, as defined in s. 394.455, with the clerk of the court
104 for the county in which the involuntary examination under s.
105 394.463 occurred. No fee shall be charged for the filing under
106 this sub-sub-subparagraph. The clerk must present the records to
107 a judge or magistrate within 24 hours after receipt of the
108 records. A judge or magistrate is required and has the lawful
109 authority to review the records ex parte and, if the judge or
110 magistrate determines that the record supports the classifying
111 of the person as an imminent danger to himself or herself or
112 others, to order that the record be submitted to the department.
113 If a judge or magistrate orders the submittal of the record to
114 the department, the record must be submitted to the department
115 within 24 hours.
116 d. A person who has been adjudicated mentally defective or
117 committed to a mental institution, as those terms are defined in
118 this paragraph, may petition the circuit court that made the
119 adjudication or commitment, or the court that ordered that the
120 record be submitted to the department pursuant to sub-sub-
121 subparagraph c.(II), for relief from the firearm disabilities
122 imposed by such adjudication or commitment. A copy of the
123 petition shall be served on the state attorney for the county in
124 which the person was adjudicated or committed. The state
125 attorney may object to and present evidence relevant to the
126 relief sought by the petition. The hearing on the petition may
127 be open or closed as the petitioner may choose. The petitioner
128 may present evidence and subpoena witnesses to appear at the

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129 hearing on the petition. The petitioner may confront and cross-
130 examine witnesses called by the state attorney. A record of the
131 hearing shall be made by a certified court reporter or by court-
132 approved electronic means. The court shall make written findings
133 of fact and conclusions of law on the issues before it and issue
134 a final order. The court shall grant the relief requested in the
135 petition if the court finds, based on the evidence presented
136 with respect to the petitioner’s reputation, the petitioner’s
137 mental health record and, if applicable, criminal history
138 record, the circumstances surrounding the firearm disability,
139 and any other evidence in the record, that the petitioner will
140 not be likely to act in a manner that is dangerous to public
141 safety and that granting the relief would not be contrary to the
142 public interest. If the final order denies relief, the
143 petitioner may not petition again for relief from firearm
144 disabilities until 1 year after the date of the final order. The
145 petitioner may seek judicial review of a final order denying
146 relief in the district court of appeal having jurisdiction over
147 the court that issued the order. The review shall be conducted
148 de novo. Relief from a firearm disability granted under this
149 sub-subparagraph has no effect on the loss of civil rights,
150 including firearm rights, for any reason other than the
151 particular adjudication of mental defectiveness or commitment to
152 a mental institution from which relief is granted.
153 e. Upon receipt of proper notice of relief from firearm
154 disabilities granted under sub-subparagraph d., the department
155 shall delete any mental health record of the person granted
156 relief from the automated database of persons who are prohibited
157 from purchasing a firearm based on court records of

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158 adjudications of mental defectiveness or commitments to mental
159 institutions.
160 f. The department is authorized to disclose data ~~the~~
161 collected pursuant to this subparagraph ~~data~~ to agencies of the
162 Federal Government and other states for use exclusively in
163 determining the lawfulness of a firearm sale or transfer. The
164 department is also authorized to disclose this ~~any collected~~
165 data to the Department of Agriculture and Consumer Services for
166 purposes of determining eligibility for issuance of a concealed
167 weapons or concealed firearms license and for determining
168 whether a basis exists for revoking or suspending a previously
169 issued license pursuant to s. 790.06(10). When a potential buyer
170 or transferee appeals a nonapproval based on these records, the
171 clerks of court and mental institutions shall, upon request by
172 the department, provide information to help determine whether
173 the potential buyer or transferee is the same person as the
174 subject of the record. Photographs and any other data that could
175 confirm or negate identity must be made available to the
176 department for such purposes, notwithstanding any other
177 provision of state law to the contrary. Any such information
178 that is made confidential or exempt from disclosure by law shall
179 retain such confidential or exempt status when transferred to
180 the department.
181 Section 2. This act shall take effect July 1, 2013.
182
183 ========== T I T L E A M E N D M E N T ==========
184 And the title is amended as follows:
185 Delete everything before the enacting clause
186 and insert:

210760

187 A bill to be entitled
188 An act relating to the purchase of firearms by
189 mentally ill persons; amending s. 790.065, F.S.;
190 providing conditions under which a person who has been
191 voluntarily admitted to a mental institution for
192 treatment and has undergone an involuntary examination
193 under the Baker Act may be prohibited from purchasing
194 a firearm; providing requirements for the examining
195 physician; providing for judicial review of certain
196 findings; providing specified notice requirements;
197 providing form and contents of notice; providing
198 requirements with respect to the filing of specified
199 records with the court and presentation of such
200 records to a judge or magistrate; providing lawful
201 authority of a judge or magistrate to review specified
202 records and order such records be submitted to the
203 Department of Law Enforcement; providing a timeframe
204 for submission of records to the department upon order
205 by a judge or magistrate; providing an effective date.

By Senator Gibson

9-01168-13 20131000__

A bill to be entitled

An act relating to regulation of firearms; creating s. 790.339, F.S.; defining "preventative assessment"; providing that it is unlawful for a person to own or have in his or her care, custody, possession, or control any firearm or ammunition, or to carry a concealed weapon or firearm, for a period of 90 days if the person is the subject of a preventative assessment received by the Department of Law Enforcement; providing restrictions to be imposed by the department upon receipt of a preventative assessment; providing for removal of restrictions; providing a penalty; reenacting and amending s. 790.065, F.S.; requiring the department to review records to determine if a potential firearms purchaser or transferee has received a preventative assessment; defining "preventative assessment"; providing for the inclusion of persons who are the subject of a preventative assessment within the department's automated database of persons who are prohibited from purchasing a firearm; providing requirements for reporting a preventative assessment and the contents thereof; requiring the department to delete any mental health record of a person subject to a preventative assessment after a specified period of time; providing an effective date.

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

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

9-01168-13 20131000__

Section 1. Section 790.339, Florida Statutes, is created to read:

790.339 Preventative assessment by psychiatrist or clinical psychologist; possession of firearm, ammunition, or concealed weapon or firearm unlawful for 90 days.—

(1) "Preventative assessment" means a conclusion reached by a psychiatrist or clinical psychologist licensed under chapter 458 or chapter 459 who, upon treating or examining a patient, makes a determination of the existence of mental illness or mental defect of the patient which, in the judgment of the psychiatrist or clinical psychologist, if combined with the presence or possession of, or access to, a firearm by the patient would pose an imminent danger or threat to the patient or others.

(2) It is unlawful for any person to own or have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon or firearm, including a tear gas gun or chemical weapon or device, for a period of 90 days if that person is the subject of a preventative assessment received by the Department of Law Enforcement under s. 790.065(2).

(3) Upon receipt of a preventative assessment by the Department of Law Enforcement, the following restrictions shall be imposed by the department upon the subject of the preventative assessment:

(a) A firearms license or license to carry a concealed weapon or firearm issued to the subject of the preventative assessment shall be suspended by the department or the Department of Agriculture and Consumer Services, as applicable,

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59 for a period of 90 days.
60 (b) The subject of the preventative assessment is
61 ineligible to purchase a firearm for a period of 90 days.
62 (4) If, at the end of the 90-day period described in
63 subsection (3), the issuing psychiatrist or clinical
64 psychologist does not renew the preventative assessment for an
65 additional 90 days, the patient's firearms license, license to
66 carry a concealed weapon or firearm, and eligibility to purchase
67 and possess a firearm shall be restored.
68 (5) A person who violates this section commits a felony of
69 the second degree, punishable as provided in s. 775.082, s.
70 775.083, or s. 775.084.
71 Section 2. Subsection (2) of section 790.065, Florida
72 Statutes, is amended, and subsection (9) and paragraph (b) of
73 subsection (10) of that section are reenacted, to read:
74 790.065 Sale and delivery of firearms.—
75 (2) Upon receipt of a request for a criminal history record
76 check, the Department of Law Enforcement shall, during the
77 licensee's call or by return call, forthwith:
78 (a) Review any records available to determine if the
79 potential buyer or transferee:
80 1. Has been convicted of a felony and is prohibited from
81 receipt or possession of a firearm pursuant to s. 790.23;
82 2. Has been convicted of a misdemeanor crime of domestic
83 violence, and therefore is prohibited from purchasing a firearm;
84 3. Has had adjudication of guilt withheld or imposition of
85 sentence suspended on any felony or misdemeanor crime of
86 domestic violence unless 3 years have elapsed since probation or
87 any other conditions set by the court have been fulfilled or

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

88 expunction has occurred; or
89 4. Has been adjudicated mentally defective or has been
90 committed to a mental institution by a court and as a result is
91 prohibited by federal law from purchasing a firearm or has
92 received a preventative assessment as defined in sub-
93 subparagraph c. and is prohibited from purchasing or possessing
94 a firearm, ammunition, or carrying a concealed weapon or firearm
95 for a period of 90 days pursuant to s. 790.339.
96 a. As used in this subparagraph, "adjudicated mentally
97 defective" means a determination by a court that a person, as a
98 result of marked subnormal intelligence, or mental illness,
99 incompetency, condition, or disease, is a danger to himself or
100 herself or to others or lacks the mental capacity to contract or
101 manage his or her own affairs. The phrase includes a judicial
102 finding of incapacity under s. 744.331(6)(a), an acquittal by
103 reason of insanity of a person charged with a criminal offense,
104 and a judicial finding that a criminal defendant is not
105 competent to stand trial.
106 b. As used in this subparagraph, "committed to a mental
107 institution" means involuntary commitment, commitment for mental
108 defectiveness or mental illness, and commitment for substance
109 abuse. The phrase includes involuntary inpatient placement as
110 defined in s. 394.467, involuntary outpatient placement as
111 defined in s. 394.4655, involuntary assessment and stabilization
112 under s. 397.6818, and involuntary substance abuse treatment
113 under s. 397.6957, but does not include a person in a mental
114 institution for observation or discharged from a mental
115 institution based upon the initial review by the physician or a
116 voluntary admission to a mental institution.

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

c. As used in this subparagraph, a "preventative assessment" means a conclusion reached by a psychiatrist or clinical psychologist licensed under chapter 458 or chapter 459 who, upon treating or examining a patient, makes a determination of the existence of mental illness or mental defect of the patient which, in the judgment of the psychiatrist or clinical psychologist, if combined with the presence or possession of, or access to, a firearm by the patient would pose an imminent danger or threat to the patient or others.

d.~~c.~~ In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions, or based upon notification to the department of a preventative assessment. Clerks of court shall submit ~~these~~ records pursuant to sub-subparagraph a. or sub-subparagraph b. to the department within 1 month after the rendition of the adjudication or commitment. A psychiatrist or clinical psychologist shall submit a report of a preventative assessment to the department within 24 hours of his or her diagnosis of the patient and subsequent determination that a preventative assessment is warranted. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject. The report of a preventative assessment must include the name and license number of the issuing psychiatrist or clinical psychologist. The report of a preventative assessment may not include a diagnosis of the patient.

e.~~d.~~ A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the circuit court that made the adjudication or commitment for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having

175 jurisdiction over the court that issued the order. The review
176 shall be conducted de novo. Relief from a firearm disability
177 granted under this sub-subparagraph has no effect on the loss of
178 civil rights, including firearm rights, for any reason other
179 than the particular adjudication of mental defectiveness or
180 commitment to a mental institution from which relief is granted.
181 f.~~e.~~ Upon receipt of proper notice of relief from firearm
182 disabilities granted under sub-subparagraph e. ~~d.~~, the
183 department shall delete any mental health record of the person
184 granted relief from the automated database of persons who are
185 prohibited from purchasing a firearm based on court records of
186 adjudications of mental defectiveness or commitments to mental
187 institutions.
188 g. The department shall delete any mental health record of
189 a person subject to a preventative assessment 90 days after the
190 preventative assessment has been provided to the department,
191 unless the preventative assessment is renewed by the
192 psychiatrist or clinical psychologist before the expiration of
193 the 90-day period.
194 h.~~f.~~ The department is authorized to disclose the collected
195 data to agencies of the Federal Government and other states for
196 use exclusively in determining the lawfulness of a firearm sale
197 or transfer. The department is also authorized to disclose any
198 collected data to the Department of Agriculture and Consumer
199 Services for purposes of determining eligibility for issuance of
200 a concealed weapons or concealed firearms license and for
201 determining whether a basis exists for revoking or suspending a
202 previously issued license pursuant to s. 790.06(10). When a
203 potential buyer or transferee appeals a nonapproval based on

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204 these records, the clerks of court and mental institutions
205 shall, upon request by the department, provide information to
206 help determine whether the potential buyer or transferee is the
207 same person as the subject of the record. Photographs and any
208 other data that could confirm or negate identity must be made
209 available to the department for such purposes, notwithstanding
210 any other provision of state law to the contrary. Any such
211 information that is made confidential or exempt from disclosure
212 by law shall retain such confidential or exempt status when
213 transferred to the department.
214 (9) This section shall become effective at such time as the
215 Department of Law Enforcement has notified all licensed
216 importers, licensed manufacturers, and licensed dealers in
217 writing that the procedures and toll-free number described in
218 this section are operational. This section shall remain in
219 effect only during such times as the procedures described in
220 subsection (2) remain operational.
221 (10) A licensed importer, licensed manufacturer, or
222 licensed dealer is not required to comply with the requirements
223 of this section in the event of:
224 (b) Failure of the Department of Law Enforcement to comply
225 with the requirements of subsections (2) and (3).
226 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

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 1000, relating to regulation of firearms, be placed on the next committee agenda.

SB 1000, mandates that is unlawful for any person to own or posses any firearm, ammunition or electric weapon if that person is the subject of a preventative psychiatric or psychological assessment by FDLE.

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) 359-2532
☐ 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)

4 / 1 /2013
Meeting Date

Topic _____ Bill Number 1800 *(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)

4-1-13
Date

SB-1000
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

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 1032

INTRODUCER: Criminal Justice Committee and Senator Altman

SUBJECT: Correctional Reentry Treatment Facilities

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	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 1032 requires the Department of Corrections to work with the Department of Health (DOH) and the Department of Highway Safety and Motor Vehicles (DHSMV) to ensure that every Florida-born inmate who leaves prison has a state identification card and a certified copy of their birth certificate at no cost to the inmate. Subject to funds, the bill also requires the department to ensure that every inmate within two years of release has access to completing the Florida Ready to Work Certification Program.

In the area of faith and character based programs, the bill encourages the department to maintain faith and character-based institutions for both male and female inmates. It also requires peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, to be offered at faith and character-based institutions.

Finally, the bill provides for a new type of conditional split sentence that can be imposed by a court on certain non-violent third degree felons who have a substance abuse problem. The conditional split sentence requires participation in an in-prison treatment program followed by drug offender probation. If the offender fails to complete the in-prison program, he or she forfeits

the opportunity to be on drug offender probation and must remain in prison for the period of time that would have otherwise been served on probation.

This bill creates section 948.0125 of the Florida Statutes. The bill substantially amends sections 322.051, 382.0255, 944.605, 944.801, and 944.803 of the Florida Statutes.

II. Present Situation:

Reentry Programs for Nonviolent Offenders

Inmates who enter prison often have shortcomings in one or more areas of education, employment skills, substance abuse-free living, and mental health that contributed to their current situation. For example, 24.6 percent of the inmates admitted to prison during Fiscal Year 2011-2012 had been convicted of a drug crime[1] and almost two-thirds of inmates who enter prison for any crime also have a substance abuse problem.[2] Unless addressed, these deficiencies are likely to contribute to re-offending and a return to prison.

In the past decade the executive and legislative branches of state government have acknowledged the importance of reentry services and post-release planning and transition. In May 2007, the Department of Corrections revised its mission statement to include assisting offenders with reentry into society in order to reduce recidivism and to lower crime rates. The department's reported goal was to bring down the three-year post-release recidivism rate from 32 percent to 20 percent by 2012. The department reports that the three-year post-release recidivism rate for inmates released in 2008 was 27.6 percent.[3]

Correctional Integrated Needs Assessment System[4]

The department assesses inmates and places them into programs using the Correctional Integrated Needs Assessment System (CINAS), which is based on the "Risk-Needs-Responsivity (RNR)" principle. The RNR principle refers to predicting which inmates have a higher probability of recidivating, and providing appropriate programming and services to higher risk inmates based on their level of need. The services would be focused on "criminogenic needs," which are factors associated with recidivism that can be changed such as lack of education, substance abuse, criminal thinking, and lack of marketable job skills. High risk offenders have multiple risk factors, and the department provides a range of services and interventions to target the specific crime producing characteristics.

The Recidivism Index (RI) is a component of CINAS developed by the department to give a score that is used to assess an inmate's program needs, determine the inmate's priority for

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[1] Fla. Dep't of Corrections, *Inmate Admissions*, http://www.dc.state.fl.us/pub/annual/1112/stats/im_admis.html (last visited March 28, 2013).
[2] Office of Program Policy Analysis and Governmental Accountability (OPPAGA), *Corrections Rehabilitative Programs Effective, But Serve Only a Portion of the Eligible Population*, Report No. 07-14 (February 2007), p. 6.
[3] Department of Corrections, *Recidivism Rates Over Time,"* http://www.dc.state.fl.us/pub/recidivism/2013.html (last visited on March 28, 2013).
[4] Information in this section is based upon the Department of Corrections' Analysis of Senate Bill 1032 (2013) and Analysis of Senate Bill 448 (2012).

intervention and services, and guide program placement. RI scores range from 1 to 5, with those in RI 1 the least likely to recidivate.

The department reports that CINAS allows it to develop and implement programs that increase the likelihood of successful reentry. It also reports that use of the RI and CINAS "avoids focusing resources on individuals ill-equipped to handle specific behavior problems, and ensures the most appropriate treatment-setting possible is being assigned, based on an inmate's characteristics." As a general rule, the closer an inmate's RI score is to either end of the range, the less likely the inmate is to benefit from recidivism reduction programs. The department focuses reentry programming on inmates with RI scores of 3 or 4 based on the assumption that R1 and R2 inmates have a relatively low likelihood of recidivating even without programming, and that programming is not likely to reduce the high likelihood that R5 inmates will recidivate.

It is department policy to administer CINAS assessment to an inmate when he or she is received at the initial parent institution unless the inmate has a death sentence or a life sentence. The inmate will not receive another CINAS assessment if his or her forecasted release date is 48 months or less. Otherwise, the policy is to give the inmate a secondary CINAS at 42 months from the forecasted release date. After the inmate's final assessment, inmates who are targeted for programs are required to meet with the classification officer every 6 months. The stated purpose of these meetings is to monitor the inmate's progress or enrollment status and for the classification officer to motivate the inmate toward completing programs.

The department reports that the percentage of inmates in each RI score category is currently as follows for the total inmate population and for those who are in minimum custody status:[5]

Recidivism Index Scores for CINAS-Assessed Inmates		
RI Score	***Percentage of Assessed Inmates (Total Population)***	***Percentage of Assessed Inmates (Minimum Custody)***
1 (lowest risk)	14%	40%
2 (low risk)	14%	26%
3 (low-medium risk)	14%	17%
4 (medium-high risk)	36%	14%
5 (highest risk)	22%	2%

According to department policy, inmates with RI scores of 3 and 4 are ranked for placement in core programs if they have an identified need for a specific core program and are within 36 months of release. By policy, they are enrolled in programs based on their priority ranking number, which is itself based on a three-part weighted formula that considers the inmates: (1) program score; (2) current release date; and (3) core program-specific equalization score that is designed to move inmates more in need ahead of others.

The department reports that it focuses on the following core programs in its reentry programming:[6]

[5] Department of Corrections 2013 Bill Analysis of Senate Bill 1032, p. 2.

- Faith and Character/Purposeful Living Units Serve
- United States Department of Labor apprenticeships
- Vocational training
- Thinking for a Change
- 100 Hour Transition[7]
- Veteran's units
- Education
- Substance abuse

Workskills Assessment and Certification

The Florida Ready to Work Certification Program is set out in s. 445.06, F.S., and is administered by the Department of Economic Opportunity. Participants in the program take placement tests to determine whether they need training or study in the areas of Applied Mathematics, Reading for Information, and Locating Information. The participant receives training in areas in which improvement is needed, and then takes an assessment test in each of the skill areas. Depending on the results of the assessment tests, the participant can receive a bronze, silver, or gold credential signifying his or her workplace readiness. The department currently offers the certification program to a small percentage of the inmate population as part of its reentry programming when funds are available.

Reentry Facilities

The department has dedicated certain facilities throughout the state to function as reentry facilities. These facilities house inmates who are within 36 months of release and who have been assigned to the facility based upon their RI score and programming needs. To the extent possible, considering other inmate and institutional needs, inmates are placed in reentry facilities in the area in which they live in order to foster support from family, friends, and community volunteers. Reentry facility staff and community volunteers are charged with helping inmates with housing, employment, and other needs in preparation for release.[8] There are currently three operational reentry facilities. These are:

- Baker Correctional Institution in Baker County (1,332 inmates)
- Sago Palm Reentry Center in Palm Beach County (384 inmates)
- Polk Correctional Institution in Polk County (1,393 inmates)

In addition to the operating programs, three new reentry facilities have been built but never opened due to budget constraints. These are:

- Baker Reentry Facility in Baker County (432 inmates)

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[6] Department of Corrections Reentry Core programs, http://www.dc.state.fl.us/reentry/programs.shtml (last visited on March 26, 2013).
[7] This program is mandated by s. 944.7065, F.S., for inmates who are within 12 months of release.
[8] In addition to other programming, the department provides the 100-Hour Transition Training Program required by s. 944.7065, F.S., for inmates who are within 12 months of their release.

- Everglades Reentry Facility in Dade County (432 inmates)
- Gadsden Reentry Facility in Gadsden County (432 inmates)[9]

The operating reentry facilities each have a "portal of entry" in the community. This portal of entry is the designated release site for state, federal, and local jail inmates who are released to a particular county. The purpose of the portal of entry is to connect the released offender with needed services that have been identified during release planning and to help them with administrative requirements. Among other things, these services may include:

- Access to a clothing closet
- Food or meal vouchers
- Medical/disability assistance
- Assistance with employment
- Assistance with obtaining housing
- Mentoring
- Life skill training
- Felony registration
- Contact with community corrections staff if on community supervision

The portals of entry are cooperative efforts that involve the department, local law enforcement agencies, social service agencies, faith communities, and community volunteers.

Community Work Release Centers

Work release is a transition program through which the department selects inmates to work at paid employment in the community while they serve the remainder of their sentence.[10] The department is statutorily authorized to place an inmate in work release programs during the last 36 months of his or her sentence, but has limited that time to 14 months by rule. Inmates who are on work release have jobs in the community, but live at a non-secure correctional facility. Work release inmates are required to pay room and board and victim restitution, and to contribute to savings. The program is designed to give inmates a chance to enhance employment skills and to re-establish ties with family and the community prior to release.

As of June 30, 2012, the department had 20 state-run work release centers with a total population of 1962 inmates, and 13 contracted work release centers with a total of 1558 inmates.[11] In December 2012, the department issued a Request for Proposals (RFP) for operation by private providers of six work release centers that are currently operated by the department. The RFP contemplated that the work release centers would begin transitioning to operation by the selected providers by April 1, 2013, but the RFP process has been temporarily suspended.[12]

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[9] It is anticipated that Gadsden Reentry Facility will receive funding to begin operations during the next fiscal year. *See* "Prison officials offer tour of shuttered inmate re-entry center," March 26, 2013, at http://www.tampabay.com/blogs/the-buzz-florida-politics/prison-officials-offer-tour-of-shuttered-inmate-re-entry-center/2111327 (last visited March 27, 2013).
[10] Work release is authorized by s. 945.091, F.S.
[11] "Summary of Florida State Correctional Facilities," http://www.dc.state.fl.us/pub/annual/1112/facil.html (last visited on March 27, 2012).
[12] The RFP and additional information are available at http://myflorida.com/apps/vbs/vbs_www.ad.view_ad?advertisement_key_num=105925 (last visited on March 28, 2013).

Faith- and Character-based Programs

In 1999, the department opened its first faith-based dormitory in cooperation with Kairos Horizon at Tomoka Correctional Institution. Several other faith-based dormitories were opened around the state beginning in 2000. In 2001, the Legislature required the department to have six additional faith-based dormitory programs fully operational by June 1, 2002.[13] In 2003, Lawtey Correctional Institution became the first faith-based institution. The department currently has faith and character-based programs at 11 institutions:[14]

Faith and Character Based Residential Facilities		
Location	**Capacity**	**Gender**
Dormitories		
Tomoka C.I.	290	Male
Polk C.I.	128	Male
Lowell RC.	344	Female
Gulf – Annex	128	Male
Everglades C.I	128	Male
Lancaster C.I.	62	Youthful offenders
Union C.I.	96	Male over 50
Hernando CI	181	Female
Total Dormitories	**1357**	
Prisons		
Lawtey C.I.	835	Male
Wakulla C.I.	1,711	Male
Wakulla Annex	1532	Male
Total Prison	**4078**	
TOTAL CAPACITY	**5435**	

OPPAGA's 2009 review of faith and character-based programs found that institution-wide programs had a positive effect on inmate institutional adjustment and security, and a positive but modest effect on reducing recidivism. Dormitory-based programs also had a positive effect on institutional adjustment and security, but had no effect on recidivism.[15]

Drug Offender Probation

Section 948.20, F.S., requires the department have a drug offender probation program that emphasizes a combination of treatment and intensive community supervision approaches and provides for supervision of offenders in accordance with a specific treatment plan. The program can use graduated sanctions when offenders violate program requirements by actions such as

[13] Section 13, Chapter 2001-110, Laws of Florida.
[14] "Faith- and Character-Based Residential Programs," http://www.dc.state.fl.us/oth/faith/index.html (last visited on April 2, 2013).
[15] OPPAGA Report No. 09-38 (October 2009), "Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest," pp. 3-6.

testing positive on drug tests, missing treatment sessions, or failing to report to court. These sanctions can include mandatory community service, extended probation, or jail stays. Probationers in this program are subject to probation revocation if they violate any conditions of their probation. This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.[16] In FY 2011-2012, 9,898 offenders were admitted to drug offender probation. This constituted 11.8 percent of all offenders who were placed on community supervision as part of their original sentence.[17]

Identification Cards and Social Security Cards

Inmates are issued an identification card during the reception process and are required to display it at all times while incarcerated. This serves the department's need to account for each inmate while incarcerated. The inmate may retain the identification card for use when released from prison. However, the inmate identification card has limited usefulness outside the prison setting, carries an inherent stigma, and is not always accepted as identification. Any other identification card that the inmate had when incarcerated, such as a driver's license or social security card, is returned to them upon release. However, many inmates do not bring identification with them when they enter prison, and identification left with someone else is often either lost or expired by the time they are released. Without proper identification and documentation upon release, inmates may be unable to acquire public assistance, legitimate transportation or employment, and housing.[18]

Section 322.051, F.S., provides for issuance of an official state identification card by the DHSMV. Issuance of a state identification card requires presentation of documentation that is sufficient to prove the applicant's identity in accordance with the state statute and the federal REAL ID Act. Many released inmates do not have this required documentation, and very few have it available while they are incarcerated.

The department reports that it works in cooperation with DHSMV and the Department of Health's Bureau of Vital Statistics to obtain identification cards for inmates prior to release.[19] The department obtains birth certificates from the DOH and works with DHSMV for dispatch of the FLOWmobile (Florida Licensing On Wheels vehicle) to department facilities. In 2011 and 2012, a total of 30 visits were made, with 1100 identification cards issued to inmates.[20]

In addition to its efforts to obtain identification cards, the department has a Memorandum of Understanding with the Social Security Administration to expedite the process for inmates to obtain replacement Social Security cards.[21]

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[16] Section 948.06(2)(e), F.S.
[17] "2011-2012 Agency Statistics, Community Supervision Admissions," http://www.dc.state.fl.us/pub/annual/1112/stats/csa_month.html (last visited on April 2, 2013).
[18] *See* Office of Program Policy Analysis and Governmental Accountability (OPPAGA), *Department of Corrections Should Maximize Use of Best Practice in Inmate Rehabilitation Efforts*, Report No. 09-44 (December 2009), pages 5-6.
[19] Department of Corrections Analysis of Senate Bill 1032 (2013), p. 9.
[20] House of Representatives Staff Analysis of PCB JDC 13-01 (now HB 7121), p. 3.
[21] Department of Corrections Analysis of Senate Bill 2616 (2009), p. 3.

The inmate must pay $9 to obtain a Florida birth certificate and $25 to obtain an identification card. The cost and difficulty of obtaining an out-of-state birth certificate varies from state to state.

III. Effect of Proposed Changes:

Identification Cards

The bill requires the department to provide every Florida-born inmate with a certified copy of their birth certificate and a state identification card before release from prison. To obtain a birth certificate, the department must submit a photo and specified personal information of all Florida-born inmates in its custody to DOH. An inmate's failure to cooperate in providing the required information may result in disciplinary action. The department is also required to assist all inmates with obtaining a social security card before release if needed.

The bill requires the department to assist inmates born outside of Florida with completing forms needed to apply for a social security card, drivers license, or state identification card. The department must also provide the inmate with the address of the appropriate agency near his or her expected release address where an identification card can be obtained.

The bill amends s. 382.0255, F.S, to require DOH to waive all fees for an inmate to acquire a certified copy of his or her birth certification through the new process created in the bill. It also amends s. 322.051, F.S., to require DHSMV to issue a state identification for no charge to an inmate who obtains the card through the new process created in the bill.

The department is not required to provide a birth certificate and state identification card to an inmate who:

- Already has a valid driver license or state identification card;
- Has an active detainer, unless cancellation of the detainer is likely or if the incarceration for which the detainer was issued will be for less than twelve months;
- Is released due to emergency release or conditional medical release;
- Is not in the department's physical custody at or within 180 days before release; or
- Is subject to sex offender residency restrictions and does not have a qualifying address.

The bill requires the department to make an annual report that identifies the number of inmates who are released with or without identification cards as well as any impediments to implementation of the identification card program, and recommends any needed improvements.

Skills Assessment Certificate

The bill requires the department to ensure that every inmate who is within two years of his or her projected release has access to skills assessment and training and is offered the opportunity to complete the Florida Ready to Work Certification Program. However, this requirement is subject to funding and the department's determination that access to the program will not present a security, safety, or management risk.

Faith and Character-Based Programs

The bill amends s. 944.803, F.S., to encourage the department to maintain faith and character-based institutions to serve both male and female inmates. Currently there are no faith and character based institutions for females. It also requires peer-to-peer programs, such as Alcoholics Anonymous and literacy instruction, to be offered at faith and character-based institutions.

Reentry Program

The bill creates a reentry program for nonviolent drug offenders. It requires the sentencing judge to order a "conditional" split sentence, with an incarcerative sentence followed by drug offender probation. The offender must be placed in a prison-based substance abuse treatment program within nine months of the end of the offender's scheduled release from the incarcerative portion of the sentence. The offender must participate in the program for a minimum of 180 days and successfully complete the program before beginning drug offender probation. If the offender does not successfully complete the in-prison reentry program, the probationary portion of the conditional split sentence becomes a term of imprisonment, and the inmate must serve at least 85 percent of the total term.

While split sentences in which an offender is sentenced to incarceration followed by probation are common, the "conditional" split sentence created by the bill appears to be unique. In essence, the offender can violate probation before it starts by not completing the in-prison reentry program. If this happens, the pre-determined punishment is to serve the time that would have been spent on probation in prison. Unlike a probation violation, though, there is no provision for a due process hearing before a judge and the offender can be removed from the program through circumstances that are not his or her fault.

To be eligible for the program, an offender's primary offense must be a 3rd degree felony. In addition, the sentencing court must determine that the offender has a substance abuse problem after reviewing a presentence investigation report prepared at its request. Finally, the offender must have never been convicted of any of the following Florida offenses (or a substantially similar offense in another jurisdiction):

- A forcible felony as defined in s. 776.08, F.S.[22]
- An offense listed in the definition of "prison releasee reoffender" in s. 775.082(9)(a)1.r., F.S., regardless of whether the inmate had been previously imprisoned.[23]
- An offense listed in ch. 847, F.S., involving a minor or a depiction of a minor.
- An offense described in ch. 827, F.S.[24]

[22] The offenses included within the definition of "forcible felony" are treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

[23] These offenses are: committing a felony while carrying a concealed weapon (s. 790.07, F.S.); lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.); child abuse or neglect (s. 827.03, F.S.); sexual performance by a child (s. 827.071, F.S.); and lewd and lascivious exhibition by computer transmission (s. 847.0135, F.S.).

- An offense described in ss. 784.07, 784.074, 784.075, 784.076, 784.08, 784.083, or 784.085. F.S. (all of which are within the definition of a forcible felony).
- An offense involving the possession or use of a firearm.
- A capital or first degree felony.
- An offense that requires registration as a sexual offender pursuant to s. 943.0435, F.S.[25]
- An offense that includes sale of a controlled substance as an element of the offense.

The department can discipline inmates in the reentry program, and must terminate an inmate from the reentry program if any of the following occur:

- The inmate commits a violent act.
- The inmate is unable to participate due to a medical condition.
- The sentence is modified or expires.
- The department changes the inmates' classification status.
- The department determines that it is in the best interests of the offender or the security of the institution to remove the offender from the program.

Before completing in-prison treatment, the department evaluates the offender's needs and prepares a post-release treatment plan including substance abuse aftercare services. Upon release, the offender is on drug offender probation and is subject to the conditions of such probation pursuant to s. 948.20, F.S., the standard conditions of probation pursuant to s. 948.03, F.S., and any special conditions of probation required by the sentencing court. Special terms of probations could include participation in an aftercare substance abuse program, residence in a postrelease transitional residential halfway house, or other appropriate supervision or treatment. If the offender is found by the court to have willfully violated a material condition of probation, he or she can be sentenced to any punishment that was authorized at the time of original sentencing.

To the extent possible, the offender is required to pay all costs of services, treatment, and supervision that he or she receives as part of drug offender probation.

If there is a post-adjudicatory drug court program as described in s. 397.334, F.S., in the county where the offender was sentenced or intends to reside, the case may be transferred to that court for supervision if accepted by the court that administers the program.

The bill specifically states that it does not create a right for any offender to be placed in the program or to placement or early release of any type. No offender can have a cause of action

[24] The offenses in ch. 827, F.S., that are not disqualifying under a previous item are contributing to the delinquency or dependency of a child (s. 827.04, F.S.), non-support of dependents (s. 827.06, F.S.), and misuse of child support money (s. 827.08, F.S.).

[25] The offenses the require registration as a sexual offender and that are not disqualifying under a previous item are: luring and enticing a child (s. 787.025, F.S.); unlawful sexual activity with certain minors (s. 794.05, F.S.); procuring person under the age of 18 for the purposes of prostitution (s. 796.03, F.S.); selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.); lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person (s. 825.1025, F.S.); and sexual misconduct by a Department of Juvenile Justice employee or provider with a juvenile offender (s. 985.701, F.S.).

against the department, a court, the state attorney, or the victim related to placement or continued participation in the reentry program.

The bill permits the department to enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program.

The department is required to include information concerning the reentry program in its annual report. The required information includes a detailed account of the department's implementation of the reentry program, the number of offenders sentenced to the program, the number of inmates who successfully complete the in-prison segment, the number of inmates who successfully complete drug offender probation, and recidivism numbers for inmates who have participated in the reentry program.

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:

The bill is subject to challenge as a violation of due process because it does not provide for a due process hearing in order to determine whether an inmate should be removed from the in-prison reentry program and the consequences of removal from the program. Removal from the program automatically results in conversion of the probation portion of the sentence into incarceration for the length of time that the offender was scheduled to be on probation.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill does not appear to have any fiscal impact on the private sector except to the extent that any private service providers are selected by the department and benefit from funds received for their services.

C. Government Sector Impact:

It does not appear the bill would require the Department of Health, the Department of Highway Safety and Motor Vehicles, or the judicial system to incur additional costs. The Department of Corrections would incur an additional cost if it provided access to the Florida Ready to Work Certification Program for all inmates who are within two years of their release date. This cost would be for training and education and the assessment tests, which cost $12 per inmate. The department indicates that it spent $24,000 on grant money in Fiscal Year 2011-2012, and that 1187 certificates were earned by inmates.

The bill will have an indeterminate negative fiscal impact on state revenues due to the waiver of the fee for a state identification card[26] and the waiver of the charge for a certified copy of a Florida birth certificate[27]. DOC estimates that an average of approximately 14,500 Florida-born inmates will be released annually for the next five years. The following table indicates the maximum amount of revenue that could potentially be lost as a result of the waiver of fees for issuing an identification card and a social security card to Florida-born inmates. However, the actual amount of lost revenue is expected to be much less for several reasons, including: (1) many inmates will not receive one or both documents because of the exclusions included in the bill and the logistical difficulties in getting inmates to a DHSMV facility or having an on-site FLOWmobile visit; (2) many inmates would not have obtained either or both documents on their own initiative either before or after release, so the agencies would not have otherwise received fees from those inmates; and (3) many inmates who receive a state identification card will obtain a driver's license after release, so the agencies will still receive fees from them.

Maximum Revenue Loss for Issue of Birth Certificates and Identification Cards to all Florida-born Inmates at No Cost (Assumes Issue to Every Released Inmate)

Fiscal Year	Florida –born inmate releases (based on CJEC projections)	Maximum lost revenue for issue of birth certificates ($9)*	Maximum lost revenue for issue of identification cards ($25)*
2013-2014	14,821	$133,389	$370,525
2014-2015	14,604	$131,436	$365,100
2015-2016	14,646	$131,814	$366,150
2016-2017	14,754	$132,786	$368,850
2017-2018	14,945	$134,586	$373,625

* These amounts are based upon issue to every Florida-born inmate. As noted above, the actual amount of lost revenue is expected to be significantly less.

VI. Technical Deficiencies:

On line 249, it appears that the word "as" should be inserted before "a special condition."

[26] Section 322.21(f), F.S., directs that the $25 fee for issuing a state identification card goes to the General Revenue Fund. For renewals, $6 of the fee goes to the Highway Safety Operating Trust Fund and $19 to the General Revenue Fund.
[27] Section 382.0255(4), F.S., provides that fees charged for issuing a copy of a birth certificate are deposited into a DOH trust fund.

On line 200, modification of the offender's sentence is a cause for mandatory removal from the in-prison reentry program. It is recommended that this be amended to require or allow removal if the sentence is modified to be outside the range of program eligibility requirements.

On lines 201 – 201, another cause for mandatory removal from the in-prison reentry program is reassignment of the offender's custody status. It is recommended that this be amended to require or allow removal if the offender's custody status is reassigned outside the range of program eligibility requirements.

On line 249, it appears that the word "as" should be inserted before "a special condition."

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 April 1, 2013:

- Requires the department to provide every Florida-born inmate with a state identification card and a certified copy of his or her birth certificate, with some exceptions.
- Requires the department to provide every inmate who is within two years of release access to the Florida Ready to Work Certification Program.
- Requires the department to use peer-to-peer programs at faith and character based institutions.
- Deletes provisions relating to the creation of Correctional Reentry Treatment Facilities.
- Creates a conditional split sentence of incarceration with reentry programming followed by drug offender probation for certain non-violent third degree felons who are determined by the court to have substance abuse issues.

B. Amendments:

None.

905990

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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The Committee on Criminal Justice (Altman) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (9) of section 322.051, Florida
6 Statutes, is amended to read:
7 322.051 Identification cards.—
8 (9) Notwithstanding any other provision of this section or
9 s. 322.21 to the contrary, the department shall issue or renew a
10 card at no charge to a person who presents evidence satisfactory
11 to the department that he or she is homeless as defined in s.
12 414.0252(7) <u>or to an inmate receiving a card issued pursuant to</u>

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13 s. 944.605(7).
14 Section 2. Subsection (3) of section 382.0255, Florida
15 Statutes, is amended to read:
16 382.0255 Fees.—
17 (3) Fees shall be established by rule. However, until rules
18 are adopted, the fees assessed pursuant to this section shall be
19 the minimum fees cited. The fees established by rule must be
20 sufficient to meet the cost of providing the service. All fees
21 shall be paid by the person requesting the record, are due and
22 payable at the time services are requested, and are
23 nonrefundable, except that, when a search is conducted and no
24 vital record is found, any fees paid for additional certified
25 copies shall be refunded. The department may waive all or part
26 of the fees required under this section for any government
27 entity. The department shall waive all fees required under this
28 section for a certified copy of a birth certificate issued for
29 purposes of an inmate acquiring a state identification card
30 before release pursuant to s. 944.605(7).
31 Section 3. Subsection (7) is added to section 944.605,
32 Florida Statutes, to read:
33 944.605 Inmate release; notification; identification card.—
34 (7)(a) The department, working in conjunction with the
35 Department of Health and the Department of Highway Safety and
36 Motor Vehicles, shall provide every Florida-born inmate with a
37 certified copy of their birth certificate and a state
38 identification card before his or her release upon expiration of
39 the inmate's sentence.
40 (b) Paragraph (a) does not apply to inmates who:
41 1. The department determines have a valid driver license or

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42 state identification card.
43 2. Have an active detainer, unless the department
44 determines that cancellation of the detainer is likely or that
45 the incarceration for which the detainer was issued will be less
46 than 12 months in duration.
47 3. Are released due to an emergency release or a
48 conditional medical release under s. 947.149.
49 4. Are not in the physical custody of the department at or
50 within 180 days before release.
51 5. Are subject to sex offender residency restrictions, and
52 who, upon release under such restrictions, do not have a
53 qualifying address.
54 (c) The department shall assist each inmate in applying for
55 and obtaining a social security card before release if the
56 inmate needs a social security card.
57 (d) The department, for purposes of assisting the inmate in
58 obtaining a birth certificate, shall submit to the Department of
59 Health on all Florida-born inmates in its custody, the
60 department's inmate photo or digitized photo, and as provided by
61 the inmate his or her date of birth, full name at birth and any
62 subsequent legal name changes, city or county of birth, mother's
63 full name including her maiden surname, and father's full name.
64 Failure of the inmate to cooperate with the department in
65 providing this information may subject the inmate to
66 disciplinary action.
67 (e) For inmates born outside of this state, the department
68 shall assist the inmate in completing the necessary forms or
69 applications to obtain a social security card, driver license,
70 or state identification card. The department shall also provide

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71 the inmate with the location and address of the appropriate
72 licensing authority the inmate will need to obtain a valid
73 identification card in proximity to the inmate's release
74 address.
75 (f) By February 1, 2014, and annually thereafter, the
76 department, in consultation with the Department of Highway
77 Safety and Motor Vehicle and the Department of Health, shall
78 provide a report to the Governor, the President of the Senate,
79 and the Speaker of the House of Representatives that identifies
80 the number of inmates released with and without identification
81 cards, identifies any impediments in the implementation of this
82 subsection, and provides recommendations to improve obtaining
83 release documents and identification cards for all inmates.
84 Section 4. Section 944.801, Florida Statutes is amended to
85 create a new paragraph (j):
86 (j) Ensure that every inmate within two years of his or her
87 projected release date has access to skills assessment and
88 training as defined by s. 445.06 and is offered the opportunity
89 to complete the certificate program. The requirements of this
90 paragraph are contingent upon and limited to the extent that
91 funding is available and determination by the department that
92 such access will not present a security, safety, or management
93 risk.
94 Section 5. Subsections (2) and (6) of section 944.803,
95 Florida Statutes, are amended to read:
96 944.803 Faith- and character-based programs.—
97 (2) It is the intent of the Legislature that the department
98 expand the faith- and character-based initiative through the use
99 of faith- and character-based institutions. The department is

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100 encouraged to phase out the faith-based and self improvement
101 dormitory programs and move toward the goal of only implementing
102 faith- and character-based institutions. The department is also
103 encouraged to dedicate and maintain faith- and character-based
104 institutions that serve both male and female inmates at their
105 respective institutions.
106 (6) Within faith- and character-based institutions of the
107 state correctional system, peer-to-peer programming shall be
108 offered ~~allowed~~, such as Alcoholics Anonymous, literacy
109 instruction, and other activities, ~~when appropriate~~.
110 Section 6. Section 948.0125, Florida Statutes, is created
111 to read:
112 948.0125 Reentry program sentence.—
113 (1) PROGRAM DEVELOPMENT.—The department shall develop and
114 implement a reentry program for nonviolent drug offenders. The
115 program shall provide a mechanism by which an eligible,
116 nonviolent offender for whom the reentry program has been
117 ordered as part of his or her conditional split sentence by the
118 court may be transitioned into the community during the last
119 year of the sentence. The reentry program shall consist of a
120 prison-based substance abuse treatment program for a minimum of
121 180 days and a community-based aftercare treatment program. The
122 reentry program may include a work-release component.
123 (2) ELIGIBILITY.—For an offender to participate in the
124 reentry program, the court at the time of ordering a state
125 prison sentence must have imposed a conditional split sentence
126 whereby the offender is ordered into the department's reentry
127 program that consists of an in-prison treatment component, and
128 upon successful completion of the in-prison treatment, drug

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129 offender probation. Entry into the department's reentry program
130 is subject to available funding and resources of the department.
131 (a) The sentencing court may order the offender into the
132 department's reentry program if the offender meets the following
133 criteria:
134 1. The offender's primary offense is a felony of the third
135 degree.
136 2. The sentencing court, after requesting and reviewing a
137 presentence investigation report prepared pursuant to s.
138 921.231, has found that the offender has a substance abuse
139 problem.
140 3. The offender has never been convicted of:
141 a. A forcible felony as defined in s. 776.08.
142 b. An offense listed in s. 775.082(9)(a)1.r. without regard
143 to prior incarceration or release.
144 c. An offense described in chapter 847 involving a minor or
145 a depiction of a minor.
146 d. An offense described in chapter 827.
147 e. Any offense described in s. 784.07, s. 784.074, s.
148 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085.
149 f. An offense involving the possession or use of a firearm.
150 g. A capital felony or a felony of the first or second
151 degree.
152 h. An offense that requires a person to register as a
153 sexual offender pursuant to s. 943.0435.
154 i. An offense that includes as an element of that offense
155 the sale of a controlled substance.
156 j. An offense in another jurisdiction that would be an
157 offense described in this subparagraph if that offense had been

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158 committed in this state.
159 (b) Placement on drug offender probation shall be
160 conditioned upon the offender's successful completion of the in-
161 prison treatment component of the program.
162 (3) ADMISSION AND PARTICIPATION IN THE REENTRY PROGRAM.—If
163 an offender meets the eligibility criteria under subsection (2),
164 the sentencing court may order the reentry program at the time
165 of sentencing. Admission into the reentry program, and an
166 offender's continued participation in the program, is not a
167 right. Accordingly, a sentencing court is not required to
168 sentence an offender to the reentry program and an offender,
169 based upon conduct in prison, may lose eligibility to continue
170 participating in the reentry program.
171 (4) PROCEDURE UPON ADMISSION TO PROGRAM; IN-PRISON
172 TREATMENT.—If the sentencing court orders the offender into the
173 reentry program, the department shall, subject to available
174 funding and resources, place the offender into the in-prison
175 treatment component not more than 9 months before the end of the
176 offender's incarceration portion of the split sentence,
177 including any gain time accrued.
178 (a) Before the offender completes the in-prison treatment
179 component, the department shall evaluate the offender's needs
180 for community placement and develop a postrelease treatment plan
181 that includes substance abuse aftercare services.
182 (b) An offender in the in-prison component of the reentry
183 program is subject to the rules of conduct established by the
184 department and may have sanctions imposed, including loss of
185 privileges, restrictions, disciplinary confinement, forfeiture
186 of gain-time or the right to earn gain-time in the future,

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187 alteration of release plans, termination from the reentry
188 program, or other program modifications in keeping with the
189 nature and gravity of the program violation. The department may
190 place an offender in the reentry program in an administrative or
191 protective confinement, as necessary. Except as provided in
192 paragraph (c), the offender shall be readmitted to the reentry
193 program after completing the ordered discipline.
194 (c) The department shall terminate an offender from the
195 reentry program if:
196 1. The offender commits a violent act;
197 2. The department determines that the offender is unable to
198 participate in the reentry program due to the offender's medical
199 condition;
200 3. The offender's sentence is modified or expires;
201 4. The department reassigns the offender's classification
202 status; or
203 5. The department determines that removing the offender
204 from the reentry program is in the best interest of the offender
205 or the security of the institution.
206 (d) An offender must serve at least 85 percent of the
207 incarceration portion of the conditional split sentence before
208 being released to drug offender probation. If the offender does
209 not successfully complete the in-prison treatment component of
210 the reentry program, the drug offender probation portion of the
211 conditional split sentence becomes a term of imprisonment to be
212 served while incarcerated. The offender must then serve at least
213 85 percent of the total term of imprisonment.
214 (5) PROCEDURE UPON COMPLETION OF IN-PRISON TREATMENT.—
215 Following successful completion of the in-prison treatment

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216 component, the offender shall be transitioned into the community
217 to serve the drug offender probation portion of the offender's
218 conditional split sentence.
219 (a) While in the community, the offender shall be subject
220 to all standard terms of probation under s. 948.03, and of drug
221 offender probation under s. 948.20, a special condition of
222 supervision ordered by the sentencing court, including
223 participation in an aftercare substance abuse program, residence
224 in a postrelease transitional residential halfway house, or
225 other appropriate form of supervision or treatment.
226 (b) Violation of a condition or order may result in
227 revocation of supervision by the court and imposition of a
228 sentence that is authorized by law, subject to time served in
229 prison.
230 (c) If there is a postadjudicatory drug court program as
231 described in s. 397.334 in the county of the sentencing court,
232 or the county to which the offender returns, and the drug court
233 is willing to accept the case, the offender's case shall be
234 transferred to the drug court for supervision for the probation
235 portion of the offender's split sentence. The drug court judge
236 shall be deemed the sentencing judge for purposes of ensuring
237 compliance with this section.
238 (d) While on drug offender probation, the department shall
239 collect from the offender the cost of supervision as provided
240 for in s. 948.09. An offender who is financially able shall also
241 pay all costs of his or her drug rehabilitation, including drug
242 testing fees. The sentencing judge may impose on the offender
243 additional conditions requiring payment of court costs and
244 fines, public service, and compliance with other court-ordered

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245 special conditions.
246 (6) CONTRACTORS.—The department may develop and enter into
247 performance-based contracts with qualified individuals,
248 agencies, or corporations to supply any or all services provided
249 in the reentry program. The department may establish incentives
250 within the reentry program to promote participation by private-
251 sector employers in the rehabilitative reentry programs and the
252 orderly operation of institutions and facilities.
253 (7) NO RIGHTS CONFERRED UPON OFFENDERS.—This section does
254 not create or confer a right to an offender to placement in the
255 reentry program or a right to placement or early-release under
256 supervision of any type. An offender does not have a cause of
257 action against the department, a court, the state attorney, or a
258 victim related to placement in or continued participation in the
259 reentry program.
260 (8) REPORTING.—The department shall, as part of its annual
261 report, provide a detailed account of the department's
262 implementation of the reentry program, the number of offenders
263 sentenced to the program, the number of inmates who successfully
264 complete the in-prison portion of the program, the number of
265 inmates who successfully complete the drug offender probation,
266 and recidivism numbers for inmates who have participated in the
267 reentry program.
268 (9) RULEMAKING.—The department may adopt rules to implement
269 this section.
270 Section 7. This act shall take effect July 1, 2013
271
272 ========== T I T L E A M E N D M E N T ==========
273 And the title is amended as follows:

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274 Delete everything before the enacting clause
275 and insert:
276 A bill to be entitled
277 An act relating to inmate reentry; amending s.
278 322.051, F.S.; waiving the fee for identification
279 cards issued to certain inmates; amending s. 382.0255,
280 F.S.; requiring a waiver of fees for certain inmates
281 receiving a copy of a birth certificate; amending s.
282 944.605, F.S.; requiring the Department of Corrections
283 to work with other agencies in acquiring necessary
284 documents for certain inmates to acquire an
285 identification card before release; providing
286 exceptions; requiring the department to provide
287 specified assistance to inmates born outside this
288 state; requiring a report; amending s. 944.801, F.S.;
289 requiring skills assessment and training; amending s.
290 944.803, F.S.; authorizing the department to operate
291 male and female faith- and character-based
292 institutions; creating s. 948.0125, F.S.; directing
293 the department to establish a reentry program for
294 nonviolent offenders; providing eligibility and
295 participation requirements; providing guidelines where
296 the department shall terminate inmate's participation
297 in program; providing for inmate to participate in
298 drug offender probation upon completion of in-prison
299 reentry program; authorizing use of postadjudicatory
300 drug court for program participant; authorizing the
301 department to contract for services; providing that no
302 rights are conferred upon inmates to participate in

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303 reentry program; providing for reports and rulemaking
304 authority; providing an effective date.

By Senator Altman

16-01296A-13 20131032__

A bill to be entitled

An act relating to correctional reentry treatment facilities; amending s. 944.02, F.S.; defining the term "correctional reentry treatment facility"; amending s. 944.024, F.S.; requiring the Department of Corrections to screen adults for eligibility for reentry treatment services; creating s. 944.0280, F.S.; providing a short title; creating s. 944.0281, F.S.; requiring the department to establish one or more correctional reentry treatment facilities to be operated by private providers who have experience providing substance abuse, behavioral health, educational, vocational, and other transitional services to offenders; requiring a correctional reentry treatment facility to meet standards for minimum custody offenders; authorizing private providers who operate a correctional reentry treatment facility to subcontract with the department or other private providers to furnish security services and other professional services; requiring a correctional reentry treatment facility to provide necessary working space to department staff; creating s. 944.0282, F.S.; specifying eligibility criteria for participation in the reentry treatment program; providing legislative intent; creating s. 944.0283, F.S.; specifying program elements of the reentry treatment facility; authorizing priority consideration for providers that are Florida-based nonprofit organizations with certain qualifications; creating s.

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16-01296A-13 20131032__

944.0284, F.S.; providing that eligible offenders may be admitted into a correctional reentry treatment facility upon recommendation of the sentencing court or upon determination by the department that an eligible offender is appropriate for admission to a correctional reentry treatment facility; prohibiting certain offenders from being admitted into a correction reentry treatment facility; providing that the department may place offenders if there are vacancies remaining after placement of offenders recommended by the courts; requiring the department to provide a court with information on program availability upon request; creating s. 944.0285, F.S.; specifying that the department may transfer an offender from a correctional reentry treatment facility under certain circumstances; creating s. 944.0286, F.S.; requiring the department to maintain a waiting list under certain circumstances; establishing priorities for admission from the waiting list; requiring the department to develop additional criteria to assign priority for the waiting list; creating s. 944.0287, F.S.; requiring the department to track recidivism of offenders who have participated in correctional reentry treatment facility programs; requiring the department to report to the Governor and the Legislature; creating s. 944.0288, F.S.; providing that the act does not create or confer any right to any offender to placement in a correctional reentry treatment facility; amending s. 945.091, F.S.;

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59 requiring the department to require offenders working
60 at paid employment to use a portion of the employment
61 proceeds equal to the amount of the voucher provided
62 for a government-issued photo identification card plus
63 the actual cost charged by the issuer for any other
64 necessary document; providing for the deposit of funds
65 collected into the General Revenue Fund; creating s.
66 945.0915, F.S.; requiring the department to assist
67 offenders to obtain the proper documents in order that
68 an offender might participate in paid employment;
69 amending s. 784.078, F.S.; conforming a cross-
70 reference; providing an effective date.
71
72 Be It Enacted by the Legislature of the State of Florida:
73
74 Section 1. Present subsections (2) through (8) of section
75 944.02, Florida Statutes, are redesignated as subsections (3)
76 through (9), respectively, and a new subsection (2) is added to
77 that subsection, to read:
78 944.02 Definitions.—The following words and phrases used in
79 this chapter shall, unless the context clearly indicates
80 otherwise, have the following meanings:
81 (2) "Correctional reentry treatment facility" means a
82 minimum custody state correctional facility established for the
83 purpose of providing substance abuse, behavioral health,
84 educational, vocational, and other transitional services to
85 state offenders who are within 36 months of release pursuant to
86 s. 944.0281 or who are sentenced to 36 months or less.
87 Section 2. Subsection (4) of section 944.024, Florida

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88 Statutes, is amended to read:
89 944.024 Adult intake and evaluation.—The state system of
90 adult intake and evaluation shall include:
91 (4) The provision of diagnostic, evaluation, and
92 classification services at the presentence stage to assist the
93 court and the department in planning programs for rehabilitation
94 of convicted offenders. This provision shall include the
95 identification of offenders who are eligible for a correctional
96 reentry treatment facility.
97 Section 3. Section 944.0280, Florida Statutes, is created
98 to read:
99 944.0280 Short title.—Sections 944.0281-944.0288 may be
100 cited as the "Correctional Reentry Treatment Act."
101 Section 4. Section 944.0281, Florida Statutes, is created
102 to read:
103 944.0281 Correctional reentry treatment facility.—
104 (1) Subject to available appropriations, the department
105 shall establish one or more correctional reentry treatment
106 facilities to be operated by providers that have experience
107 providing substance abuse, behavioral health, educational,
108 vocational, and other transitional services to offenders
109 pursuant to the competitive procurement requirements of s.
110 287.057.
111 (2) In selecting providers for correctional reentry
112 treatment facilities, the department shall give priority
113 consideration to Florida-based nonprofit organizations that have
114 direct experience in providing behavioral health and substance
115 abuse treatment, vocational and work release, and educational
116 and other transitional reentry services to offenders in this

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117 state.
118 (3) A correctional reentry treatment facility must meet the
119 standards for offenders who are classified as minimum custody.
120 (4) A private provider that operates a correctional reentry
121 treatment facility may subcontract with the department,
122 educational institutions, government entities, or other
123 providers to furnish security services, educational services,
124 vocational services, and other professional services.
125 (5) A correctional reentry treatment facility must provide
126 working space to department staff necessary to perform ongoing
127 classification services.
128 Section 5. Section 944.0282, Florida Statutes, is created
129 to read:
130 944.0282 Eligibility and target population.—
131 (1) Eligibility for placement in a correctional reentry
132 treatment facility is limited to an offender who is in the final
133 36 months of his or her expected prison commitment or is
134 sentenced to 36 months or less, and who meets the following
135 additional criteria:
136 (a) The offender has been determined by the department to
137 be in need of services provided by the correctional reentry
138 treatment facility.
139 (b) The offender has been classified as appropriate for
140 minimum custody.
141 (c) The offender has been committed for a nonviolent third-
142 degree felony or a second-degree felony involving the purchase
143 of a controlled substance.
144 (d) The offender is not the subject of an active injunction
145 for domestic violence.

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146 (e) The offender has never been convicted of any of the
147 following offenses or a substantially similar offense in another
148 jurisdiction:
149 1. A forcible felony as defined in s. 776.08.
150 2. An offense listed in s. 775.082(9)(a)1., without regard
151 to prior incarceration or release.
152 3. An offense described in chapter 847, involving a minor
153 or a depiction of a minor.
154 4. An offense described in chapter 827.
155 5. An offense described in s. 784.07, s. 784.074, s.
156 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085.
157 6. An offense involving the possession or use of a firearm
158 or other weapon.
159 7. A capital felony or a felony of the first or second
160 degree except as provided in paragraph (c).
161 8. An offense that requires a person to register as a
162 sexual offender pursuant to s. 943.0435.
163 (2) In addition to the eligibility criteria enumerated in
164 subsection (1), it is the intent of the Legislature that an
165 offender who is sentenced for a drug-related offense or whose
166 substance abuse is a factor that leads to commission of the
167 offense be given priority for consideration for placement in a
168 correctional reentry treatment facility.
169 Section 6. Section 944.0283, Florida Statutes, is created
170 to read:
171 944.0283 Program requirements.—Services provided to an
172 offender who is placed in a correctional reentry treatment
173 facility shall be based on the offender's needs assessments. A
174 correctional reentry treatment facility shall offer the

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175 following services in order to address the individual offender's
176 needs:
177 (1) Needs assessments, including psychosocial, educational,
178 vocational, employability, social skills, and behavioral
179 assessments.
180 (2) Individualized service and treatment plans to be
181 developed for each offender based on the results of needs
182 assessments conducted in paragraph (a) and other relevant
183 information.
184 (3) Expedited intake and classification to be performed by
185 department staff in cooperation with the private provider that
186 operates the correctional reentry treatment facility. The
187 department may rely upon information developed by private
188 providers conducting offender needs assessments, as appropriate,
189 in performing the expedited intake and classification function.
190 (4) Educational instruction, including adult basic
191 education and social skills training.
192 (5) Behavioral health services, which must include medical
193 and psychological intervention, treatment, and support services
194 and prevention interventions for diagnosed mental illnesses, for
195 substance abuse disorders, and for co-occurring disorders, to
196 promote individual recovery, improved health, and functioning.
197 (6) Vocational and prevocational training.
198 (7) Behavioral services, which include, as appropriate,
199 victim awareness, anger management, and criminal thinking
200 remediation.
201 (8) Basic life skills training, which must include, but
202 need not be limited to, family development and personal
203 budgeting.

204 (9) Transitional services and development of skills
205 necessary for successful reentry.
206 Section 7. Section 944.0284, Florida Statutes, is created
207 to read:
208 944.0284 Admissions process.—
209 (1) An eligible offender, as provided under s. 944.0282,
210 may be admitted into a correctional reentry treatment facility
211 upon recommendation of the sentencing court or upon
212 determination by the department that the eligible offender is
213 appropriate for admission to a correctional reentry treatment
214 facility. The department shall provide an expedited reception
215 and classification process for an offender who is recommended by
216 the court for admission into a correctional reentry treatment
217 facility in order to verify eligibility and to assess the
218 appropriateness of admission to a correctional reentry treatment
219 facility.
220 (2) The court shall consider any original charge, if
221 different from the offense for which the offender is being
222 sentenced, along with information provided by the arresting law
223 enforcement agency, the defense attorney, and the state attorney
224 in determining whether to recommend that an offender be admitted
225 to a correctional reentry treatment facility.
226 (3) An offender who is determined to have medical or
227 psychiatric needs or other needs that the correctional reentry
228 treatment facility cannot meet or who is determined to be
229 otherwise inappropriate for placement in a correctional reentry
230 treatment facility may not be admitted to a correctional reentry
231 treatment facility.
232 (4) If there are vacancies after placement of offenders

233 recommended by the courts, the department may admit other
234 eligible offenders, as provided under s. 944.0282, to a
235 correctional reentry treatment facility.
236 (5) Upon request of any court, the department shall provide
237 information on the current and projected availability of beds in
238 each correctional reentry treatment facility.
239 Section 8. Section 944.0285, Florida Statutes, is created
240 to read:
241 944.0285 Transfers.—
242 (1) The department shall transfer an offender from a
243 correctional reentry treatment facility in the following
244 circumstances:
245 (a) The offender is unable or unwilling to comply with
246 program requirements.
247 (b) The offender develops serious medical conditions or
248 other conditions that the facility cannot appropriately treat.
249 (c) The offender exhibits disruptive behaviors that
250 compromise the safety of staff or other offenders at the
251 facility or that create disruptions that prevent other offenders
252 from benefitting from the program.
253 (d) The department determines for any reason that continued
254 placement is not in the best interests of the offender or other
255 offenders assigned to the facility.
256 (e) The department determines that transfer is necessary to
257 the population management of the facility.
258 (2) An offender who is determined to be inappropriate for
259 placement at a correctional reentry treatment facility during
260 the expedited intake and classification process may be
261 reconsidered at a later date.

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262 (3) An offender who is placed in a correctional reentry
263 treatment facility may be released to a work-release center if
264 the offender is otherwise eligible for work release.
265 Section 9. Section 944.0286, Florida Statutes, is created
266 to read:
267 944.0286 Department to maintain waiting list.—If there is
268 greater demand for correctional reentry treatment facility beds
269 than are available, the department shall maintain a waiting
270 list. From the waiting list, priority for admission to a
271 correctional reentry treatment facilty shall be first assigned
272 to offenders who have been recommended by a court for admission
273 to a correctional reentry treatment facility. The department
274 shall develop additional criteria to assign priority for
275 placement from the waiting list as vacancies occur. Such
276 criteria must use information generated through an offender's
277 needs assessments and must include the need for substance abuse
278 and behavioral health treatment, probability of successful
279 program completion, disciplinary record, acuity of need, and
280 length of time spent on the waiting list. The waiting list shall
281 be periodically updated and must be available upon request to
282 any court and providers under contract with the department to
283 provide correctional reentry treatment facility services.
284 Section 10. Section 944.0287, Florida Statutes, is created
285 to read:
286 944.0287 Reporting requirements.—The department shall
287 collect data, in a manner that allows for comparison of outcomes
288 by correctional reentry treatment facility, to track recidivism
289 of offenders who have participated in correctional reentry
290 treatment facility programs. As used in this section, the term

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291 "recidivism" is defined as recommitment to prison within 3 years
292 following release. The department shall include the data in the
293 annual recidivism report and shall provide the report to the
294 Governor, the President of the Senate, and the Speaker of the
295 House of Representatives by October 1, 2014. In addition, the
296 department may track such other data that the department deems
297 necessary for future program evaluations.
298 Section 11. Section 944.0288, Florida Statutes, is created
299 to read:
300 944.0288 No rights conferred or created.—Sections 944.0281-
301 944.0287 do not create or confer any right to any offender to
302 placement in a correctional reentry treatment facility. An
303 offender does not have a cause of action against the department,
304 a court, the state attorney, or a victim, which is related to
305 placement at a correctional reentry treatment facility.
306 Section 12. Subsection (6) of section 945.091, Florida
307 Statutes, is amended to read:
308 945.091 Extension of the limits of confinement; restitution
309 by employed inmates.—
310 (6)(a) The department shall require offenders ~~inmates~~
311 working at paid employment as provided in paragraph (1)(b) to
312 use a portion of the employment proceeds to provide restitution
313 to the aggrieved party for the damage or loss caused by the
314 offense of the offender ~~inmate~~, in an amount to be determined by
315 the department, unless the department finds clear and compelling
316 reasons not to order such restitution. If restitution or partial
317 restitution is not ordered, the department shall state on the
318 record in detail the reasons therefor.
319 (b) An offender who is required to provide restitution or

320 reparation may petition the circuit court to amend the amount of
321 restitution or reparation required or to revise the schedule of
322 repayment established by the department or the Parole
323 Commission.
324 (c) The department shall require an offender working at
325 paid employment as provided in paragraph (1)(b) to use a portion
326 of the employment proceeds equal to the amount of the voucher
327 provided for a government-issued photo identification card plus
328 the actual cost charged by the issuer for any other necessary
329 document required to obtain the identification card. As a
330 condition of being allowed to work at paid employment, the
331 offender must agree to allow for the use of employment proceeds
332 as required in this paragraph. All such proceeds collected shall
333 be deposited into the General Revenue Fund.
334 Section 13. Section 945.0915, Florida Statutes, is created
335 to read:
336 945.0915 The department shall determine whether each
337 offender has the necessary documentation to receive a
338 government-issued photo identification card. If an offender does
339 not possess the necessary documentation, the department shall,
340 under an agreement with the Bureau of Vital Statistics and other
341 entities as necessary, attempt to obtain a birth certificate, a
342 social security card, and any other necessary document on behalf
343 of the offender. Upon release, the department shall provide to
344 the offender the documents gathered pursuant to this section,
345 along with detailed instructions on how to obtain a government-
346 issued photo identification card. In addition, the department
347 shall give to the offender a voucher equal to the actual cost
348 charged by the Department of Highway Safety and Motor Vehicles

349 or its agents pursuant to s. 322.051 or s. 322.135. The voucher
350 may be exchanged only for a government-issued photo
351 identification card.
352 Section 14. Subsection (1) of section 784.078, Florida
353 Statutes, is amended to read:
354 784.078 Battery of facility employee by throwing, tossing,
355 or expelling certain fluids or materials.—
356 (1) As used in this section, the term "facility" means a
357 state correctional institution defined in s. 944.02 ~~s.~~
358 ~~944.02(6)~~; a private correctional facility defined in s. 944.710
359 or under chapter 957; a county, municipal, or regional jail or
360 other detention facility of local government under chapter 950
361 or chapter 951; or a secure facility operated and maintained by
362 the Department of Corrections or the Department of Juvenile
363 Justice.
364 Section 15. This act shall take effect July 1, 2013.

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)

04/01/2013
Meeting Date

Topic: Re Entry

Bill Number: 1032 (if applicable)

Name: Jeffery S Roberts

Amendment Barcode: _____ (if applicable)

Job Title: Correctional Officer Sergeant

Address: 7511 Luther Road #121
Street

Punta Gorda, FL 33983
City, State, Zip

Phone: (941) 833-1941

E-mail: jskye4521@gmail.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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Re-entry

Bill Number: 1032 *(if applicable)*

Name: Ron Silver

Amendment Barcode: *(if applicable)*

Job Title:

Address: 2031 NE 209 ST
Street

MIAMI, FL 33179
City, State, Zip

Phone: 305-502-1199

E-mail: RSilver378@AOL.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Teamsters

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 1 /2013
Meeting Date

Topic _____

Bill Number 1032 *(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)

Meeting Date: _____

Topic: Reentry Bill

Bill Number: 1032 (if applicable)

Name: Barney Bishop III

Amendment Barcode: _____ (if applicable)

Job Title: President & CEO

Address: 204 S. Monroe, Ste. 201
Street

Tall — City
FL — State
32301 — Zip

Phone: 907.3436

E-mail: barney@smartjustice alliance.org

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

Representing: Fla. Smart Justice Alliance

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Correctional Reentry

Bill Number: 1032 (if applicable)

Name: Ron Bilbao

Amendment Barcode: (if applicable)

Job Title: SR. Legis. Assoc.

Address: 4500 Biscayne
Street

Miami, FL 33137
City, State, Zip

Phone: 919-923-7288

E-mail: rbilbao@aclufl.org

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

Representing: ACLU of FL

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.

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)

4/1/13
Meeting Date

Topic: Correctional Reentry Treatment Facility

Bill Number: 1032 (if applicable)

Name: Jim DeBeaugrine

Amendment Barcode: (if applicable)

Job Title: CEO, RFJ Governmental Consultants

Address: 204 South Monroe St. Suite 201
Street

Tallahassee, FL 32301
City, State, Zip

Phone:

E-mail: Jim_DeBeaugrine@comcast.net

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

Representing: Bridges of America

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Recovery

Bill Number: SB 1032 *(if applicable)*

Name: Mark P. Fontaine

Amendment Barcode: *(if applicable)*

Job Title: Executive Director

Address: 2868 Mahan Drive
Street

Tallahassee, FL 32308
City, State, Zip

Phone: 878-2196

E-mail:

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

Representing: Florida Alcohol + Drug Abuse 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/2013
Meeting Date

Topic: Re-entry treatment facilities

Bill Number: SB1032 (if applicable)

Name: Jorge Chamizo

Amendment Barcode: (if applicable)

Job Title: Attorney

Address: 108 S. Monroe Street
Street

Tallahassee, FL 32301
City State Zip

Phone: (850) 681-0024

E-mail: jorge@flapartners.com

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

Representing: Fla Assoc. of Criminal Defense Lawyers

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.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR THAD ALTMAN
16th District

March 5, 2013

The Honorable Greg Evers
Senate Committee on Criminal Justice, Chair
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that SB 1032, related to *Correctional Reentry Treatment Facilities,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/rk

CC: Amanda Cannon, Staff Director, 510 Knott Building

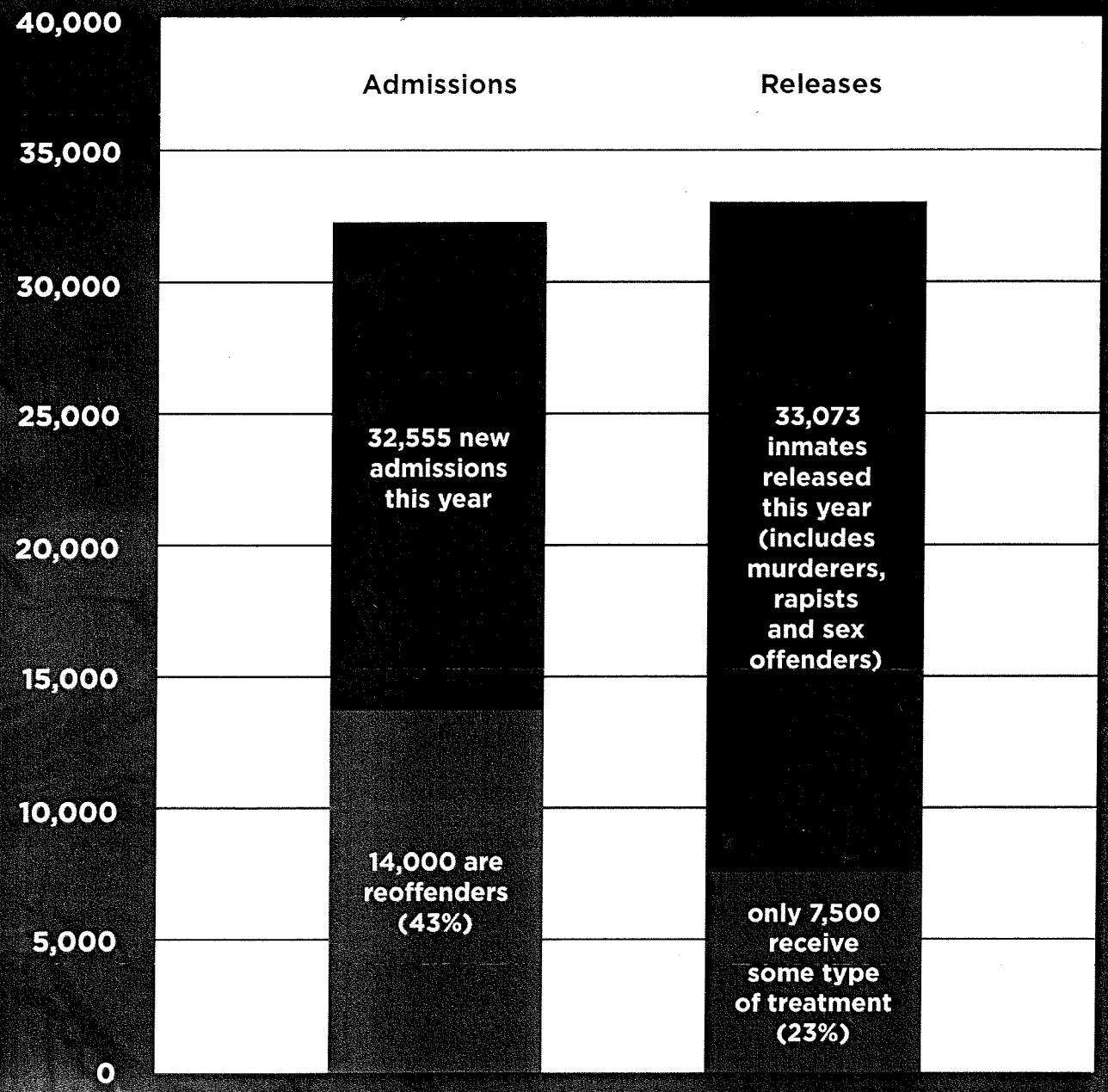
REPLY TO:
❒ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
❒ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

REVOLVING PRISON DOORS



Criminal Justice Estimating Conference, November 2012, for FY 2012-13

"87% OF INMATES HOUSED IN FLORIDA PRISONS TODAY WILL ONE DAY BE RELEASED BACK INTO OUR COMMUNITIES" - *FLORIDA DOC, 2/4/13*

ALMOST HALF OF ALL ADMISSIONS ARE FOR NON-VIOLENT OFFENSES

PRIMARY OFFENSE OF FLORIDA PRISON COMMITMENTS FY 2011-12		
Non-violent (excluding burglary and weapons)	**# of inmates**	**% of total**
Property theft/fraud/damage	4,722	15.05%
Drugs	7,773	24.78%
Non-violent - other	2,547	8.12%
Subtotal Non-violent	**15,042**	**47.95%**
Violent Offenses		
Murder/manslaughter	1,035	3.30%
Sexual/Lewd Behavior	1,698	5.41%
Robbery	2,332	7.43%
Violent - other	4,356	13.88%
Subtotal Violent	**9,421**	**30.03%**
Weapons	1,406	4.48%
Burglary	5,504	17.54%
Total	**31,373**	**100.00%**

Source: "Criminal Justice Trends," 11/19/12 - provided to Florida Criminal Justice Estimating Conference

TOP 5 REASONS FOR COMMITMENT

1. **Drugs*** **24.8%**
2. Burglary 17.5%
3. **Property theft/fraud/damage*** **15.1%**
4. Violent – other 13.9%
5. **Non-violent – other*** **8.1%**

*** 3 of top 5 = non-violent**

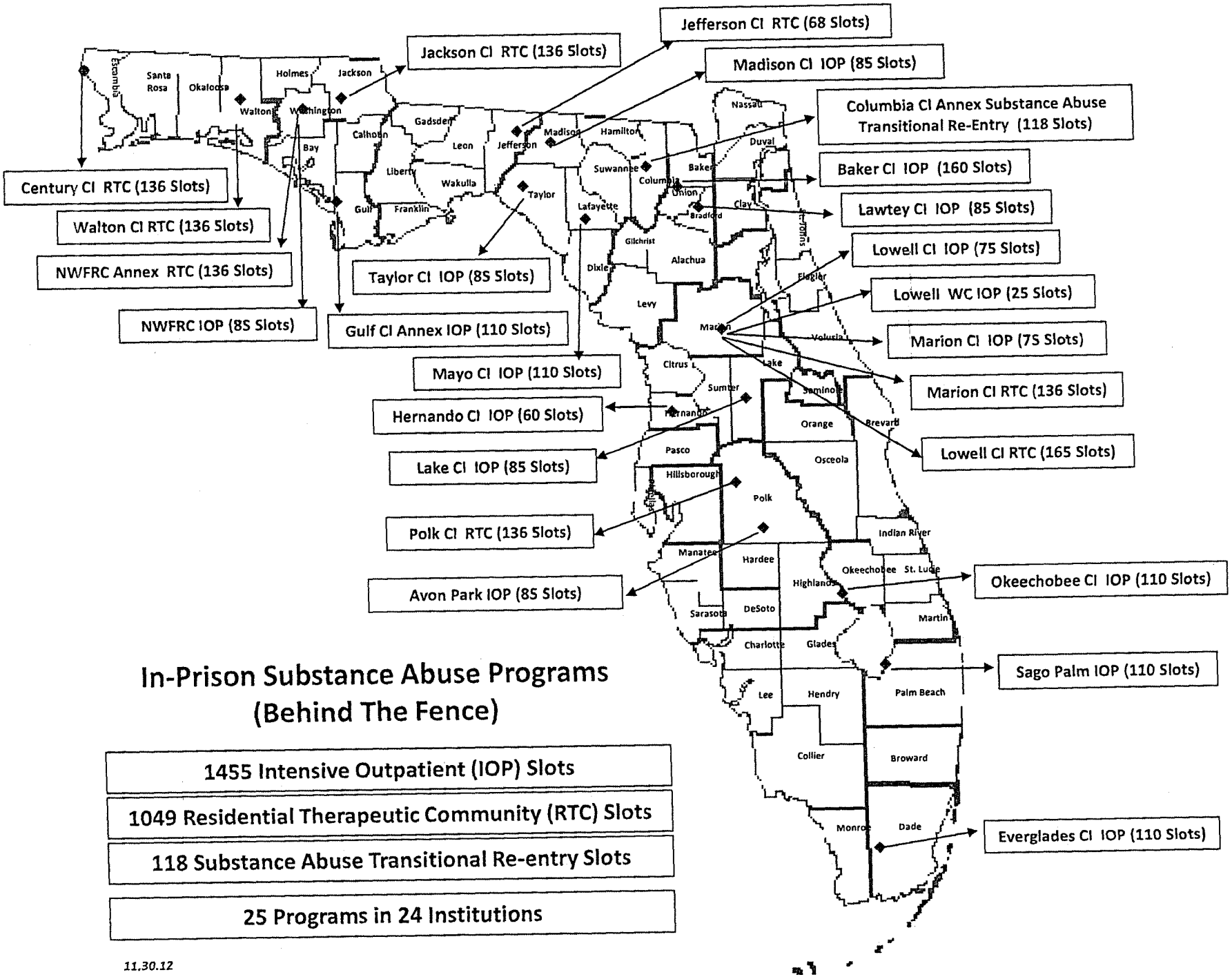
A SNAPSHOT:

64% of new inmates entering Florida prisons in 2011-12 were sentenced for less than 39 months.

73% were sentenced for less than 5 years.

FLORIDA SENTENCE LENGTH DISTRIBUTION - FY 2011-12			
Sentence length	**# of inmates**	**Cumulative**	**Cumulative %**
Year and a day	2,281	2,281	7.27%
367 days to 15 months	3,179	5,460	17.40%
16 - 21 months	4,541	10,001	31.88%
22 - 27 months	4,158	14,159	45.13%
28 - 33 months	2,021	16,180	51.57%
34 - 39 months	3,787	19,967	63.64%
40 - 45 months	986	20,953	66.79%
46 - 51 months	1,612	22,565	71.92%
52 - 57 months	422	22,987	73.27%
58 - 78 months	2,924	25,911	82.59%
79 - 102 months	1,182	27,093	86.36%
Greater than 102 months	4,280	31,373	100.00%
Total	**31,373**		

Source: "Criminal Justice Trends," 11/19/12 – provided to Florida Criminal Justice Estimating Conference



In-Prison Substance Abuse Programs (Behind The Fence)

1455 Intensive Outpatient (IOP) Slots

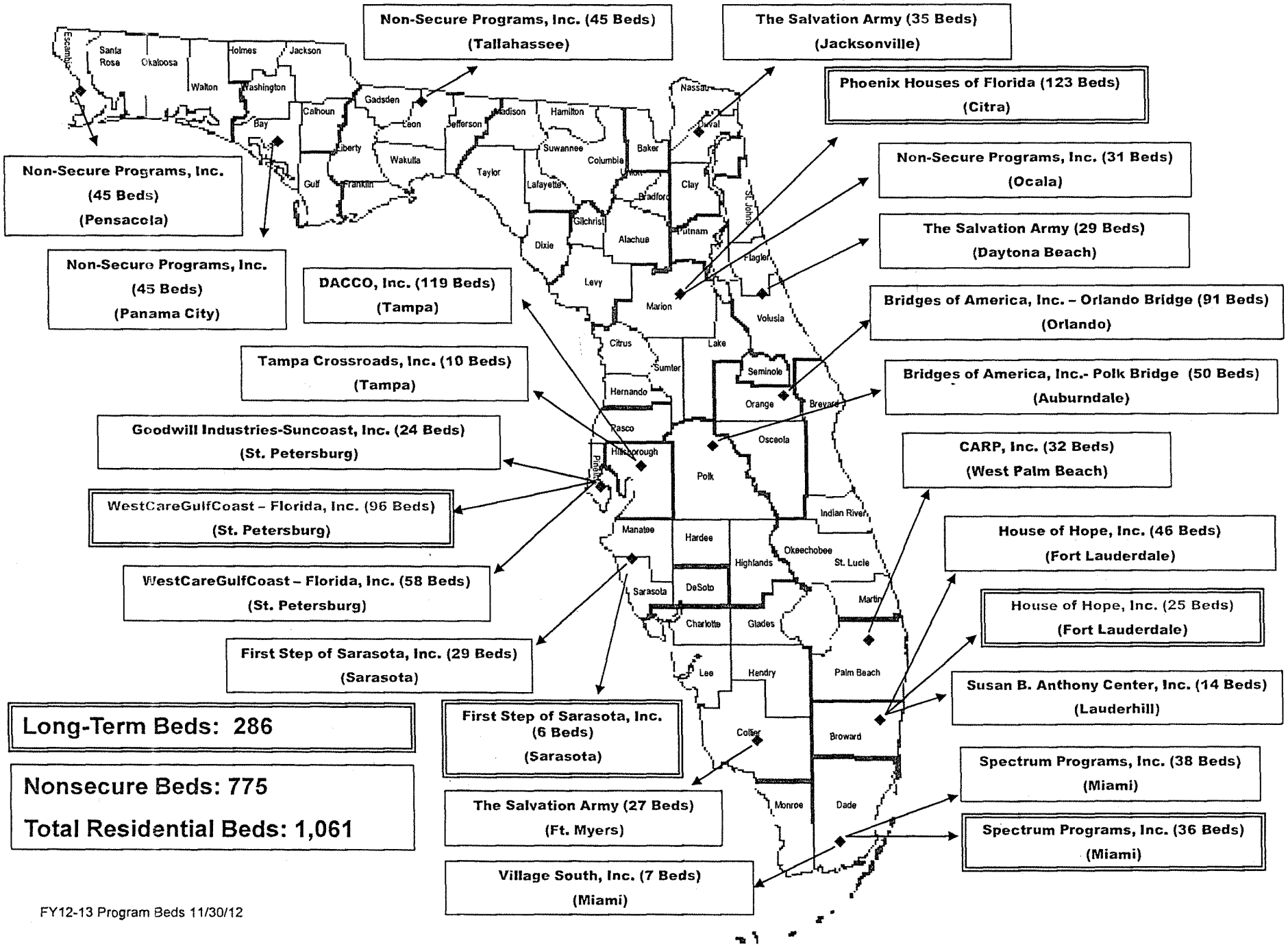
1049 Residential Therapeutic Community (RTC) Slots

118 Substance Abuse Transitional Re-entry Slots

25 Programs in 24 Institutions

11.30.12

Residential Substance Abuse Treatment Programs (Funded Beds)

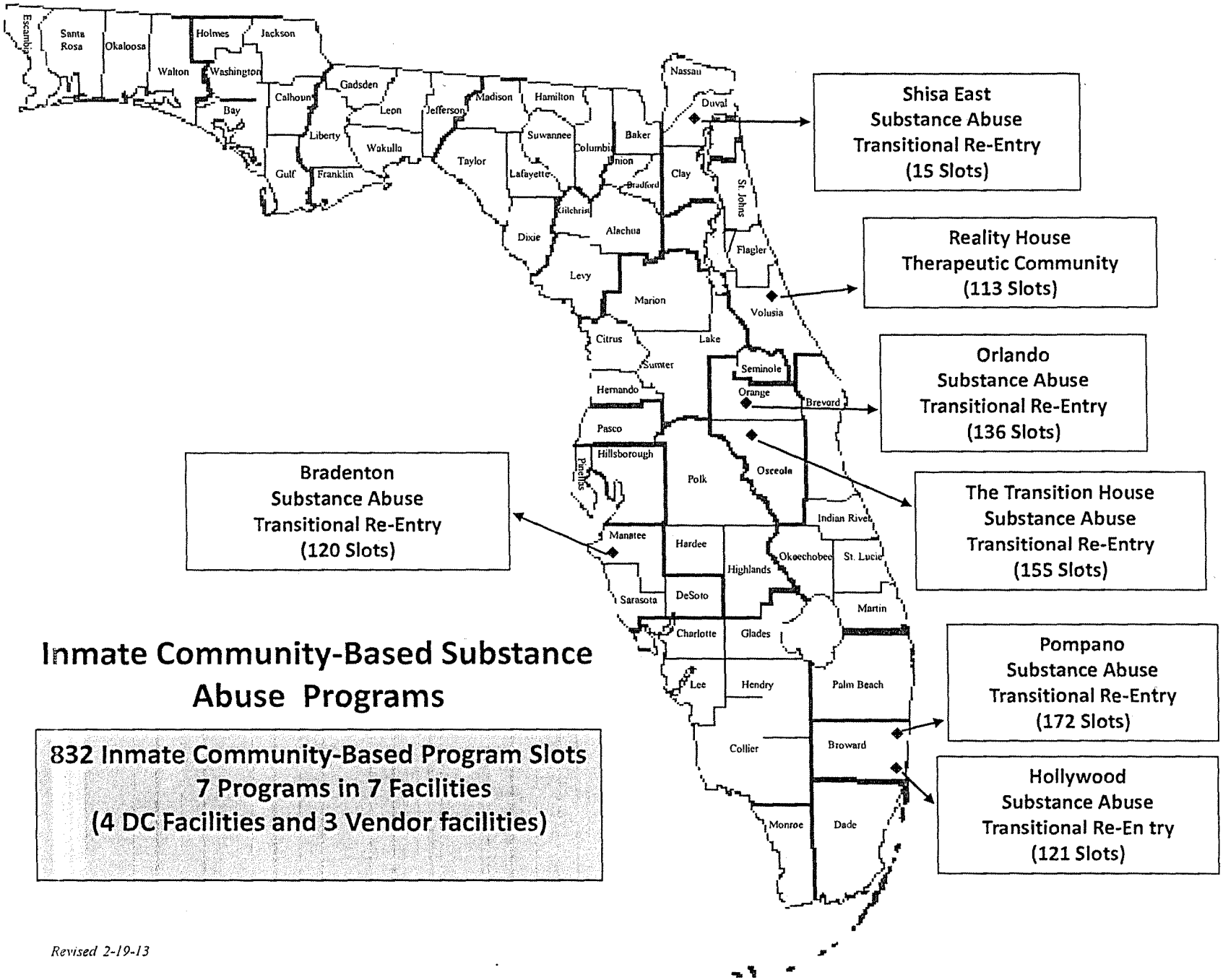


Long-Term Beds: 286

Nonsecure Beds: 775

Total Residential Beds: 1,061

FY12-13 Program Beds 11/30/12



Inmate Community-Based Substance Abuse Programs

832 Inmate Community-Based Program Slots
7 Programs in 7 Facilities
(4 DC Facilities and 3 Vendor facilities)

Revised 2-19-13

Frequently Asked Questions-HB 7121-Inmate Reentry

General

What does this legislation do?

This legislation directs the Department of Corrections (DOC) to:

- *Issue, to the best of its ability, an identification card to inmates as they are released from prison*
- *Encourage the DOC to open faith- and character-based institutions (not just dormitories) for both males and females*
- *Establish a reentry program for nonviolent offenders including provisions for an in-prison component and community-based probation as a split sentence*

Why is this bill needed? Can't the DOC do this now?

Yes the Department can. But this bill provides policy direction and legislative support to emphasize to the new leadership in the DOC (1) that inmates leaving prison need a state-issued ID Car, (2)to encourage faith and character-based programs in institutions and (3) targeting low-level, non-violent offenders.

Will it violate the 85% rule?

No. The bill still requires that an inmate must serve at least 85% of their sentence in prison. There is nothing in the bill that changes current law.

What constitutes in-prison/community based treatment?

In-prison treatment-The inmate will not begin more than nine months before the end of the inmate's incarceration period, and it will be conducted in a prison facility or under the auspices of the DOC.
Community-based treatment-The offender must have successfully completed the in-prison treatment and must not be placed in this treatment for more than one year. The offender will be subject to all standard terms of probation during this part of the split sentence, and any violation will subject the inmate to custody back to a prison.

How many treatment slots are currently available?

*There are currently 7,500 slots available which equals just **23% of all inmates being released annually receive some treatment services. 77% receive no treatment!** These slots include treatment in-prison and community control transition facilities.*

Why is the program limited to those with 3rd degree felonies?

Non-violent inmates are generally young and thus have a higher potential for recidivism. This is the "target" population and of the 14,000 inmates returning to prison each year, most of them are 3rd degree felons. In addition, drug abusers are the largest cohort among state prisoners. Treating them will help further reduce recidivism.
The offender must have been identified as having a substance abuse problem by the court.
Offenders must never have been convicted of:

- *A forcible felony as defined in s. 776.08*
- *An offense listed in s. 775.082(9) (a)1.r. without regard to prior incarceration or release*
- *An offense described in chapter 847 involving a minor or a depiction of a minor*
- *And offense described in chapter 827*
- *Any offense described in s. 784.07, s. 784.074, s. 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085*
- *An offense involving the possession or use of a firearm*
- *A capital felony or a felony of the first or second degree*
- *An offense that requires a person to register as a sexual offender pursuant to s. 943.0435*
- *An offense that includes as an element of that offence the sale of a controlled substance*
- *An offense in another jurisdiction that would be an offence described in this subparagraph if that offence has been committed in this state*

Will drug traffickers or drug distributors be eligible for this treatment program?

No, not at all.

Will violent offenders be at any of the non-profit providers facilities?

It depends on whom the DOC sends to these facilities which is how the current system operates now. Generally, violent and non-violent inmates are sent as they get ready to reenter society. The non-profit providers have no say in whom DOC sends to their facilities.

What about cherry picking of inmates by private providers?

*The DOC currently sends violent and non-violent inmates to the private providers at their discretion. The private non-profit providers are not able to pick who does or does not receive treatment in their facilities. So **NO** cherry-picking goes on since DOC decides not the providers.*

Will any prisons close with this legislation?

No. This legislation does not direct the DOC to close any prisons; only to have a reentry program targeted for non-violent offenders-3rd degree felons.

Will any correctional officers lose their jobs?

No. This legislation has no impact on the number of correctional officers.

Is this privatization?

No. This legislation only directs the DOC to administer a reentry program specifically for non-violent drug offenders – which it currently does. It does not specify for the DOC to privatize any services, but it does allow the DOC to continue to work with non-profit vendors as it does now. No state-operated prisons will have to close because of this bill.

Are any for-profit corporations going to run the facility?

This legislation does not address that issue. The legislation allows the Department to enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided in the reentry program. Currently, only non-profit entities provide substance abuse treatment services to DOC inmates.

Identification Cards

What is the fiscal impact on the ID cards?

There is a negative impact on revenue each fiscal year of approximately $500,000 for the cost of issuing birth certificates and state ID cards IF every Florida-born inmate received a card. Inmates born out-of-state will not have a negative fiscal impact on the state's GR. In other words these are dollars that DOC and/or DHSMV will not receive in the future.

What is the fiscal impact?

The bill will have a relatively negligible negative impact on state revenues due to the waiver of the fee for a state identification card and the waiver of the fee for a certified copy of a Florida birth certificate. The anticipated increase in the DOC, Department of Health, and the Department of Highway Safety and Motor Vehicles' workload will be subsumed within existing agency resources. And DOC and DHSMV have a Memorandum of Understanding (MOU) on the reduced costs for the obtaining the card and the certified copy of the birth certificate.

Faith and Character-Based Institutions

How many faith- and character-based prisons are there now?

The DOC has two faith-based institutions for males - Wakulla and Lawtey Correctional Institutions. There are NO faith-based institutions for women at this time. In addition, there are 8 faith-based dormitories for a total of 10 locations.

*Total faith-based beds = **5,435** (which is just **5.4%** of all 100,000+ inmate beds in prison system)*

*DOC plans to add only 792 new faith-based beds = **6227** (which will bring the total percentage of faith-based beds to **6.2%**)*

Are faith and character-based prisons safer?

Yes. The Disciplinary Report (DR) rate of faith-based dormitories, as presented by DOC Secretary Michael Crews to the House Judiciary Committee on March 7, 2013, indicates that DR's for faith-based dormitories are lower than non-faith-based dormitories:

DR Rate/1000 inmates comparison for Faith-based and Non-Faith-based dormitories @ same Prison:

Tomoka	***Faith-based DR's***	***111***
	Non-Faith-based DR's	*343*
Gulf Annex	***Faith-based DR's***	***101***
	Non-Faith-based DR's	*164*
Polk	***Faith-based DR's***	***96***
	Non-Faith-based DR's	*221*

EDUCATION AND SUBSTANCE ABUSE TREATMENT COSTS: A COMPARISON

DOC

Sago Palm Re-Entry at Martin Correctional Institution

	Expenditures	Avg. Daily Pop.	Per Diem
Education	$237,967	384	$1.70
Substance Abuse	$63,473	384	$.045

DOC expends **$1.70** per day per inmate for education

DOC expends **$0.45** per day per inmate for Substance Abuse

Recidivism Rate 30%

BOA

Bradenton, Broward, Orlando, Turning Point, Jacksonville

	Expenditures	Avg. Daily Pop.	Per Diem
Education	$819,115	826	$5.24
Substance Abuse	$1,820,460	826	$6.04

BOA expends **$5.24** per day per inmate for education

BOA expends **$6.04** per day per inmate for Substance Abuse

Recidivism Rate 18%

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 1110

INTRODUCER: Criminal Justice Committee; Transportation Committee; and Senator Evers

SUBJECT: Railroad Police Officers

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	**Fav/CS**
2.	Erickson	Cannon	CJ	**Fav/CS**
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/CS/SB 1110 provides that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with minimum qualifications for employment as a law enforcement officer. Notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with these minimum qualifications and specified continuing education and training. A Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of these minimum qualifications and specified continuing education and training, and pay all costs associated with the certification and continuing education of employed special officers.

The bill adds "railroad special officer" (defined in the bill) to the list of officers and positions for which the felony or misdemeanor degree of any specified assault and battery offense is reclassified when committed upon a listed officer or person in a listed position.

Sections 943.085-943.255, F.S., deal with definitions of relevant terms in ch. 943, F.S., the Criminal Justice Standards and Training Commission (CJSTC), minimum qualifications for employment, officer certification, education and training, and other matters. The bill modifies

definitions of "law enforcement officer" and "employing agency" to specify that, for purposes of these statutes *only*, the definition of "law enforcement officer" includes special officers employed by a Class I or Class II railroad and appointed by the Governor and an "employing agency" includes a Class I or Class II railroad that employs special officers appointed by the Governor.

This bill amends the following sections of the Florida Statutes: 354.01; 784.07; and 943.10.

II. Present Situation:

Law Enforcement Officer Certification and Training

Section 943.10, F.S., provides the following definitions applicable to ch. 943, FS.:

- A "law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.[1]
- An "employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a non-juvenile detention facility.[2]

The Criminal Justice Standards and Training Commission (CJSTC) within the Florida Department of Law Enforcement (FDLE) establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers. Currently, the CJSTC certifies a person for employment as a law enforcement officer if:

- The person complies with s. 943.13(1)-(10), F.S.; and
- The employing agency complies with s. 943.133(2) and (3), F.S.[3]

Section 943.13, F.S., requires every person employed or appointed as a law enforcement officer to:

- Be at least 19 years of age;
- Be a citizen of the United States;

[1] Section 943.10(1), F.S.
[2] Section 943.10(4), F.S.
[3] Section 943.1395(1), F.S. Section 943.133, F.S., sets forth the general responsibilities and requirements of employing agencies, and specifies that an employing agency is responsible for the collection, verification, and maintenance of documentation establishing that an applicant complies with the requirements of s. 943.13, F.S.

- Be a high school graduate or its "equivalent;"
- Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;
- Have documentation of his or her processed fingerprints on file with the employing agency (an alternative is provided for private correctional officers);
- Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the CJSTC;
- Have a good moral character as determined by a background investigation under procedures established by the CJSTC;
- Execute and submit to the employing agency an affidavit-of-applicant form, adopted by the CJSTC, attesting to his or her compliance with specified subsections of the statute.
- Complete a CJSTC-approved basic recruit training program for the applicable criminal justice discipline, unless exempt;
- Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline; and
- Comply with the continuing training or education requirements of s. 943.135, F.S.

The definition of the term "law enforcement officer" only includes those elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof. As such, persons employed by private entities (e.g., special officers appointed by the Governor pursuant to s. 354.01, F.S., including railroad police) cannot be certified by the CJSTC as "law enforcement officers." Similarly, the definition of the term "employing agency" only includes agencies or units of government or any municipality or the state or any political subdivision thereof. It does not include private entities (e.g., Class I or Class I railroads that employ special officers pursuant to s. 354.01, F.S.)

Railroads and Special Officers

According to the U.S. Surface Transportation Board (STB),[4] railroads are classified based on their annual operating revenues. The Class to which a railroad belongs is determined by comparing its adjusted operating revenues for three consecutive years to the following scale:

Class I - $250 million or more;
Class II - $20 million or more;
Class III - $0 to $20 million.[5]

Florida's rail system is comprised of 2,786 miles of mainline track, which are primarily owned by 15 operating line-haul railroads and terminal or switching companies (81 miles are owned by

[4] The STB was created in the ICC Termination Act of 1995 and is the successor agency to the Interstate Commerce Commission. The STB is an economic regulatory agency that Congress charged with resolving railroad rate and service disputes and reviewing proposed railroad mergers. The STB is decisionally independent, although it is administratively affiliated with the Department of Transportation. *See* http://www.stb.dot.gov/stb/about/overview.html.
[5] The following formula is used to adjust a railroad's operating revenues to eliminate the effects of inflation: Current Year's Revenues X (1991 Avg. Index /Current Year's Avg. Index). The average index (deflator factor) is based on the annual average Railroad Freight Price Index for all commodities. *Frequently Asked Questions*, Surface Transportation Board, available at http://www.stb.dot.gov/stb/faqs.html.

the State).[6] Florida's rail system includes two Class I railroads,[7] one Class II railroad,[8] eleven Class III railroads,[9] and one railroad specializing in switching and terminals.[10] The largest operator in Florida is CSX Transportation, which owns more than 53 percent of the statewide track mileage.[11]

Section 354.01, F.S., authorizes the appointment of "special officers," who are persons employed by railroads and other common carriers for the protection of the carrier's employees, passengers, freight, equipment, and properties. Appointments of special officers are made by the Governor, and applicants are required to meet the law enforcement qualifications and training requirements of s. 943.13(1)-(10), F.S.[12] Special officer arrest powers are generally limited in that they can arrest persons, on or off the railroad's property, so long as the violation occurred on the property.[13]

Special officers are required to provide a $5,000 surety bond to the Governor for the faithful performance of their duties, and may be removed by the Governor at any time.[14] Special officers are paid by their employing carrier – not by the state or any county.[15]

While special officers are required to meet the minimum standards that apply to law enforcement officers, they are not certified law enforcement officers because they do not work for an "employing agency" as defined in s. 943.10(4), F.S. Railroads and common carriers that employ special officers are not considered employing agencies because they are not governmental entities.

Reclassification of Assault and Battery Offenses Committed Against Specified Persons

Section 784.07, F.S., reclassifies the misdemeanor or felony degree of assault and battery offenses committed upon the following types of employees or persons:

- A law enforcement officer;

---

[6] *The Florida Rail System Plan: Investment Element (*December 2010), p. 2-1, available at http://www.dot.state.fl.us/rail/PlanDevel/Documents/FinalInvestmentElement/A-2010FLRailPlan-InvestmentElement.pdf.
[7] *Id.* (CSX Transportation and Norfolk Southern Corporation).
[8] *Id.* (Florida East Coast Railway).
[9] *Id.* (Alabama and Gulf Coast Railway AN Railway, Bay Line Railroad, First Coast Railroad, Florida West Coast Railroad, Florida Central Railroad, Florida Midland Railroad, Florida Northern Railroad, Georgia and Florida Railway, Seminole Gulf Railway, and South Central Florida Express).
[10] *Id.* (Talleyrand Terminal).
[11] *Id.*
[12] Section 354.01, F.S. The FDLE states that, currently, the Governor grants a commission to railroad police officers who have the arrest authority equivalent to that of a deputy sheriff. They are duly sworn officers on railroad property with full arrest powers and the authority to investigate crimes. According to the FDLE, the bill does not seek to expand the scope of their existing authority in any way. The FDLE further states that, while rail police currently meet or exceed all requirements for state certification as law enforcement officers, these police are not under the administrative oversight of the CJSTC. In addition, there are no continuing education and training requirements for these police. Analysis of SB 1110 (dated February 26, 2013), Florida Department of Law Enforcement (on file with the Committee on Criminal Justice). This analysis is further cited as "FDLE Analysis."
[13] *Id.*
[14] Sections 354.03 and 354.05, F.S.
[15] Section 354.04, F.S.

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

Section 784.07, F.S., applies whenever any person is charged with knowingly committing an assault or battery upon one of these persons while that person is engaged in the lawful performance of his or her duties. The reclassification of degree of the offense depends on the assault or battery offense charged:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment.
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, as defined, the person is subject to a mandatory minimum term of imprisonment of three years.
- A semiautomatic firearm and its high-capacity detachable box magazine, as defined, or a machine gun, as defined, the person is subject to a mandatory minimum term of imprisonment of eight years.

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

- A second degree misdemeanor is 60 days in a county jail.
- A first degree misdemeanor, one year in a county jail.
- A third degree felony, 5 years in state prison.
- A second degree felony, 15 years in state prison.

- A first degree felony, generally 30 years in state prison.[16]

Fines may also be imposed, and these fines escalate based on the degree of the offense.[17]

The offense severity ranking level of applicable reclassified felony offenses is as follows:

- Reclassified battery: Level 4.
- Reclassified aggravated assault: Level 6.
- Reclassified aggravated battery: Level 7.[18]

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

III. Effect of Proposed Changes:

Section 1 amends s. 354.01, F.S., to provide that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with the qualification for employment as a law enforcement officer in s. 943.13, F.S. (minimum qualifications for employment or appointment). Notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with s. 943.13, F.S., and s. 943.135(1), F.S. (continuing education and training). A Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of s. 943.13, F.S., and s. 943.135(1), F.S., and shall pay all costs associated with the certification and continuing education of employed special officers.

Section 2 amends s. 784.07, F.S., to define "railroad special officer" to mean a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S. The bill adds railroad special officer to the list of officers and positions for which the misdemeanor or felony degree of any specified assault and battery offense is reclassified when committed upon a listed officer or person in a listed position.

Section 3 amends s. 943.10(1), F.S., to provide that, for purposes of ss. 943.085-943.255, F.S., *only*, the definition of "law enforcement officer" includes special officers employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S. The bill also amends s. 943.10(4), F.S., to provide that, for purposes of ss. 943.085-943.255, F.S., *only*, the definition of "employing agency" also includes a Class I or Class II railroad that employs special officers pursuant to s. 354.01, F.S.[19]

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[16] Section 775.082, F.S.
[17] Section 775.083, F.S.
[18] Section 921.0022, F.S. Sentence points accrue based upon the ranking of a non-capital felony offense with higher-level offenses accruing more sentence points than lower-ranking offenses. These points, along with points accrued for additional and prior offenses and other factors, are entered into a statutorily-derived mathematical calculation to determine the lowest possible sentence.
[19] Class III railroads are not referenced. See "Technical Deficiencies' section of this analysis.

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 provides that a Class I, Class II, or Class III railroad that employs special officers incurs all costs associated with certification and continuing education of the employed special officers.

C. Government Sector Impact:

The FDLE stated that CS/SB 1110 would make railroad special officers eligible to receive monies from the Criminal Justice Standards and Training Trust Fund for advanced and specialized training that is delivered by Florida's forty criminal justice training centers. This would be a recurring cost of approximately $1,800 per year (based on the current disbursement amount of $67 per officer with an officer count of 27) beginning in FY 2013-14 and continuing every year thereafter. This cost may increase or decrease depending on the availability of funds for disbursement to the training centers.[20] It is unclear if this analysis is equally applicable to CS/CS SB 1110. An FDLE analysis of CS/CS/SB 1110 was not available at the time this analysis was completed.

VI. Technical Deficiencies:

CS/CS/SB 1110, in part, amends s. 354.01, F.S., to read: "Notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with s. 943.13 and s. 943.135(1) and a Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of s. 943.13 and s. 943.135(1)...." While this language corrects an earlier omission of a reference to Class III railroads, the language does not pick up specific statutory references ("943.085-943.255") that

[20] *Id.*

are used in Section 3 of the bill, which amends the definitions of "law enforcement officer" and "employing agency" in s. 943.10, F.S.

Section 3 of the bill (unlike Sections 1 and 2 of the bill) does not reference Class III railroads in amendments to the definitions of "law enforcement officer" and employing agency."

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 April 1, 2013:

- Provides that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with the minimum qualifications for employment or appointment in s. 943.13, F.S.
- Provides that, notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with s. 943.13, F.S., and s. 943.135(1), F.S. (continuing education and training).
- Revises the definition of "railroad special officer" in s. 784.07, F.S. (reclassification of assault and battery offenses on specified officers and persons is specified positions) to mean a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S. (appointment of special officers).
- Reclassifies the misdemeanor or felony degree of specified assault and battery offenses committed upon "railroad special officers" (as defined).

CS by Transportation on March 14, 2013:

The CS requires a Class I or Class II railroad that employs special officers, as a non-public employing entity, to incur all costs associated with certification and continuing education of the employed special officers, thereby removing a conflict with existing law that prohibits such officers from receiving any fees from the state.

B. Amendments:

None.

532492

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 35 - 43
4 and insert:
5
6 passengers, and employees. However, until the Governor has
7 either appointed or rejected the appointment of the special
8 officer, a common carrier may temporarily employ a person as a
9 special officer if the person complies with the qualifications
10 for employment as a law enforcement officer in s. 943.13.
11 Notwithstanding any other provision of law, a special officer
12 shall be required to have the same training and certification as

532492

13 a law enforcement officer in accordance with s. 943.13 and s.
14 943.135(1) and a Class I, Class II, or Class III railroad shall
15 be considered an employing agency for purposes of s. 943.13 and
16 s. 943.135(1), and shall pay all costs associated with the
17 certification and continuing education of employed special
18 officers.
19
20 ========== T I T L E A M E N D M E N T ==========
21 And the title is amended as follows:
22 Delete lines 3 - 11
23 and insert:
24
25 s. 354.01, F.S.; requiring the Governor to appoint one
26 or more persons as special officers for a railroad or
27 other common carrier under certain circumstances;
28 authorizing the railroad or common carrier to
29 temporarily employ a person as a special officer;
30 requiring the special officer to have the same
31 training and certification as a law enforcement
32 officer; providing that a Class I, Class II, or Class
33 III railroad is considered an “employing agency” for
34 purposes of ss. 943.13 and 943.135(1), F.S.; providing
35 responsibility of certain

761198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete lines 94 - 95
4 and insert:
5
6 Class I, Class II, or Class III railroad and appointed or
7 pending appointment by the Governor pursuant to s. 354.01.

781814

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 152 - 183
4 and insert:
5
6 Section 3. This act shall take effect July 1, 2013.
7
8 ========== T I T L E A M E N D M E N T ==========
9 And the title is amended as follows:
10 Delete lines 15 - 21
11 and insert:
12 a railroad special officer; providing an effective

By the Committee on Transportation; and Senator Evers

596-02419-13 20131110c1

A bill to be entitled

An act relating to railroad police officers; amending s. 354.01, F.S.; requiring special officers employed by a railroad or other common carrier to comply with specified continuing training or education requirements; providing that a special officer is not considered a "law enforcement officer" except for purposes of ss. 943.085-943.255, F.S.; providing that a Class I or Class II railroad is not considered an "employing agency" except for purposes of ss. 943.085-943.255, F.S.; providing responsibility of certain costs; amending s. 784.07, F.S.; defining the term "railroad special officer"; providing for reclassification of certain offenses committed against a railroad special officer; amending s. 943.10, F.S.; including special officers employed by a railroad or other common carrier within the definition of "law enforcement officer" and including certain railroads within the definition of "employing agency" for purposes of specified provisions relating to law enforcement officer standards; providing an effective date.

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

Section 1. Section 354.01, Florida Statutes, is amended to read:

354.01 Appointment of special officers.—Upon the application of any railroad or other common carrier doing

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596-02419-13 20131110c1

business in this state, the Governor shall appoint one or more persons who have met the law enforcement qualifications and training requirements of s. 943.13 ~~943.13(1)-(10)~~ as special officers for the protection and safety of such carriers; their passengers and employees; and the property of such carriers, passengers, and employees. A special officer shall not be considered a "law enforcement officer" except for purposes of ss. 943.085-943.255. A Class I or Class II railroad shall not be considered an "employing agency" except for purposes of ss. 943.085-943.255. Notwithstanding s. 943.25(5), a Class I or Class II railroad that employs special officers shall as a non-public employing entity incur all costs associated with certification and continuing education of the employed special officers.

Section 2. Section 784.07, Florida Statutes, is amended to read:

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.—

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

(a) "Emergency medical care provider" means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, medical director as defined in s. 401.23, or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 395, who are

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59 employed, under contract, or otherwise authorized by a hospital
60 to perform duties directly associated with the care and
61 treatment rendered by the hospital's emergency department or the
62 security thereof.
63 (b) "Firefighter" means any person employed by any public
64 employer of this state whose duty it is to extinguish fires; to
65 protect life or property; or to enforce municipal, county, and
66 state fire prevention codes, as well as any law pertaining to
67 the prevention and control of fires.
68 (c) "Law enforcement explorer" means any person who is a
69 current member of a law enforcement agency's explorer program
70 and who is performing functions other than those required to be
71 performed by sworn law enforcement officers on behalf of a law
72 enforcement agency while under the direct physical supervision
73 of a sworn officer of that agency and wearing a uniform that
74 bears at least one patch that clearly identifies the law
75 enforcement agency that he or she represents.
76 (d) "Law enforcement officer" includes a law enforcement
77 officer, a correctional officer, a correctional probation
78 officer, a part-time law enforcement officer, a part-time
79 correctional officer, an auxiliary law enforcement officer, and
80 an auxiliary correctional officer, as those terms are
81 respectively defined in s. 943.10, and any county probation
82 officer; an employee or agent of the Department of Corrections
83 who supervises or provides services to inmates; an officer of
84 the Parole Commission; a federal law enforcement officer as
85 defined in s. 901.1505; and law enforcement personnel of the
86 Fish and Wildlife Conservation Commission or the Department of
87 Law Enforcement.

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

88 (e) "Public transit employees or agents" means bus
89 operators, train operators, revenue collectors, security
90 personnel, equipment maintenance personnel, or field
91 supervisors, who are employees or agents of a transit agency as
92 described in s. 812.015(1)(l).
93 (f) "Railroad special officer" means a person employed by a
94 Class I or Class II railroad and appointed by the Governor
95 pursuant to s. 354.01.
96 (2) Whenever any person is charged with knowingly
97 committing an assault or battery upon a law enforcement officer,
98 a firefighter, an emergency medical care provider, a railroad
99 special officer, a traffic accident investigation officer as
100 described in s. 316.640, a nonsworn law enforcement agency
101 employee who is certified as an agency inspector, a blood
102 alcohol analyst, or a breath test operator while such employee
103 is in uniform and engaged in processing, testing, evaluating,
104 analyzing, or transporting a person who is detained or under
105 arrest for DUI, a law enforcement explorer, a traffic infraction
106 enforcement officer as described in s. 316.640, a parking
107 enforcement specialist as defined in s. 316.640, a person
108 licensed as a security officer as defined in s. 493.6101 and
109 wearing a uniform that bears at least one patch or emblem that
110 is visible at all times that clearly identifies the employing
111 agency and that clearly identifies the person as a licensed
112 security officer, or a security officer employed by the board of
113 trustees of a community college, while the officer, firefighter,
114 emergency medical care provider, railroad special officer,
115 traffic accident investigation officer, traffic infraction
116 enforcement officer, inspector, analyst, operator, law

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

117 enforcement explorer, parking enforcement specialist, public
118 transit employee or agent, or security officer is engaged in the
119 lawful performance of his or her duties, the offense for which
120 the person is charged shall be reclassified as follows:
121 (a) In the case of assault, from a misdemeanor of the
122 second degree to a misdemeanor of the first degree.
123 (b) In the case of battery, from a misdemeanor of the first
124 degree to a felony of the third degree.
125 (c) In the case of aggravated assault, from a felony of the
126 third degree to a felony of the second degree. Notwithstanding
127 any other provision of law, any person convicted of aggravated
128 assault upon a law enforcement officer shall be sentenced to a
129 minimum term of imprisonment of 3 years.
130 (d) In the case of aggravated battery, from a felony of the
131 second degree to a felony of the first degree. Notwithstanding
132 any other provision of law, any person convicted of aggravated
133 battery of a law enforcement officer shall be sentenced to a
134 minimum term of imprisonment of 5 years.
135 (3) Any person who is convicted of a battery under
136 paragraph (2)(b) and, during the commission of the offense, such
137 person possessed:
138 (a) A "firearm" or "destructive device" as those terms are
139 defined in s. 790.001, shall be sentenced to a minimum term of
140 imprisonment of 3 years.
141 (b) A semiautomatic firearm and its high-capacity
142 detachable box magazine, as defined in s. 775.087(3), or a
143 machine gun as defined in s. 790.001, shall be sentenced to a
144 minimum term of imprisonment of 8 years.
145

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146 Notwithstanding s. 948.01, adjudication of guilt or imposition
147 of sentence shall not be suspended, deferred, or withheld, and
148 the defendant is not eligible for statutory gain-time under s.
149 944.275 or any form of discretionary early release, other than
150 pardon or executive clemency, or conditional medical release
151 under s. 947.149, prior to serving the minimum sentence.
152 Section 3. Subsections (1) and (4) of section 943.10,
153 Florida Statutes, are amended to read:
154 943.10 Definitions; ss. 943.085-943.255.—The following
155 words and phrases as used in ss. 943.085-943.255 are defined as
156 follows:
157 (1) "Law enforcement officer" means any person who is
158 elected, appointed, or employed full time by any municipality or
159 the state or any political subdivision thereof; who is vested
160 with authority to bear arms and make arrests; and whose primary
161 responsibility is the prevention and detection of crime or the
162 enforcement of the penal, criminal, traffic, or highway laws of
163 the state. This definition includes all certified supervisory
164 and command personnel whose duties include, in whole or in part,
165 the supervision, training, guidance, and management
166 responsibilities of full-time law enforcement officers, part-
167 time law enforcement officers, or auxiliary law enforcement
168 officers but does not include support personnel employed by the
169 employing agency. For purposes of ss. 943.085-943.255 only, this
170 definition also includes special officers employed by a Class I
171 or Class II railroad and appointed by the Governor pursuant to
172 s. 354.01.
173 (4) "Employing agency" means any agency or unit of
174 government or any municipality or the state or any political

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

175 subdivision thereof, or any agent thereof, which has
176 constitutional or statutory authority to employ or appoint
177 persons as officers. The term also includes any private entity
178 which has contracted with the state or county for the operation
179 and maintenance of a nonjuvenile detention facility. For
180 purposes of ss. 943.085-943.255 only, the term also includes a
181 Class I or Class II railroad that employs special officers
182 pursuant to s. 354.01.
183 Section 4. This act shall take effect July 1, 2013.

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)

4-1-13
Meeting Date

Topic: RAILROAD POLICE CERTIFICATION

Bill Number: SB 1110 *(if applicable)*

Name: JACKIE LITZINGER

Amendment Barcode: *(if applicable)*

Job Title: CHIEF OF POLICE

Address: 500 WATER STREET
Street

JACKSONVILLE, FL 32202
City *State* *Zip*

Phone: 904-366-4203

E-mail: JACKIE_LITZINGER@CSX.COM

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

Representing: CSX TRANSPORTATION

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)

4.1.13
Meeting Date

Topic: Railroad Police ofc

Bill Number: 1110 *(if applicable)*

Name: ken Kopczynski

Amendment Barcode: *(if applicable)*

Job Title: Lobbyist

Address: 300 East Brevard St
Street

Talla FL 32301
City *State* *Zip*

Phone: 222-3329

E-mail:

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

Representing: Fla PBA Inc

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: CS/SB 1114

INTRODUCER: Criminal Justice Committee and Senator Altman

SUBJECT: Sex Offenses

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	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 1114, which primarily addresses sexual predator/offender registration, includes the following major features:

- Modifies the child victim out-of-court statement exception to the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).
- Modifies various registration, reregistration, and reporting provisions relevant to sexual predators and sexual offenders to:
  - Add specified sex offenses (e.g., lewd offenses committed upon the elderly or disabled) to criteria or definitions that qualify a person as a sexual predator or sexual offender.
  - Require that Internet identifiers, palm prints, passports, professional license information, immigration status information, volunteer status at a Florida institution of higher education, and other information be provided, produced, or reported, as specified in the bill.
  - Require sexual predators or sexual offenders to register all Internet identifiers with the FDLE prior to use.
  - Require a sexual predator or sexual offender who is unable to secure or update a driver license or identification card with the Department of Highway Safety and Motor Vehicles

(DHSMV) to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change.
  - Require a sexual predator or sexual offender who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and to provide to the sheriff the address and country of intended residence.
  - Authorize certain sexual offenders to move for removal of the registration requirement after a specified time period and subject to specified criteria being met.
  - Remove a current requirement that the petitioning sexual offender demonstrate to the court that he or she has not been arrested for any crime since release.
  - Modify various penalty provisions to punish a sexual predator or sexual offender who fails to report that he or she remains in Florida after reporting an intent to leave Florida, fails to provide required Internet identifiers prior to use, or knowingly provides false registration information by act or omission.
- Provides that a third or subsequent violation of s. 800.03, F.S. (vulgar or indecent exposure or exhibition of person's sexual organs and public nakedness in a place not provided or set apart for that purpose), is a third degree felony.
- Provides that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other than a defendant whose only criminal charge is a traffic misdemeanor offense under ch. 316, F.S., is required to register as a sexual offender or a sexual predator; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.
- Provides that a state agency or governmental subdivision, before making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.
- Modifies the child victim age requirement (from 14 years of age to 13 years of age) and modifies other criteria in s. 943.04354, F.S. (the "Romeo and Juliet" statute). A sexual predator or sexual offender who meet these criteria may move the court, as specified in the bill, to have the registration requirement removed.
- Authorizes the court to order any probationer or community controllee who is required to register as a sexual predator or sexual offender to undergo an evaluation, at the probationer or community controllee's expense, by a qualified practitioner to determine whether such person needs sexual offender treatment. If the qualified practitioner determines the treatment is needed and recommends it, the probationer or community controllee must successfully complete and pay for it.

This bill substantially amends the following sections of the Florida Statutes: 90.803; 775.21; 800.03; 903.046; 921.0022; 943.0435; 943.04351; 943.04354; 943.0437; 944.606; 944.607; 947.005; 948.31; 985.481; and 985.4815.

II. Present Situation:

Hearsay Exception: Out-of-Court Statement of Child Victim

Chapter 90, F.S., is the Florida Evidence Code (Code). Section 90.802, F.S., of the Code, provides the general rule that hearsay is inadmissible except as provided by statute. Section 90.801(1)(c), F.S., defines "hearsay" as a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

Section 90.803(23), F.S., provides an exception to the hearsay rule. Specifically, unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate; and
- The child either:
  - Testifies; or
  - Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.

In a criminal action, the defendant shall be notified no later than 10 days before trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the child's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.

The court is required to make specific findings of fact, on the record, as to the basis for its ruling under s. 90.803(23), F.S.

Registration of Sexual Predators and Sexual Offenders: General Information

Florida requires registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws, which also require reregistration and provide for public and community notification of certain

information about sexual predators and sexual offenders, span several different chapters and numerous statutes, and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the DHSMV, and the Department of Children and Family Services (DCF).[1]

A person who meets sexual predator qualifying criteria is designated by a court as a sexual predator. A person who meets sexual offender qualifying criteria is classified as a sexual offender (no court designation). Aside from sexual predator qualifying criteria, there are a few other provisions that apply only to sexual predators, such as the prohibition against working or volunteering at places where children regularly congregate.

Requirements for in-person registration and reregistration (discussed below) are similar for sexual predators and sexual offenders but frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, i.e., the sexual predator or sexual offender is in the DOC's control or custody or under its supervision; is in residential commitment under the DJJ or under DJJ's supervision; or is in civil commitment under the DCF as a sexually violent predator. These agencies are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

Certain information on sexual predators and sexual offenders is a public record and there are various provisions authorizing or requiring public or community notification of this information. The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.[2] Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry maintained by the FDLE.

SORNA

The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA),[3] attempts to make all states' laws uniform with respect to requirements (or "minimum" standards) that Congress has judged to be necessary to be included in states' laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website.[4] While states are free to choose not to substantially implement SORNA, the AWA provides for sanctioning noncomplying states through a partial reduction in Byrne Justice Assistance Grant funding. The DOJ has determined that Florida has substantially implemented[5] SORNA.[6] Florida was the third state to do so.[7]

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[1] The FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration.
[2] "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Z57sCH6qxtkuph8ZJOqpXg__ (last visited on March 25, 2013).
[3] P.L. 109-248 (July 27, 2006).
[4] "Dru Sjodin National Sex Offender Public Website," http://www.nsopw.gov/Core/Portal.aspx (last visited on March 25, 2013).
[5] This standard is satisfied if a jurisdiction carries out the requirements of SORNA as interpreted and explained in the DOJ's guidelines on SORNA. It does not mean that the jurisdiction has necessarily followed SORNA or the DOJ's guidelines on SORNA in all respects.

Registration and Reregistration Requirements

At the FDLE's website,[8] the following information is provided to sexual predators and sexual offenders regarding registration, reregistration, and other requirements:

- A sexual predator or sexual offender must report in person to the local sheriff's office to register his or her temporary, transient, or permanent address and other information specified in statute within 48 hours of establishing or maintaining a residence in Florida; within 48 hours of release from custody and/or supervision of the DOC, DCF, or DJJ; or in the county of conviction (if not under custody and/or supervision), within 48 hours of conviction if not under custody and/or supervision of the DOC.
- At initial registration, a sexual predator or sexual offender must provide the following information to the FDLE: name; date of birth; social security number; race; sex; height; weight; hair and eye color; photograph; home telephone number and any cellular telephone number; any electronic mail address and any instant message name (as required by statute); address of legal residence; address of any current temporary residence, if no permanent or temporary residence; any transient residence within Florida; dates of any current or known future temporary residence within Florida or out of state; occupation and place of employment; date and place of each conviction; fingerprints; and a brief description of the crime or crimes committed.
- Within 48 hours after the initial report required (as previously stated), a sexual predator or sexual offender must report in person to the driver license office of the DHSMV and provide proof of initial registration as a sexual predator or sexual offender to secure or renew a valid Florida driver's license or identification card displaying one of the following designations: "775.21, F.S." or "943.0435, F.S.," unless a driver's license or identification card with such designation was previously secured or updated. A sexual offender must also submit to the taking of a photograph for use by the FDLE in maintaining current records of sexual offenders.
- Each time the driver's license or identification card is subject to renewal, or within 48 hours after any change in permanent, temporary, or transient residence or change in name made by marriage or other legal process, a sexual predator or sexual offender must report in person to a driver's license office to update the driver's license or identification card and ensure that it displays the designations (as previously identified).
- If enrolled, employed, or carrying on a vocation at a Florida institution of higher education, a sexual predator or sexual offender must provide the name, address, and county of each institution, including each campus, enrollment, or employment status, and each change in enrollment or employment status (i.e. commencement or termination) in person at the

[6] "Jurisdictions that have substantially implemented SORNA," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on March 25, 2013).
[7] "Governor Crist Announces Florida's Implementation of the Adam Walsh Act" (May 18, 2010), Florida Department of Law Enforcement, https://www.fdle.state.fl.us/Content/News/May-2010/Governor-Crist-Announces-Florida%e2%80%99s-Implementation-.aspx (last visited on March 25, 2013).
[8] "Important Information," Florida Department of Law Enforcement, http://offender.fdle.state.fl.us/offender/Important.jsp#General (last visited on March 25, 2013), discussing provisions of ss. 775.21 and 943.0435, F.S.

sheriff's office. If a sexual offender is supervised by the DOC or the DJJ, this information must be reported to the sexual offender's probation office, within 48 hours after any change in status.

- A sexual predator or sexual offender must report any electronic mail address or instant message name, prior to using the address or name, during registration/reregistration or by providing all updates through the online system maintained by the FDLE.
- If a sexual predator or sexual offender vacates a permanent, temporary, or transient residence and does not have another permanent, temporary, or transient residence, he or she must report in person to the sheriff's office in the county where he or she is located within 48 hours. If a sexual predator or sexual offender reports that he or she has vacated a permanent, temporary, or transient residence and then remains at that residence, he or she must report in person to the sheriff's office where he or she reported vacating the residence. Failure to report this information is a second degree felony. The address will be verified by county, state, or local law enforcement agencies.
- If a sexual predator or sexual offender intends on establishing a permanent, temporary, or transient residence in another state or in a jurisdiction other than Florida, he or she must report in person to the sheriff's office of the county of current residence within 48 hours before the date that he or she intends to leave Florida to establish residence in another state or jurisdiction. If the sexual predator or sexual offender reporting this information later decides to remain in Florida, he or she must report in person to the sheriff's office to which he or she reported the intention of leaving Florida within 48 hours after the intended departure date. Failure to report this information is a second degree felony.
- A sexual predator or sexual offender must report in person either twice a year (during the birth month and during the sixth month following the birth month) or four times a year (once during the birth month and every third month thereafter), depending upon his or her offense/designation, to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. All sexual predators and sexual offenders convicted for offenses specified in s. 943.0435(14), F.S., and juvenile sexual offenders required to register pursuant to s. 943.0435(1)(a)1.d., F.S., are required to reregister four times a year. All other sexual offenders are required to reregister twice a year.
- If a sexual predator or sexual offender lives in another state but works or attends school in Florida, he or she must register the work or school address as a temporary address within 48 hours by reporting in person to the local sheriff's office.
- A sexual predator or sexual offender must respond to any address verification correspondence from the FDLE within three weeks of the date of the correspondence.
- If employed, carrying on a vocation, a student, or becoming a resident of another state, a sexual predator or sexual offender may have a requirement to register under the laws of that state.
- A sexual predator or sexual offender must maintain registration for the duration of his or her life.[9]

[9] This is the general rule. Exceptions exist in ss. 775.21, 943.0435, and 943.04354, F.S.

Reporting of Information Regarding Sexual Predators and Sexual Offenders

Section 944.606, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is being released after serving a period of incarceration. Similarly, agency reporting requirements exist in other statutes:

- Section 944.607, F.S., in part, requires the DOC to report to the FDLE certain personal information regarding a sexual offender who is in the DOC's custody or control or under its supervision, or in the custody of a private correctional facility.
- Section 985.481, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender released from residential commitment under the DJJ.
- Section 985.4815, F.S., in part, requires the DJJ to report to the FDLE certain personal information regarding a sexual offender under DJJ supervision but who is not committed.

Public Registry Searches Prior to Appointment or Employment of Certain Government Employees

Section 943.04351, F.S., provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE under s. 943.043, F.S. The agency or governmental subdivision may conduct the search using the Internet site maintained by the FDLE. Section 943.04351, F.S., does not apply to those positions or appointments within a state agency or governmental subdivision for which a state and national criminal history background check is conducted.

Providing Information to Commercial Social Networking Websites

Section 943.0437, F.S., provides that the FDLE may provide information relating to electronic mail addresses and instant message names maintained as part of the sexual offender registry to commercial social networking websites[10] or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and instant message names provided by the FDLE.

Section 943.0437, F.S., shall not be construed to impose any civil liability on a commercial social networking website for any action that meets either criterion:

- The action was voluntarily taken in good faith to remove or disable any profile of a registered user associated with an electronic mail address or instant message name contained in the sexual offender registry.

[10] The term "commercial social networking website" is defined in the statute as a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.

- The action was taken to restrict access by such registered user to the commercial social networking website.

Removal of Registration Requirement

Section 943.04354, F.S.,[11] provides for the removal of the requirement to register as a sexual predator or sexual offender if a court finds that *all* criteria are met and grants a motion or petition for removal of the registration requirement. A person shall be considered for removal of the requirement to register as a sexual offender or sexual predator only if the person:

- Was or will be convicted or adjudicated delinquent of a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S., or the person committed a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of s. 794.011, F.S., s. 800.04, F.S., s. 827.071, F.S., or s. 847.0135(5), F.S.
- Is required to register as a sexual offender or sexual predator solely on the basis of this violation.
- Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

A person who meets all of these criteria can move the court for removal of the registration requirement if the qualifying violation was committed on or after July 1, 2007. The motion is made in the court that will sentence or dispose of the qualifying violation. The person must allege in the motion that he or she meets all of the criteria and that removal of the registration requirement will not conflict with federal law.[12] The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of the qualifying violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. At sentencing or disposition of the qualifying violation, the court must rule on this motion and, if the court determines the person meets the criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the court denies the motion, the person is not authorized to petition for removal of the registration requirement.

A person who meets all of the criteria but does not qualify to seek relief by motion can seek relief by petition in the court in which the sentence or disposition for the qualifying violation occurred. All of the previously described requirements for the motion and the disposition of the motion apply to the petition and disposition of petition. If the court denies the petition, the person is not authorized under s. 943.04354, F.S., to file any further petition for removal of the registration requirement.

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[11] This statute is sometimes referred to as the "Romeo and Juliet" statute or law.

[12] Of relevance to s. 943.04354, F.S., SORNA does not require registration "[w]here both participants are at least 13 years old and neither participant is more than 4 years older than the other, a sex offense conviction based on consensual sexual conduct does not require registration under the Adam Walsh Act," though "jurisdictions have discretion to exceed the minimum standards of SORNA and require registration upon convictions based on consensual sexual conduct." "SORNA," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Department of Justice, http://www.ojp.usdoj.gov/smart/sorna.htm#consensualconduct (last visited on March 25, 2013).

If a person provides to the FDLE a certified copy of the court's order removing the requirement that the person register as a sexual offender or sexual predator, the registration requirement will not apply to the person and the FDLE must remove all information about the person from the public registry of sexual offenders and sexual predators maintained by the FDLE. However, the removal of this information from the public registry does not mean that the public is denied access to information about the person's criminal history or record that is otherwise available as a public record.

Purpose of and Criteria for Bail Determination

Article I, Section 14, of the Florida Constitution, provides: "Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained."

Section 903.046, F.S., sets forth the purpose of a bail determination. It also provides considerations which the court is required to consider when determining whether to release a defendant on bail or other conditions, and what the bail or those conditions may be. For example, the court must consider the nature and circumstances of the offense charged. The bill includes a new consideration, which bears some similarity to the consideration in s. 903.046(2)(l), F.S.: "The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant."

Whether the crime charged is a violation of ch. 874, F.S., or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Evaluation and Treatment of Sexual Predators and Sexual Offenders on Probation or Community Control

Section 948.31, F.S., provides that the court shall require an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment. If the court determines that a need for the treatment is established by the evaluation process, the court shall require sexual offender treatment as a term or condition of probation or community control for any person who is required to register as a sexual predator under s. 775.21, F.S., or sexual offender under s. 943.0435, F.S., s. 944.606, F.S., or s. 944.607, F.S. The treatment must be obtained from a qualified practitioner as defined in s. 948.001, F.S. Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I), F.S. The court must impose a restriction against contact with minors if

sexual offender treatment is recommended. The evaluation and recommendations for treatment of the probationer or community controllee must be provided to the court for review.

III. Effect of Proposed Changes:

Section 1 amends s. 90.803(23), F.S., the child victim out-of-court statement exception of the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).

As amended, the exception provides that, unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 16 or less describing any act of child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if the court finds the statement is reliable (in accordance with the hearing requirements in this subsection) and the child either testifies or is unavailable as a witness (as specified in the subsection).

Section 2 amends s. 775.21, F.S., relating to sexual predator registration, to:

- Add to the list of offenses that, in addition to other criteria, qualify a person for designation as a "sexual predator" the following offenses:
  - Sexual misconduct by an employee of the Department of Children and Family Services (DCF) or other specified person with specified individuals with developmental disabilities. (s. 393.135(2), F.S.)
  - Sexual activity by a DCF employee or other specified person with a patient in the DCF's custody or residing in a receiving or treatment facility. (s. 394.4593(2), F.S.)
  - Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person. (s. 825.1025, F.S.)[13]
  - Sexual misconduct by a DCF employee or other specified person with a forensic client who resides in a civil or forensic facility. (s. 916.1075(2), F.S.)
- Require a sexual predator to provide or produce at registration and reregistration the following information and changes to that information:
  - Tattoos or other identifying marks.
  - All "Internet identifiers"[14] (current references to instant message name in various registration statutes are removed). A sexual predator is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual predators may securely access and update all Internet identifier information.
  - Make, model, color, registration number, and license tag number of all vehicles owned.

[13] Current law just references lewd or lascivious battery upon an elderly person or disabled person.
[14] The bill defines "Internet identifier" as all electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN). However, voluntary disclosure of date of birth, social security number, or PIN number waives the disclosure exemption.

  - Palm prints. The sheriff's office is required to take a sexual predator's palm prints and forward them to the FDLE.
  - A passport, if the sexual predator has a passport.
  - Information about documents establishing immigration status, if the sexual predator is an alien.
  - Information about any professional licenses the sexual predator may have.
  - Information that the sexual predator is volunteering at a Florida institution of higher education.[15] The sheriff's office or the DOC, if the sexual predator is in the DOC's custody or control or under its supervision, is required to report to a Florida institution of higher education any change in the sexual predator's status as a volunteer at that institution.
- Require a sexual predator who is unable to secure or update a driver license or identification card with the DHSMV to report any change of residence or change of name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county in which the sexual predator resides or is located and provide confirmation that he or she has reported the change to the DHSMV.
- Require a sexual predator who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and provide to the sheriff the address and country of intended residence. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual predator's intended residence.
- Require a sexual predator who indicates his or intent to establish a residence in another country and later decides to remain in Florida to report in person, within 48 hours after the date upon which the sexual predator indicated he or she would leave Florida, to the sheriff's office where the sexual predator reported the intended change of residence and report his or her intent to remain in Florida.
- Amend penalties to provide that:
  - It is a second degree felony for a sexual predator who reports his or her intent to establish a residence in a jurisdiction other than Florida or in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 775.21, F.S.
  - It is a third degree felony to fail to provide required Internet identifier information and other information prior to their use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

Section 3 amends s. 800.03, F.S., which prohibits vulgar or indecent exposure or exhibition of a person's sexual organs and public nakedness in a place not provided or set apart for that purpose, to provide that a third or subsequent violation of s. 800.03, F.S., is a third degree felony.

Section 4 amends s. 903.046, F.S., relating to the purpose of and criteria for bail determination, to provide that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, the court shall consider whether the defendant, other

[15] Under current law, a sexual predator must report a change in enrollment or employment status at a Florida institution of higher education within 48 hours after the change, unless the sexual predator is in the DOC's custody or control or under its supervision, in which case the DOC reports the change.

than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S. (state uniform traffic control), is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 5 amends s. 943.0435, F.S., relating to sexual offender registration, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of "sexual offender" pertinent to s. 943.0435, F.S.
- Provide that a court is not required to make a written finding of the age of the victim at the time of the offense if the offense is a violation of s. 794.011, F.S.
- Require a sexual offender to provide or produce at registration and/or reregistration the following information and changes to that information:
  - All Internet identifiers. A sexual offender is required to register all Internet identifiers with the FDLE before using them. The FDLE must establish an online system through which sexual offenders may securely access and update all Internet identifier information.
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Fingerprints.
  - Palm prints. The sheriff's office is required to take a sexual offender's palm prints and forward them to the FDLE.
  - Photograph.
  - Passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
  - Information about any professional licenses the sexual offender may have.
  - Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported in person at the sheriff's office within 48 hours after the change. The sheriff is required to report to a Florida institution of higher education any change in the sexual offender's status as a volunteer at that institution.
  - Any other information determined necessary by the FDLE, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.
- Require a sexual offender who is unable to secure or update a driver license or identification card with the DHSMV to report any change in residence or change in name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the sexual offender resides or is located and provide confirmation that he or she has reported the change to the DHSMV.
- Require a sexual offender who intends to establish a residence in another state or jurisdiction to report in person to the sheriff of the county of current residence within 21 days before his or her planned departure date if the intended residence of 5 days or more is outside the United States and to provide to the sheriff the address and country of intended residence. The FDLE is required to notify the law enforcement agency (comparable to a statewide law enforcement agency) of the country of residence of the sexual offender's intended residence.

- Require a sexual offender who indicates his or intent to establish a residence in another country and later decides to remain in Florida to report in person, within 48 hours after the date upon which the sexual offender indicated he or she would leave Florida, to the sheriff's office where the sexual offender reported the intended change of residence and report his or her intent to remain in Florida.
- Authorize a sexual offender to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for removal of the registration requirement if:
  - Twenty-five years have elapsed since the sexual offender's registration period for the most recent conviction that required the offender to register began;
  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the 25 years preceding the petition to the court;
  - The sexual offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
  - The sexual offender's requirement to register was not based upon an adult conviction for a violation of s. 787.01, F.S., s. 794.011, F.S., excluding s. 794.011(10), F.S., s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion, s. 800.04(5)(b), F.S., or s. 800.04(5)(c)2., F.S., where the court finds the offense involved unclothed genitals or genital area; for any attempt or conspiracy to commit any of these offenses; or for a violation of similar law of another jurisdiction; and
  - For sexual offenders whose requirement to register is based upon a conviction in another state, the sexual offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
- Authorize a sexual offender whose requirement to register was based upon an adult conviction for a violation of s. 787.02, F.S., or s. 827.071(5), F.S., for any attempt or conspiracy to commit any of these offenses, or for a violation of similar law of another jurisdiction, to petition for removal of the registration requirement in the criminal division of the circuit court of the circuit in which the sexual offender resides if:
  - Fifteen years have elapsed since the sexual offender's registration period for the most recent conviction that required the offender to register began;
  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the years preceding the petition to the court;
  - The sexual offender has successfully completed all sanctions imposed for all offenses that required the offender to register; and
  - For sexual offenders whose requirement to register is based upon a conviction in another state, the sexual offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
- Authorize a sexual offender required to register under s. 943.0435(1)(a)(1)(d), F.S.,[16] to petition for removal of the registration requirement in the criminal division of the circuit court of the circuit in which the sexual offender resides if:

[16] This sub-subparagraph applies to a person who, on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the statutes or statutory provisions listed in the sub-subparagraph.

  - Twenty-five years have elapsed since the sexual offender's registration period for the most recent adjudication that required the offender to register began;
  - The sexual offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than 1 year of imprisonment during the 25 years preceding the petition to the court; and
  - The sexual offender has successfully completed all sanctions imposed for any offense that required the offender to register.
- Remove a current provision that requires the sexual offender to demonstrate to the court considering whether to grant or deny the relief that he or she has not been arrested for any crime since release.
- Require the FDLE to be given notice of the petition for removal of the registration requirement.
- Provide that if the court grants the petition, the court shall instruct the petitioner to provide the FDLE with a certified copy of the order granting relief.
- Provide, for the purpose of sexual offenders who may qualify to petition for removal of the registration requirement, that:
  - The registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon the offender's release from incarceration or commitment for the most recent conviction that required the offender to register.
  - A sexual offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S., or committed to a residential program.
- Amend penalties to provide that:
  - It is a second degree felony for a sexual offender who reports his or her intent to establish a residence in a jurisdiction other than Florida or in another country to remain in Florida without reporting to the sheriff this information in the manner required by s. 943.0435, F.S.
  - It is a third degree felony to fail to report all required Internet identifiers prior to use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

Section 6 amends s. 943.04351, F.S., regarding required searches of sexual predator and sexual offender registration information, to provide that a state agency or governmental subdivision, before making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a national search through the Dru Sjodin National Sex Offender Public Website maintained by the DOJ.

Section 7 amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances, to:

- Amend criteria for qualifying for consideration for removal of the registration requirement to remove reference to an incipient conviction ("will be convicted") and modify qualifying convictions or juvenile adjudications to include:
  - A conviction, regardless of adjudication, or an adjudication of delinquency, of a specified Florida offense, or a similar offense in another jurisdiction, and the person does not have

any other conviction, regardless of adjudication or adjudication of delinquency, for a specified Florida offense or a similar offense in another jurisdiction.
  - A conviction, regardless of adjudication, or an adjudication of delinquency of a specified Florida offense, or a similar offense in another jurisdiction, and the person is required to register as a sexual offender or sexual predator solely on the basis of this conviction or adjudication.
  - A conviction, regardless of adjudication, or an adjudication of delinquency, of an offense in another jurisdiction that is similar to a specified Florida offense, and the person with the conviction or adjudication of delinquency no longer meets the criteria for registration as a sexual offender or sexual predator under the laws of the jurisdiction where the similar offense occurred.
- Provide that the victim of the qualifying offense must have been 13 years of age or older but less than 18 years of age at the time the offense was committed.
- Remove the current requirement that a person's relevant offense must be committed on or after July 1, 2007, to move for removal of the registration requirement.
- Provide that the motion for removal of the registration requirement is in the criminal court of the circuit in which the offense occurred or the sentencing court or, for persons convicted or adjudicated delinquent of a qualifying offense in another jurisdiction, the criminal court of the circuit in which the person resides.
- Remove current provisions providing for removal of the registration requirement by petition.[17]
- Require that a person who was convicted or adjudicated delinquent of an offense in another jurisdiction that is similar to a specified Florida offense must provide the court with written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.
- Provide as another permissible time period for notice of the motion: at least 21 days prior to the hearing on the motion.
- Require the FDLE to be given notice of the motion for removal of the registration requirement.
- Authorize the FDLE to present evidence in opposition to the requested relief or otherwise demonstrate why the motion should be denied.
- Provide as another permissible time period for the court to rule on the motion: at the hearing on the motion.
- Require the court to instruct the person to provide to the FDLE a certified copy of the order granting relief.
- Specify that if a person provides to the FDLE a certified copy of the court's order removing the requirement to register as a sexual predator or sexual offender for a violation of a similar offense in another jurisdiction, the registration requirement does not apply to that person and the FDLE shall remove all information about the person from the public registry.

Section 8 amends s. 943.0437, F.S., relating to commercial social networking websites, to authorize the FDLE to provide information relating to Internet identifiers maintained as part of the sexual offender registry to commercial social networking sites or their designated third parties. A commercial social networking website may use this information for the purpose of

[17] This petition process is currently available to those who do not qualify under the statute to seek removal by motion but otherwise meet criteria to be considered for removal of the registration requirement.

comparing registered users and screening potential users of the website against the list of Internet identifiers provided by the FDLE. Section 943.0437, F.S., shall not be construed to impose any civil liability on a commercial social networking website for any action voluntarily taken in good faith to remove or disable any profile of a registered user associated with an Internet identifier contained in the sexual offender registry.

Section 9 amends s. 944.606, F.S., relating to notification of release of sexual offenders, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of "sexual offender" pertinent to s. 944.606, F.S.
- Require the DOC to provide to the FDLE the following information about a sexual offender released from imprisonment:
  - Palm prints.
  - All Internet identifiers.
  - Information about any professional licenses the sexual offender may have, if known.
  - Passport information, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.

Section 10 amends s. 944.607, F.S., relating to notification to the FDLE of information on sexual offenders, to:

- Add the offenses added to sexual predator criteria in s. 775.21, F.S. (except for s. 825.1025, F.S., which is currently listed), by Section 1 of the bill to the definition of "sexual offender" pertinent to s. 944.607, F.S.
- Require a sexual offender who is under the supervision of the DOC but is not incarcerated to provide or produce at registration and/or reregistration the following information and changes to that information:
  - Palm prints.
  - All Internet identifiers.
  - All home telephone numbers and cellular telephone numbers.
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Passport, if the sexual offender has a passport.
  - Information about documents establishing immigration status, if the sexual offender is an alien.
  - Information about any professional licenses the sexual offender may have.
  - Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported in person at the sheriff's office within 48 hours after the change. The DOC is required to report to a Florida institution of higher education any change in the sexual offender's status as a volunteer at that institution.
- Amend penalties to provide that:
  - It is a third degree felony to fail to report all Internet identifiers prior to use.
  - It is a third degree felony to knowingly provide false registration information by act or omission.

Section 11 amends s. 947.005, F.S., the definitions section of ch. 947, F.S., relating to the Parole Commission, to modify the definition of "risk assessment" to mean an assessment completed by a qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child (the current definition indicates the practitioner must be an "*independent* qualified practitioner").

Section 12 amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation and community control, to:

- Remove from the statute language that:
  - Requires the court to order an evaluation by a qualified practitioner to determine the need of a probationer or community controllee for treatment.
  - Provides that if the court determines that there is a need for treatment, the court shall require sexual offender treatment as a term of condition of probation or community control for any person required to register as a sexual predator or sexual offender.
  - Requires the court to impose a restriction against contact with minors if sexual offender treatment is recommended.
  - Requires that the evaluation and recommendations for treatment of the probationer or community controllee be provided to the court for review.
- Authorize the court to order any probationer or community controllee who is required to register as a sexual predator or sexual offender to undergo an evaluation, at the probationer or community controllee's expense, by a qualified practitioner to determine whether such person needs sexual offender treatment. If the qualified practitioner determines the treatment is needed and recommends it, the probationer or community controllee must successfully complete and pay for it.

Section 13 amends s. 985.481, F.S., relating to registration of sexual offenders adjudicated delinquent of certain offenses and DJJ notification of release, to require the DJJ to provide to the FDLE the following information regarding any sexual offender who is being released after serving a period of residential commitment under the DJJ:

- Make, model, color, registration number, and license tag number of all vehicles owned.
- Information about any professional licenses the offender may have, if known.
- Passport information, if the sexual offender has a passport.
- Information about documents establishing immigration status, if the sexual offender is an alien.

Section 14 amends s. 985.4815, F.S., relating to notification to the FDLE of information on juvenile sex offenders, to:

- Require a sexual offender under the supervision of the DJJ but who is not committed to the DJJ to provide or produce at registration and/or reregistration the following information and changes to that information:
  - Make, model, color, registration number, and license tag number of all vehicles owned.
  - Passport, if the sexual offender has a passport.[18]

[18] The reregistration provision specifies passport information.

- Information about documents establishing immigration status, if the sexual offender is an alien.
- Information about any professional licenses the sexual offender may have.
- Information indicating the sexual offender is volunteering at a Florida institution of higher education. Each change in volunteer status must be reported to the DJJ within 48 hours after the change. The DJJ must report to the Florida institution of higher education any change in the sexual offender's volunteer status at the institution.

- Amend a penalty provision to provide that it is a third degree felony to knowingly provide false registration information by act or omission.

Section 15 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical, not substantive changes (grammatical corrections and corrections to descriptive language of some offenses for accuracy).

Section 16 provides that the 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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation estimates that the penalty provisions of the original bill will have an insignificant prison bed impact. The committee substitute does not change these penalty provisions.

The estimated fiscal impact of the bill on the FDLE is $66,425 in non-recurring expenditures. The $66,425 fiscal impact will be handled within the department's existing

resources.[19] The committee substitute does not change provisions of the original bill impacting the FDLE.

This bill will have no operational or programming impact to the DHSMV since a process is already in place to facilitate the notification process.[20]

The DOC has not provided an analysis. In remarks regarding a similar bill last year (SB 1812), the department remarked that the bill would have required internal programming, form, and procedure revisions, but the fiscal impact for these revisions was not significant.[21]

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 April 1, 2013:
Modifies the child victim out-of-court statement exception of the hearsay rule by increasing the age of the child victim to 16 or less (current law is 11 or less).

B. Amendments:

None.

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

[19] Analysis of SB 1114, Florida Department of Law Enforcement, dated March 21, 2013 (on file with the Committee on Criminal Justice).
[20] Analysis of SB 1114, Florida Department of Highway Safety and Motor Vehicles, dated March 7, 2013 (on file with the Committee on Criminal Justice).
[21] Analysis of SB 1812, Florida Department of Corrections, dated January 31, 2012 (on file with the Committee on Criminal Justice).

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2013	.	
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The Committee on Criminal Justice (Evers) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 88 and 89
4 insert:
5 Section 1. Paragraph (a) of subsection (23) of section
6 90.803, Florida Statutes, is amended to read:
7 90.803 Hearsay exceptions; availability of declarant
8 immaterial.—The provision of s. 90.802 to the contrary
9 notwithstanding, the following are not inadmissible as evidence,
10 even though the declarant is available as a witness:
11 (23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—
12 (a) Unless the source of information or the method or

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13 circumstances by which the statement is reported indicates a
14 lack of trustworthiness, an out-of-court statement made by a
15 child victim with a physical, mental, emotional, or
16 developmental age of 16 ~~11~~ or less describing any act of child
17 abuse or neglect, any act of sexual abuse against a child, the
18 offense of child abuse, the offense of aggravated child abuse,
19 or any offense involving an unlawful sexual act, contact,
20 intrusion, or penetration performed in the presence of, with,
21 by, or on the declarant child, not otherwise admissible, is
22 admissible in evidence in any civil or criminal proceeding if:
23 1. The court finds in a hearing conducted outside the
24 presence of the jury that the time, content, and circumstances
25 of the statement provide sufficient safeguards of reliability.
26 In making its determination, the court may consider the mental
27 and physical age and maturity of the child, the nature and
28 duration of the abuse or offense, the relationship of the child
29 to the offender, the reliability of the assertion, the
30 reliability of the child victim, and any other factor deemed
31 appropriate; and
32 2. The child either:
33 a. Testifies; or
34 b. Is unavailable as a witness, provided that there is
35 other corroborative evidence of the abuse or offense.
36 Unavailability shall include a finding by the court that the
37 child’s participation in the trial or proceeding would result in
38 a substantial likelihood of severe emotional or mental harm, in
39 addition to findings pursuant to s. 90.804(1).
40
41 ========== T I T L E A M E N D M E N T ==========

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42 And the title is amended as follows:
43 Delete line 2
44 and insert:
45 An act relating to sex offenses; amending s. 90.803, F.S.;
46 providing that an out-of-court statement by a child victim with
47 a physical, mental, emotional, or developmental age of 16 or
48 less rather than 11 or less describing specified criminal acts
49 is admissible in evidence in certain instances; amending s.
50 775.21,

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 88 and 89
4 insert:
5 Section 1. Paragraph (a) of subsection (23) of section
6 90.803, Florida Statutes, is amended to read:
7 90.803 Hearsay exceptions; availability of declarant
8 immaterial.—The provision of s. 90.802 to the contrary
9 notwithstanding, the following are not inadmissible as evidence,
10 even though the declarant is available as a witness:
11 (23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—
12 (a) Unless the source of information or the method or

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13 circumstances by which the statement is reported indicates a
14 lack of trustworthiness, an out-of-court statement made by a
15 child victim with a physical, mental, emotional, or
16 developmental age of 16 ~~11~~ or less describing any act of child
17 abuse or neglect, any act of sexual abuse against a child, the
18 offense of child abuse, the offense of aggravated child abuse,
19 or any offense involving an unlawful sexual act, contact,
20 intrusion, or penetration performed in the presence of, with,
21 by, or on the declarant child, not otherwise admissible, is
22 admissible in evidence in any civil or criminal proceeding if:
23 1. The court finds in a hearing conducted outside the
24 presence of the jury that the time, content, and circumstances
25 of the statement provide sufficient safeguards of reliability.
26 In making its determination, the court may consider the mental
27 and physical age and maturity of the child, the nature and
28 duration of the abuse or offense, the relationship of the child
29 to the offender, the reliability of the assertion, the
30 reliability of the child victim, and any other factor deemed
31 appropriate; and
32 2. The child either:
33 a. Testifies; or
34 b. Is unavailable as a witness, provided that there is
35 other corroborative evidence of the abuse or offense.
36 Unavailability shall include a finding by the court that the
37 child's participation in the trial or proceeding would result in
38 a substantial likelihood of severe emotional or mental harm, in
39 addition to findings pursuant to s. 90.804(1).
40
41 ========== T I T L E A M E N D M E N T ==========

392522

42 And the title is amended as follows:
43 Delete line 2
44 and insert:
45 An act relating to sex offenses; amending s. 90.803,
46 F.S.; providing that an out-of-court statement by a
47 child victim with a physical, mental, emotional, or
48 developmental age of 16 or less rather than 11 or less
49 describing specified criminal acts is admissible in
50 evidence in certain instances; amending s. 775.21,

By Senator Altman

16-00688-13 20131114__

A bill to be entitled

An act relating to sex offenses; amending s. 775.21, F.S.; replacing the definition of the term “instant message name” with the definition of the term “Internet identifier”; providing that voluntary disclosure of specified information waives a disclosure exemption for such information; conforming provisions; adding additional offenses to the list of sexual predator qualifying offenses; requiring disclosure of additional information during the sexual predator registration process; requiring that a sexual predator who is unable to secure or update a driver license or identification card within a specified period must report specified information to the local sheriff’s office within a specified period after such change with confirmation that he or she also reported such information to the Department of Highway Safety and Motor Vehicles; revising reporting requirements if a sexual predator plans to leave the United States for more than a specified period; providing criminal penalties for knowingly providing false registration information by act or omission; amending s. 800.03, F.S.; providing enhanced penalties for third or subsequent indecent exposure violations; amending s. 903.046, F.S.; requiring a court considering whether to release a defendant on bail to determine whether the defendant is subject to registration as a sexual offender or sexual predator and, if so, to hold the defendant without bail until the first appearance on

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

16-00688-13 20131114__

the case; providing an exception; amending s. 943.0435, F.S.; adding additional offenses to the list of sexual offender qualifying offenses; replacing the definition of the term “instant message name” with the definition of the term “Internet identifier”; conforming provisions; requiring disclosure of additional sexual offender registration information; requiring that a sexual offender who is unable to secure or update a driver license or identification card within a specified period must report specified information to the local sheriff’s office within a specified period of such change with confirmation that he or she also reported such information to the Department of Highway Safety and Motor Vehicles; providing additional requirements for sexual offenders intending to reside outside of the United States; revising criteria applicable to provisions allowing removal from the requirement to register as a sexual offender; providing criminal penalties for knowingly providing false registration information by act or omission; amending s. 943.04351, F.S.; requiring a specified national search of registration information regarding sexual predators and sexual offenders prior to appointment or employment of persons by state agencies and governmental subdivisions; amending s. 943.04354, F.S.; revising the criteria applicable to provisions allowing removal of the requirement to register as a sexual offender or sexual predator; amending s. 943.0437, F.S.; replacing the term

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

59 "instant message name" with the term "Internet
60 identifier"; amending ss. 944.606 and 944.607, F.S.;
61 adding additional offenses to the list of sexual
62 offender qualifying offenses; replacing the definition
63 of the term "instant message name" with the definition
64 of the term "Internet identifier"; conforming
65 provisions; requiring disclosure of additional
66 registration information; providing criminal penalties
67 for knowingly providing false registration information
68 by act or omission; amending s. 947.005, F.S.;
69 revising the definition of the term "risk assessment";
70 amending s. 948.31, F.S.; authorizing the court to
71 require sexual offenders and sexual predators who are
72 on probation or community control to undergo an
73 evaluation to determine whether the offender or
74 predator needs sexual offender treatment; requiring
75 the probationer or community controllee to pay for the
76 treatment; removing a provision prohibiting contact
77 with minors if sexual offender treatment is
78 recommended; amending ss. 985.481 and 985.4815, F.S.;
79 requiring disclosure of additional registration
80 information by certain sexual offenders adjudicated
81 delinquent and certain juvenile sexual offenders;
82 providing criminal penalties for knowingly providing
83 false registration information by act or omission;
84 amending s. 921.0022, F.S.; conforming cross-
85 references; providing an effective date.
86
87 Be It Enacted by the Legislature of the State of Florida:

88
89 Section 1. Paragraph (i) of subsection (2), paragraph (a)
90 of subsection (4), subsections (6) and (8), and paragraph (a) of
91 subsection (10) of section 775.21, Florida Statutes, are amended
92 to read:
93 775.21 The Florida Sexual Predators Act.—
94 (2) DEFINITIONS.—As used in this section, the term:
95 (i) "Internet identifier ~~Instant message name~~" means all
96 electronic mail, chat, instant messenger, social networking, or
97 similar name used for Internet communication, but does not
98 include a date of birth, social security number, or personal
99 identification number (PIN). Voluntary disclosure by the sexual
100 predator of his or her date of birth, social security number, or
101 personal identification number (PIN) as an Internet identifier
102 waives the disclosure exemption in this paragraph for such
103 personal information ~~an identifier that allows a person to~~
104 ~~communicate in real time with another person using the Internet~~.
105 (4) SEXUAL PREDATOR CRITERIA.—
106 (a) For a current offense committed on or after October 1,
107 1993, upon conviction, an offender shall be designated as a
108 "sexual predator" under subsection (5), and subject to
109 registration under subsection (6) and community and public
110 notification under subsection (7) if:
111 1. The felony is:
112 a. A capital, life, or first-degree felony violation, or
113 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
114 is a minor and the defendant is not the victim's parent or
115 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
116 violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025 ~~825.1025(2)(b)~~; s. 827.071; s. 847.0135(5); s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(6) REGISTRATION.—

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

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; photograph; address of legal residence and 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; all ~~any~~ electronic mail addresses ~~address~~ and all Internet identifiers ~~any instant message name~~ required to be provided pursuant to subparagraph (g)4.; all home telephone numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; date and place of any employment; the make, model, color, registration number, and license tag number of all vehicles owned; date and place of each conviction; fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address. The sexual predator must also produce his or her passport, if he or she has a passport, and, if he or she is an alien, must produce or provide information about documents establishing his or her immigration status. The sexual predator must also provide information about any professional licenses he or she may have.

a. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle,

175 trailer, mobile home, or manufactured home. If a sexual
176 predator's place of residence is a vessel, live-aboard vessel,
177 or houseboat, as defined in chapter 327, the sexual predator
178 shall also provide to the department written notice of the hull
179 identification number; the manufacturer's serial number; the
180 name of the vessel, live-aboard vessel, or houseboat; the
181 registration number; and a description, including color scheme,
182 of the vessel, live-aboard vessel, or houseboat.
183 b. If the sexual predator is enrolled, employed,
184 volunteering, or carrying on a vocation at an institution of
185 higher education in this state, the sexual predator shall also
186 provide to the department the name, address, and county of each
187 institution, including each campus attended, and the sexual
188 predator's enrollment, volunteer, or employment status. Each
189 change in enrollment, volunteer, or employment status shall be
190 reported in person at the sheriff's office, or the Department of
191 Corrections if the sexual predator is in the custody or control
192 of or under the supervision of the Department of Corrections,
193 within 48 hours after any change in status. The sheriff or the
194 Department of Corrections shall promptly notify each institution
195 of the sexual predator's presence and any change in the sexual
196 predator's enrollment, volunteer, or employment status.
197 2. Any other information determined necessary by the
198 department, including criminal and corrections records;
199 nonprivileged personnel and treatment records; and evidentiary
200 genetic markers when available.
201 (b) If the sexual predator is in the custody or control of,
202 or under the supervision of, the Department of Corrections, or
203 is in the custody of a private correctional facility, the sexual

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204 predator must register with the Department of Corrections. A
205 sexual predator who is under the supervision of the Department
206 of Corrections but who is not incarcerated must register with
207 the Department of Corrections within 3 business days after the
208 court finds the offender to be a sexual predator. The Department
209 of Corrections shall provide to the department registration
210 information and the location of, and local telephone number for,
211 any Department of Corrections office that is responsible for
212 supervising the sexual predator. In addition, the Department of
213 Corrections shall notify the department if the sexual predator
214 escapes or absconds from custody or supervision or if the sexual
215 predator dies.
216 (c) If the sexual predator is in the custody of a local
217 jail, the custodian of the local jail shall register the sexual
218 predator within 3 business days after intake of the sexual
219 predator for any reason and upon release, and shall forward the
220 registration information to the department. The custodian of the
221 local jail shall also take a digitized photograph of the sexual
222 predator while the sexual predator remains in custody and shall
223 provide the digitized photograph to the department. The
224 custodian shall notify the department if the sexual predator
225 escapes from custody or dies.
226 (d) If the sexual predator is under federal supervision,
227 the federal agency responsible for supervising the sexual
228 predator may forward to the department any information regarding
229 the sexual predator which is consistent with the information
230 provided by the Department of Corrections under this section,
231 and may indicate whether use of the information is restricted to
232 law enforcement purposes only or may be used by the department

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233 for purposes of public notification.
234 (e)1. If the sexual predator is not in the custody or
235 control of, or under the supervision of, the Department of
236 Corrections or is not in the custody of a private correctional
237 facility, the sexual predator shall register in person:
238 a. At the sheriff's office in the county where he or she
239 establishes or maintains a residence within 48 hours after
240 establishing or maintaining a residence in this state; and
241 b. At the sheriff's office in the county where he or she
242 was designated a sexual predator by the court within 48 hours
243 after such finding is made.
244 2. Any change in the sexual predator's permanent or
245 temporary residence, name, ~~or any~~ electronic mail addresses, or
246 Internet identifiers ~~address and any instant message name~~
247 required to be provided pursuant to subparagraph (g)4., after
248 the sexual predator registers in person at the sheriff's office
249 as provided in subparagraph 1., shall be accomplished in the
250 manner provided in paragraphs (g), (i), and (j). When a sexual
251 predator registers with the sheriff's office, the sheriff shall
252 take a photograph, ~~and~~ a set of fingerprints, and palm prints of
253 the predator and forward the photographs, palm prints, and
254 fingerprints to the department, along with the information that
255 the predator is required to provide pursuant to this section.
256 (f) Within 48 hours after the registration required under
257 paragraph (a) or paragraph (e), a sexual predator who is not
258 incarcerated and who resides in the community, including a
259 sexual predator under the supervision of the Department of
260 Corrections, shall register in person at a driver ~~driver's~~
261 license office of the Department of Highway Safety and Motor

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262 Vehicles and shall present proof of registration. At the driver
263 ~~driver's~~ license office the sexual predator shall:
264 1. If otherwise qualified, secure a Florida driver ~~driver's~~
265 license, renew a Florida driver ~~driver's~~ license, or secure an
266 identification card. The sexual predator shall identify himself
267 or herself as a sexual predator who is required to comply with
268 this section, provide his or her place of permanent, temporary,
269 or transient residence, including a rural route address and a
270 post office box, and submit to the taking of a photograph for
271 use in issuing a driver ~~driver's~~ license, renewed license, or
272 identification card, and for use by the department in
273 maintaining current records of sexual predators. A post office
274 box shall not be provided in lieu of a physical residential
275 address. If the sexual predator's place of residence is a motor
276 vehicle, trailer, mobile home, or manufactured home, as defined
277 in chapter 320, the sexual predator shall also provide to the
278 Department of Highway Safety and Motor Vehicles the vehicle
279 identification number; the license tag number; the registration
280 number; and a description, including color scheme, of the motor
281 vehicle, trailer, mobile home, or manufactured home. If a sexual
282 predator's place of residence is a vessel, live-aboard vessel,
283 or houseboat, as defined in chapter 327, the sexual predator
284 shall also provide to the Department of Highway Safety and Motor
285 Vehicles the hull identification number; the manufacturer's
286 serial number; the name of the vessel, live-aboard vessel, or
287 houseboat; the registration number; and a description, including
288 color scheme, of the vessel, live-aboard vessel, or houseboat.
289 2. Pay the costs assessed by the Department of Highway
290 Safety and Motor Vehicles for issuing or renewing a driver

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291 ~~driver's~~ license or identification card as required by this
292 section. The driver ~~driver's~~ license or identification card
293 issued to the sexual predator must be in compliance with s.
294 322.141(3).
295 3. Provide, upon request, any additional information
296 necessary to confirm the identity of the sexual predator,
297 including a set of fingerprints.
298 (g)1. Each time a sexual predator's driver ~~driver's~~ license
299 or identification card is subject to renewal, and, without
300 regard to the status of the predator's driver ~~driver's~~ license
301 or identification card, within 48 hours after any change of the
302 predator's residence or change in the predator's name by reason
303 of marriage or other legal process, the predator shall report in
304 person to a driver ~~driver's~~ license office and shall be subject
305 to the requirements specified in paragraph (f). The Department
306 of Highway Safety and Motor Vehicles shall forward to the
307 department and to the Department of Corrections all photographs
308 and information provided by sexual predators. Notwithstanding
309 the restrictions set forth in s. 322.142, the Department of
310 Highway Safety and Motor Vehicles is authorized to release a
311 reproduction of a color-photograph or digital-image license to
312 the Department of Law Enforcement for purposes of public
313 notification of sexual predators as provided in this section. A
314 sexual predator who is unable to secure or update a driver
315 license or identification card with the Department of Highway
316 Safety and Motor Vehicles as provided in paragraph (f) and this
317 paragraph must also report any change of the predator's
318 residence or change in the predator's name by reason of marriage
319 or other legal process within 48 hours after the change to the

320 sheriff's office in the county where the predator resides or is
321 located and provide confirmation that he or she reported such
322 information to the Department of Highway Safety and Motor
323 Vehicles.
324 2. A sexual predator who vacates a permanent, temporary, or
325 transient residence and fails to establish or maintain another
326 permanent, temporary, or transient residence shall, within 48
327 hours after vacating the permanent, temporary, or transient
328 residence, report in person to the sheriff's office of the
329 county in which he or she is located. The sexual predator shall
330 specify the date upon which he or she intends to or did vacate
331 such residence. The sexual predator must provide or update all
332 of the registration information required under paragraph (a).
333 The sexual predator must provide an address for the residence or
334 other place that he or she is or will be located during the time
335 in which he or she fails to establish or maintain a permanent or
336 temporary residence.
337 3. A sexual predator who remains at a permanent, temporary,
338 or transient residence after reporting his or her intent to
339 vacate such residence shall, within 48 hours after the date upon
340 which the predator indicated he or she would or did vacate such
341 residence, report in person to the sheriff's office to which he
342 or she reported pursuant to subparagraph 2. for the purpose of
343 reporting his or her address at such residence. When the sheriff
344 receives the report, the sheriff shall promptly convey the
345 information to the department. An offender who makes a report as
346 required under subparagraph 2. but fails to make a report as
347 required under this subparagraph commits a felony of the second
348 degree, punishable as provided in s. 775.082, s. 775.083, or s.

349 775.084.
350 4. A sexual predator must register all ~~any~~ electronic mail
351 addresses and Internet identifiers ~~address or instant message~~
352 ~~name~~ with the department prior to using such electronic mail
353 addresses and Internet identifiers ~~address or instant message~~
354 ~~name on or after October 1, 2007~~. The department shall establish
355 an online system through which sexual predators may securely
356 access and update all electronic mail address and Internet
357 identifier ~~instant message name~~ information.
358 (h) The department must notify the sheriff and the state
359 attorney of the county and, if applicable, the police chief of
360 the municipality, where the sexual predator maintains a
361 residence.
362 (i) A sexual predator who intends to establish a permanent,
363 temporary, or transient residence in another state or
364 jurisdiction other than the State of Florida shall report in
365 person to the sheriff of the county of current residence within
366 48 hours before the date he or she intends to leave this state
367 to establish residence in another state or jurisdiction or
368 within 21 days before his or her planned departure date if the
369 intended residence of 5 days or more is outside of the United
370 States. The sexual predator must provide to the sheriff the
371 address, municipality, county, ~~and~~ state, and country of
372 intended residence. The sheriff shall promptly provide to the
373 department the information received from the sexual predator.
374 The department shall notify the statewide law enforcement
375 agency, or a comparable agency, in the intended state, ~~or~~
376 jurisdiction, or country of residence of the sexual predator's
377 intended residence. The failure of a sexual predator to provide

378 his or her intended place of residence is punishable as provided
379 in subsection (10).
380 (j) A sexual predator who indicates his or her intent to
381 establish a permanent, temporary, or transient residence in
382 another state, a ~~or~~ jurisdiction other than the State of
383 Florida, or another country and later decides to remain in this
384 state shall, within 48 hours after the date upon which the
385 sexual predator indicated he or she would leave this state,
386 report in person to the sheriff to which the sexual predator
387 reported the intended change of residence, and report his or her
388 intent to remain in this state. If the sheriff is notified by
389 the sexual predator that he or she intends to remain in this
390 state, the sheriff shall promptly report this information to the
391 department. A sexual predator who reports his or her intent to
392 establish a permanent, temporary, or transient residence in
393 another state, a ~~or~~ jurisdiction other than the State of
394 Florida, or another country, but who remains in this state
395 without reporting to the sheriff in the manner required by this
396 paragraph, commits a felony of the second degree, punishable as
397 provided in s. 775.082, s. 775.083, or s. 775.084.
398 (k)1. The department is responsible for the online
399 maintenance of current information regarding each registered
400 sexual predator. The department must maintain hotline access for
401 state, local, and federal law enforcement agencies to obtain
402 instantaneous locator file and offender characteristics
403 information on all released registered sexual predators for
404 purposes of monitoring, tracking, and prosecution. The
405 photograph and fingerprints do not have to be stored in a
406 computerized format.

407 2. The department's sexual predator registration list,
408 containing the information described in subparagraph (a)1., is a
409 public record. The department is authorized to disseminate this
410 public information by any means deemed appropriate, including
411 operating a toll-free telephone number for this purpose. When
412 the department provides information regarding a registered
413 sexual predator to the public, department personnel must advise
414 the person making the inquiry that positive identification of a
415 person believed to be a sexual predator cannot be established
416 unless a fingerprint comparison is made, and that it is illegal
417 to use public information regarding a registered sexual predator
418 to facilitate the commission of a crime.
419 3. The department shall adopt guidelines as necessary
420 regarding the registration of sexual predators and the
421 dissemination of information regarding sexual predators as
422 required by this section.
423 (l) A sexual predator must maintain registration with the
424 department for the duration of his or her life, unless the
425 sexual predator has received a full pardon or has had a
426 conviction set aside in a postconviction proceeding for any
427 offense that met the criteria for the sexual predator
428 designation.
429 (8) VERIFICATION.—The department and the Department of
430 Corrections shall implement a system for verifying the addresses
431 of sexual predators. The system must be consistent with the
432 provisions of the federal Adam Walsh Child Protection and Safety
433 Act of 2006 and any other federal standards applicable to such
434 verification or required to be met as a condition for the
435 receipt of federal funds by the state. The Department of

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436 Corrections shall verify the addresses of sexual predators who
437 are not incarcerated but who reside in the community under the
438 supervision of the Department of Corrections and shall report to
439 the department any failure by a sexual predator to comply with
440 registration requirements. County and local law enforcement
441 agencies, in conjunction with the department, shall verify the
442 addresses of sexual predators who are not under the care,
443 custody, control, or supervision of the Department of
444 Corrections. Local law enforcement agencies shall report to the
445 department any failure by a sexual predator to comply with
446 registration requirements.
447 (a) A sexual predator must report in person each year
448 during the month of the sexual predator's birthday and during
449 every third month thereafter to the sheriff's office in the
450 county in which he or she resides or is otherwise located to
451 reregister. The sheriff's office may determine the appropriate
452 times and days for reporting by the sexual predator, which shall
453 be consistent with the reporting requirements of this paragraph.
454 Reregistration shall include any changes to the following
455 information:
456 1. Name; social security number; age; race; sex; date of
457 birth; height; weight; tattoos or other identifying marks; hair
458 and eye color; address of any permanent residence and address of
459 any current temporary residence, within the state or out of
460 state, including a rural route address and a post office box; if
461 no permanent or temporary address, any transient residence
462 within the state; address, location or description, and dates of
463 any current or known future temporary residence within the state
464 or out of state; ~~any~~ electronic mail addresses or Internet

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465 identifiers ~~address and any instant message name~~ required to be
466 provided pursuant to subparagraph (6)(g)4.; home telephone
467 numbers or ~~number and any~~ cellular telephone numbers ~~number~~;
468 date and place of any employment; the ~~vehicle~~ make, model,
469 color, registration number, and license tag number of any
470 vehicles owned; fingerprints; palm prints; and photograph. A
471 post office box shall not be provided in lieu of a physical
472 residential address. The sexual predator must also produce his
473 or her passport, if he or she has a passport, and, if he or she
474 is an alien, must produce or provide information about documents
475 establishing his or her immigration status. The sexual predator
476 must also provide information about any professional licenses he
477 or she may have.
478 2. If the sexual predator is enrolled, employed,
479 volunteering, or carrying on a vocation at an institution of
480 higher education in this state, the sexual predator shall also
481 provide to the department the name, address, and county of each
482 institution, including each campus attended, and the sexual
483 predator's enrollment, volunteer, or employment status.
484 3. If the sexual predator's place of residence is a motor
485 vehicle, trailer, mobile home, or manufactured home, as defined
486 in chapter 320, the sexual predator shall also provide the
487 vehicle identification number; the license tag number; the
488 registration number; and a description, including color scheme,
489 of the motor vehicle, trailer, mobile home, or manufactured
490 home. If the sexual predator's place of residence is a vessel,
491 live-aboard vessel, or houseboat, as defined in chapter 327, the
492 sexual predator shall also provide the hull identification
493 number; the manufacturer's serial number; the name of the

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494 vessel, live-aboard vessel, or houseboat; the registration
495 number; and a description, including color scheme, of the
496 vessel, live-aboard vessel, or houseboat.
497 (b) The sheriff's office shall, within 2 working days,
498 electronically submit and update all information provided by the
499 sexual predator to the department in a manner prescribed by the
500 department.
501 (10) PENALTIES.—
502 (a) Except as otherwise specifically provided, a sexual
503 predator who fails to register; who fails, after registration,
504 to maintain, acquire, or renew a driver ~~driver's~~ license or
505 identification card; who fails to provide required location
506 information, electronic mail address information prior to use,
507 Internet identifier ~~instant message name~~ information prior to
508 use, all home telephone numbers ~~number~~ and ~~any~~ cellular
509 telephone numbers ~~number~~, or change-of-name information; who
510 fails to make a required report in connection with vacating a
511 permanent residence; who fails to reregister as required; who
512 fails to respond to any address verification correspondence from
513 the department within 3 weeks of the date of the correspondence;
514 who knowingly provides false registration information by act or
515 omission; or who otherwise fails, by act or omission, to comply
516 with the requirements of this section~~,~~ commits a felony of the
517 third degree, punishable as provided in s. 775.082, s. 775.083,
518 or s. 775.084.
519 Section 2. Section 800.03, Florida Statutes, is amended to
520 read:
521 800.03 Exposure of sexual organs.—
522 (1) It is unlawful to expose or exhibit one's sexual organs

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523 in public or on the private premises of another, or so near
524 thereto as to be seen from such private premises, in a vulgar or
525 indecent manner, or to be naked in public except in any place
526 provided or set apart for that purpose.
527 (2)(a) Except as provided in paragraph (b), a violation of
528 this section is a misdemeanor of the first degree, punishable as
529 provided in s. 775.082 or s. 775.083.
530 (b) A third or subsequent violation of this section is a
531 felony of the third degree, punishable as provided in s.
532 775.082, s. 775.083, or s. 775.084.
533 (3) A mother's breastfeeding of her baby does not under any
534 circumstance violate this section.
535 Section 3. Paragraph (m) is added to subsection (2) of
536 section 903.046, Florida Statutes, to read:
537 903.046 Purpose of and criteria for bail determination.—
538 (2) When determining whether to release a defendant on bail
539 or other conditions, and what that bail or those conditions may
540 be, the court shall consider:
541 (m) Whether the defendant, other than a defendant whose
542 only criminal charge is a misdemeanor offense under chapter 316,
543 is required to register as a sexual offender under s. 943.0435
544 or a sexual predator under s. 775.21; and, if so, he or she is
545 not eligible for release on bail or surety bond until the first
546 appearance on the case in order to ensure the full participation
547 of the prosecutor and the protection of the public.
548 Section 4. Paragraphs (a) and (g) of subsection (1),
549 subsection (2), paragraphs (a) and (d) of subsection (4),
550 subsections (7), (8), and (11), and paragraph (c) of subsection
551 (14) of section 943.0435, Florida Statutes, are amended to read:

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552 943.0435 Sexual offenders required to register with the
553 department; penalty.—
554 (1) As used in this section, the term:
555 (a)1. "Sexual offender" means a person who meets the
556 criteria in sub-subparagraph a., sub-subparagraph b., sub-
557 subparagraph c., or sub-subparagraph d., as follows:
558 a.(I) Has been convicted of committing, or attempting,
559 soliciting, or conspiring to commit, any of the criminal
560 offenses proscribed in the following statutes in this state or
561 similar offenses in another jurisdiction: s. 393.135(2); s.
562 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
563 the victim is a minor and the defendant is not the victim's
564 parent or guardian; s. 787.06(3)(b), (d), (f), (g), or (h); s.
565 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
566 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s.
567 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
568 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any
569 similar offense committed in this state which has been
570 redesignated from a former statute number to one of those listed
571 in this sub-sub-subparagraph; and
572 (II) Has been released on or after October 1, 1997, from
573 the sanction imposed for any conviction of an offense described
574 in sub-sub-subparagraph (I). For purposes of sub-sub-
575 subparagraph (I), a sanction imposed in this state or in any
576 other jurisdiction includes, but is not limited to, a fine,
577 probation, community control, parole, conditional release,
578 control release, or incarceration in a state prison, federal
579 prison, private correctional facility, or local detention
580 facility;

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581 b. Establishes or maintains a residence in this state and
582 who has not been designated as a sexual predator by a court of
583 this state but who has been designated as a sexual predator, as
584 a sexually violent predator, or by another sexual offender
585 designation in another state or jurisdiction and was, as a
586 result of such designation, subjected to registration or
587 community or public notification, or both, or would be if the
588 person were a resident of that state or jurisdiction, without
589 regard to whether the person otherwise meets the criteria for
590 registration as a sexual offender;
591 c. Establishes or maintains a residence in this state who
592 is in the custody or control of, or under the supervision of,
593 any other state or jurisdiction as a result of a conviction for
594 committing, or attempting, soliciting, or conspiring to commit,
595 any of the criminal offenses proscribed in the following
596 statutes or similar offense in another jurisdiction: s.
597 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
598 787.025(2)(c), where the victim is a minor and the defendant is
599 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
600 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.
601 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
602 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
603 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
604 985.701(1); or any similar offense committed in this state which
605 has been redesignated from a former statute number to one of
606 those listed in this sub-subparagraph; or
607 d. On or after July 1, 2007, has been adjudicated
608 delinquent for committing, or attempting, soliciting, or
609 conspiring to commit, any of the criminal offenses proscribed in

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610 the following statutes in this state or similar offenses in
611 another jurisdiction when the juvenile was 14 years of age or
612 older at the time of the offense:
613 (I) Section 794.011, excluding s. 794.011(10);
614 (II) Section 800.04(4)(b) where the victim is under 12
615 years of age or where the court finds sexual activity by the use
616 of force or coercion;
617 (III) Section 800.04(5)(c)1. where the court finds
618 molestation involving unclothed genitals; or
619 (IV) Section 800.04(5)(d) where the court finds the use of
620 force or coercion and unclothed genitals.
621 2. For all qualifying offenses listed in sub-subparagraph
622 (1)(a)1.d., the court shall make a written finding of the age of
623 the offender at the time of the offense.
624
625 For each violation of a qualifying offense listed in this
626 subsection, except for a violation of s. 794.011, the court
627 shall make a written finding of the age of the victim at the
628 time of the offense. For a violation of s. 800.04(4), the court
629 shall additionally make a written finding indicating that the
630 offense did or did not involve sexual activity and indicating
631 that the offense did or did not involve force or coercion. For a
632 violation of s. 800.04(5), the court shall additionally make a
633 written finding that the offense did or did not involve
634 unclothed genitals or genital area and that the offense did or
635 did not involve the use of force or coercion.
636 (g) "Internet identifier ~~Instant message name~~" has the same
637 meaning as provided in s. 775.21 ~~means an identifier that allows~~
638 ~~a person to communicate in real time with another person using~~

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639 ~~the Internet~~.
640 (2) A sexual offender shall:
641 (a) Report in person at the sheriff's office:
642 1. In the county in which the offender establishes or
643 maintains a permanent, temporary, or transient residence within
644 48 hours after:
645 a. Establishing permanent, temporary, or transient
646 residence in this state; or
647 b. Being released from the custody, control, or supervision
648 of the Department of Corrections or from the custody of a
649 private correctional facility; or
650 2. In the county where he or she was convicted within 48
651 hours after being convicted for a qualifying offense for
652 registration under this section if the offender is not in the
653 custody or control of, or under the supervision of, the
654 Department of Corrections, or is not in the custody of a private
655 correctional facility.
656
657 Any change in the information required to be provided pursuant
658 to paragraph (b), including, but not limited to, any change in
659 the sexual offender's permanent, temporary, or transient
660 residence, name, ~~any~~ electronic mail addresses, or Internet
661 identifiers ~~address and any instant message name~~ required to be
662 provided pursuant to paragraph (4)(d), after the sexual offender
663 reports in person at the sheriff's office, shall be accomplished
664 in the manner provided in subsections (4), (7), and (8).
665 (b) Provide his or her name; date of birth; social security
666 number; race; sex; height; weight; hair and eye color; tattoos
667 or other identifying marks; occupation and place of employment;

668 address of permanent or legal residence or address of any
669 current temporary residence, within the state or out of state,
670 including a rural route address and a post office box; if no
671 permanent or temporary address, any transient residence within
672 the state, address, location or description, and dates of any
673 current or known future temporary residence within the state or
674 out of state; the make, model, color, registration number, and
675 license tag number of all vehicles owned; all home telephone
676 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; all
677 ~~any~~ electronic mail addresses ~~address~~ and all Internet
678 identifiers ~~any instant message name~~ required to be provided
679 pursuant to paragraph (4)(d); fingerprints; palm prints;
680 photograph; date and place of each conviction; and a brief
681 description of the crime or crimes committed by the offender. A
682 post office box shall not be provided in lieu of a physical
683 residential address. The sexual offender must also produce his
684 or her passport, if he or she has a passport, and, if he or she
685 is an alien, must produce or provide information about documents
686 establishing his or her immigration status. The sexual offender
687 must also provide information about any professional licenses he
688 or she may have.
689 1. If the sexual offender's place of residence is a motor
690 vehicle, trailer, mobile home, or manufactured home, as defined
691 in chapter 320, the sexual offender shall also provide to the
692 department through the sheriff's office written notice of the
693 vehicle identification number; the license tag number; the
694 registration number; and a description, including color scheme,
695 of the motor vehicle, trailer, mobile home, or manufactured
696 home. If the sexual offender's place of residence is a vessel,

697 live-aboard vessel, or houseboat, as defined in chapter 327, the
698 sexual offender shall also provide to the department written
699 notice of the hull identification number; the manufacturer's
700 serial number; the name of the vessel, live-aboard vessel, or
701 houseboat; the registration number; and a description, including
702 color scheme, of the vessel, live-aboard vessel, or houseboat.
703 2. If the sexual offender is enrolled, employed,
704 volunteering, or carrying on a vocation at an institution of
705 higher education in this state, the sexual offender shall also
706 provide to the department through the sheriff's office the name,
707 address, and county of each institution, including each campus
708 attended, and the sexual offender's enrollment, volunteer, or
709 employment status. Each change in enrollment, volunteer, or
710 employment status shall be reported in person at the sheriff's
711 office, within 48 hours after any change in status. The sheriff
712 shall promptly notify each institution of the sexual offender's
713 presence and any change in the sexual offender's enrollment,
714 volunteer, or employment status.
715 (c) Provide any other information determined necessary by
716 the department, including criminal and corrections records;
717 nonprivileged personnel and treatment records; and evidentiary
718 genetic markers, when available.
719
720 When a sexual offender reports at the sheriff's office, the
721 sheriff shall take a photograph, ~~and~~ a set of fingerprints, and
722 palm prints of the offender and forward the photographs, palm
723 prints, and fingerprints to the department, along with the
724 information provided by the sexual offender. The sheriff shall
725 promptly provide to the department the information received from

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726 the sexual offender.
727 (4)(a) Each time a sexual offender's driver ~~driver's~~
728 license or identification card is subject to renewal, and,
729 without regard to the status of the offender's driver ~~driver's~~
730 license or identification card, within 48 hours after any change
731 in the offender's permanent, temporary, or transient residence
732 or change in the offender's name by reason of marriage or other
733 legal process, the offender shall report in person to a driver
734 ~~driver's~~ license office, and shall be subject to the
735 requirements specified in subsection (3). The Department of
736 Highway Safety and Motor Vehicles shall forward to the
737 department all photographs and information provided by sexual
738 offenders. Notwithstanding the restrictions set forth in s.
739 322.142, the Department of Highway Safety and Motor Vehicles is
740 authorized to release a reproduction of a color-photograph or
741 digital-image license to the Department of Law Enforcement for
742 purposes of public notification of sexual offenders as provided
743 in this section and ss. 943.043 and 944.606. A sexual offender
744 who is unable to secure or update a driver license or
745 identification card with the Department of Highway Safety and
746 Motor Vehicles as provided in subsection (3) and this subsection
747 must also report any change in the sexual offender's permanent,
748 temporary, or transient residence or change in the offender's
749 name by reason of marriage or other legal process within 48
750 hours after the change to the sheriff's office in the county
751 where the offender resides or is located and provide
752 confirmation that he or she reported such information to the
753 Department of Highway Safety and Motor Vehicles.
754 (d) A sexual offender must register all ~~any~~ electronic mail

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755 addresses and Internet identifiers ~~address or instant message~~
756 ~~name~~ with the department prior to using such electronic mail
757 addresses and Internet identifiers ~~address or instant message~~
758 ~~name on or after October 1, 2007~~. The department shall establish
759 an online system through which sexual offenders may securely
760 access and update all electronic mail address and Internet
761 identifier ~~instant message name~~ information.
762 (7) A sexual offender who intends to establish a permanent,
763 temporary, or transient residence in another state or
764 jurisdiction other than the State of Florida shall report in
765 person to the sheriff of the county of current residence within
766 48 hours before the date he or she intends to leave this state
767 to establish residence in another state or jurisdiction or
768 within 21 days before his or her planned departure date if the
769 intended residence of 5 days or more is outside of the United
770 States. The notification must include the address, municipality,
771 county, ~~and~~ state, and country of intended residence. The
772 sheriff shall promptly provide to the department the information
773 received from the sexual offender. The department shall notify
774 the statewide law enforcement agency, or a comparable agency, in
775 the intended state, ~~or~~ jurisdiction, or country of residence of
776 the sexual offender's intended residence. The failure of a
777 sexual offender to provide his or her intended place of
778 residence is punishable as provided in subsection (9).
779 (8) A sexual offender who indicates his or her intent to
780 establish a permanent, temporary, or transient residence in
781 another state, a ~~or~~ jurisdiction other than the State of
782 Florida, or another country and later decides to remain in this
783 state shall, within 48 hours after the date upon which the

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784 sexual offender indicated he or she would leave this state,
785 report in person to the sheriff to which the sexual offender
786 reported the intended change of permanent, temporary, or
787 transient residence, and report his or her intent to remain in
788 this state. The sheriff shall promptly report this information
789 to the department. A sexual offender who reports his or her
790 intent to establish a permanent, temporary, or transient
791 residence in another state, a ~~or~~ jurisdiction other than the
792 State of Florida, or another country but who remains in this
793 state without reporting to the sheriff in the manner required by
794 this subsection commits a felony of the second degree,
795 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
796 (11) Except as provided in this subsection and s.
797 943.04354, a sexual offender must maintain registration with the
798 department for the duration of his or her life, unless the
799 sexual offender has received a full pardon or has had a
800 conviction set aside in a postconviction proceeding for any
801 offense that meets the criteria for classifying the person as a
802 sexual offender for purposes of registration. ~~However, a sexual~~
803 ~~offender:~~
804 (a)1. A sexual offender may petition the criminal division
805 of the circuit court of the circuit in which the sexual offender
806 resides for the purpose of removing the requirement for
807 registration as a sexual offender if ~~Who has been lawfully~~
808 ~~released from confinement, supervision, or sanction, whichever~~
809 ~~is later, for at least 25 years and has not been arrested for~~
810 ~~any felony or misdemeanor offense since release, provided that~~
811 ~~the sexual offender's requirement to register was not based upon~~
812 ~~an adult conviction~~:

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813 a. Twenty-five years have elapsed since the sexual
814 offender's registration period for the most recent conviction
815 that required the offender to register began;
816 b. The sexual offender has not been convicted or
817 adjudicated delinquent of any felony offense or of an offense
818 punishable by more than 1 year of imprisonment during the 25
819 years preceding the petition to the court;
820 c. The sexual offender has successfully completed all
821 sanctions imposed for all offenses that required the offender to
822 register;
823 d. The sexual offender's requirement to register was not
824 based upon an adult conviction for a violation of s. 787.01, s.
825 794.011, excluding s. 794.011(10), s. 800.04(4)(b) where the
826 court finds the offense involved a victim under 12 years of age
827 or sexual activity by the use of force or coercion, s.
828 800.04(5)(b), or s. 800.04(5)(c)2. where the court finds the
829 offense involved unclothed genitals or genital area; for any
830 attempt or conspiracy to commit any offense listed in this sub-
831 subparagraph; or for a violation of similar law of another
832 jurisdiction; and
833 e. For sexual offenders whose requirement to register is
834 based upon a conviction in another state, the sexual offender is
835 not required to register as a sexual offender pursuant to the
836 laws of the state where the conviction occurred. Such an
837 offender must provide the court written confirmation that he or
838 she is not required to register in the state where the
839 conviction occurred.
840 ~~a. For a violation of s. 787.01 or s. 787.02;~~
841 ~~b. For a violation of s. 794.011, excluding s. 794.011(10);~~

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842 ~~c. For a violation of s. 800.04(4)(b) where the court finds~~
843 ~~the offense involved a victim under 12 years of age or sexual~~
844 ~~activity by the use of force or coercion;~~
845 ~~d. For a violation of s. 800.04(5)(b);~~
846 ~~e. For a violation of s. 800.04(5)c.2. where the court~~
847 ~~finds the offense involved unclothed genitals or genital area;~~
848 ~~f. For any attempt or conspiracy to commit any such~~
849 ~~offense; or~~
850 ~~g. For a violation of similar law of another jurisdiction,~~
851 ~~may petition the criminal division of the circuit court of the~~
852 ~~circuit in which the sexual offender resides for the purpose of~~
853 ~~removing the requirement for registration as a sexual offender.~~
854 2. A sexual offender whose requirement to register was
855 based upon an adult conviction for a violation of s. 787.02 or
856 s. 827.071(5), for any attempt or conspiracy to commit any
857 offense listed in this subparagraph, or for a violation of
858 similar law of another jurisdiction, may petition the criminal
859 division of the circuit court of the circuit in which the sexual
860 offender resides for the purpose of removing the requirement for
861 registration as a sexual offender if:
862 a. Fifteen years have elapsed since the sexual offender's
863 registration period for the most recent conviction that required
864 the offender to register began;
865 b. The sexual offender has not been convicted or
866 adjudicated delinquent of any felony offense or of an offense
867 punishable by more than 1 year of imprisonment during the 10
868 years preceding the petition to the court;
869 c. The sexual offender has successfully completed all
870 sanctions imposed for all offenses that required the offender to

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871 register; and
872 d. For sexual offenders whose requirement to register is
873 based upon a conviction in another state, the sexual offender is
874 not required to register as a sexual offender pursuant to the
875 laws of the state where the conviction occurred. Such an
876 offender must provide the court written confirmation that he or
877 she is not required to register in the state where the
878 conviction occurred.
879 3. A sexual offender required to register under sub-
880 subparagraph (1)(a)1.d. may petition the criminal division of
881 the circuit court of the circuit in which the sexual offender
882 resides for the purpose of removing the requirement for
883 registration as a sexual offender if:
884 a. Twenty-five years have elapsed since the sexual
885 offender's registration period for the most recent adjudication
886 that required the offender to register began;
887 b. The sexual offender has not been convicted or
888 adjudicated delinquent of any felony offense or of an offense
889 punishable by more than 1 year of imprisonment during the 25
890 years preceding the petition to the court; and
891 c. The sexual offender has successfully completed all
892 sanctions imposed for any offense that required the offender to
893 register.
894 4.~~2.~~ The court may grant or deny relief if the offender
895 demonstrates to the court that ~~he or she has not been arrested~~
896 ~~for any crime since release;~~ the requested relief complies with
897 this paragraph, ~~the provisions of~~ the federal Adam Walsh Child
898 Protection and Safety Act of 2006, and any other federal
899 standards applicable to the removal of registration requirements

900 for a sexual offender or required to be met as a condition for
901 the receipt of federal funds by the state; and the court is
902 otherwise satisfied that the offender is not a current or
903 potential threat to public safety. The state attorney in the
904 circuit in which the petition is filed and the department must
905 be given notice of the petition at least 3 weeks before the
906 hearing on the matter. The state attorney may present evidence
907 in opposition to the requested relief or may otherwise
908 demonstrate the reasons why the petition should be denied. If
909 the court grants the petition, the court shall instruct the
910 petitioner to provide the department with a certified copy of
911 the order granting relief. If the court denies the petition, the
912 court may set a future date at which the sexual offender may
913 again petition the court for relief, subject to the standards
914 for relief provided in this subsection.
915 5.~~3.~~ The department shall remove an offender from
916 classification as a sexual offender for purposes of registration
917 if the offender provides to the department a certified copy of
918 the court's written findings or order that indicates that the
919 offender is no longer required to comply with the requirements
920 for registration as a sexual offender.
921 6. For purposes of this paragraph:
922 a. The registration period of a sexual offender sentenced
923 to a term of incarceration or committed to a residential program
924 begins upon the offender's release from incarceration or
925 commitment for the most recent conviction that required the
926 offender to register.
927 b. A sexual offender's registration period is tolled during
928 any period in which the offender is incarcerated, civilly

929 committed, detained pursuant to chapter 985, or committed to a
930 residential program.
931 (b) A sexual offender as defined in sub-subparagraph
932 (1)(a)1.b. must maintain registration with the department for
933 the duration of his or her life until the person provides the
934 department with an order issued by the court that designated the
935 person as a sexual predator, as a sexually violent predator, or
936 by another sexual offender designation in the state or
937 jurisdiction in which the order was issued which states that
938 such designation has been removed or demonstrates to the
939 department that such designation, if not imposed by a court, has
940 been removed by operation of law or court order in the state or
941 jurisdiction in which the designation was made, and provided
942 such person no longer meets the criteria for registration as a
943 sexual offender under the laws of this state.
944 (14)
945 (c) The sheriff's office may determine the appropriate
946 times and days for reporting by the sexual offender, which shall
947 be consistent with the reporting requirements of this
948 subsection. Reregistration shall include any changes to the
949 following information:
950 1. Name; social security number; age; race; sex; date of
951 birth; height; weight; hair and eye color; address of any
952 permanent residence and address of any current temporary
953 residence, within the state or out of state, including a rural
954 route address and a post office box; if no permanent or
955 temporary address, any transient residence within the state;
956 address, location or description, and dates of any current or
957 known future temporary residence within the state or out of

958 state; ~~any~~ electronic mail addresses or Internet identifiers
959 ~~address and any instant message name~~ required to be provided
960 pursuant to paragraph (4)(d); home telephone numbers or ~~number~~
961 ~~and any~~ cellular telephone numbers ~~number~~; date and place of any
962 employment; the ~~vehicle~~ make, model, color, registration number,
963 and license tag number of any vehicles owned; fingerprints; palm
964 prints; and photograph. A post office box may ~~shall~~ not be
965 provided in lieu of a physical residential address. The sexual
966 offender must also produce his or her passport, if he or she has
967 a passport, and, if he or she is an alien, must produce or
968 provide information about documents establishing his or her
969 immigration status. The sexual offender must also provide
970 information about any professional licenses he or she may have.
971 2. If the sexual offender is enrolled, volunteering,
972 employed, or carrying on a vocation at an institution of higher
973 education in this state, the sexual offender shall also provide
974 to the department the name, address, and county of each
975 institution, including each campus attended, and the sexual
976 offender's enrollment, volunteer, or employment status.
977 3. If the sexual offender's place of residence is a motor
978 vehicle, trailer, mobile home, or manufactured home, as defined
979 in chapter 320, the sexual offender shall also provide the
980 vehicle identification number; the license tag number; the
981 registration number; and a description, including color scheme,
982 of the motor vehicle, trailer, mobile home, or manufactured
983 home. If the sexual offender's place of residence is a vessel,
984 live-aboard vessel, or houseboat, as defined in chapter 327, the
985 sexual offender shall also provide the hull identification
986 number; the manufacturer's serial number; the name of the

987 vessel, live-aboard vessel, or houseboat; the registration
988 number; and a description, including color scheme, of the
989 vessel, live-aboard vessel or houseboat.
990 4. Any sexual offender who fails to report in person as
991 required at the sheriff's office, ~~or~~ who fails to respond to any
992 address verification correspondence from the department within 3
993 weeks of the date of the correspondence, ~~or~~ who fails to report
994 all electronic mail addresses and all Internet identifiers prior
995 to use ~~or instant message names~~, or who knowingly provides false
996 registration information by act or omission commits a felony of
997 the third degree, punishable as provided in s. 775.082, s.
998 775.083, or s. 775.084.
999 Section 5. Section 943.04351, Florida Statutes, is amended
1000 to read:
1001 943.04351 Search of registration information regarding
1002 sexual predators and sexual offenders required prior to
1003 appointment or employment.—A state agency or governmental
1004 subdivision, prior to making any decision to appoint or employ a
1005 person to work, whether for compensation or as a volunteer, at
1006 any park, playground, day care center, or other place where
1007 children regularly congregate, must conduct a search of that
1008 person's name or other identifying information against the
1009 registration information regarding sexual predators and sexual
1010 offenders maintained by the Department of Law Enforcement under
1011 s. 943.043. The agency or governmental subdivision may conduct
1012 the search using the Internet site maintained by the Department
1013 of Law Enforcement. Also, a national search must be conducted
1014 through the Dru Sjodin National Sex Offender Public Website
1015 maintained by the United States Department of Justice. This

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1016 section does not apply to those positions or appointments within
1017 a state agency or governmental subdivision for which a state and
1018 national criminal history background check is conducted.
1019 Section 6. Section 943.04354, Florida Statutes, is amended
1020 to read:
1021 943.04354 Removal of the requirement to register as a
1022 sexual offender or sexual predator in special circumstances.—
1023 (1) For purposes of this section, a person shall be
1024 considered for removal of the requirement to register as a
1025 sexual offender or sexual predator only if the person:
1026 (a) Was ~~or will be~~ convicted, regardless of adjudication,
1027 or adjudicated delinquent of a violation of s. 794.011, s.
1028 800.04, s. 827.071, or s. 847.0135(5), or a similar offense in
1029 another jurisdiction, ~~or the person committed a violation of s.~~
1030 ~~794.011, s. 800.04, s. 827.071, or s. 847.0135(5) for which~~
1031 ~~adjudication of guilt was or will be withheld,~~ and the person
1032 does not have any other conviction, regardless of adjudication,
1033 or adjudication of delinquency~~, or withhold of adjudication of~~
1034 ~~guilt~~ for a violation of s. 794.011, s. 800.04, s. 827.071, or
1035 s. 847.0135(5), or a similar offense in another jurisdiction;
1036 (b)1. Was convicted, regardless of adjudication, or
1037 adjudicated delinquent of an offense listed in paragraph (a) and
1038 is required to register as a sexual offender or sexual predator
1039 solely on the basis of this conviction or adjudication
1040 ~~violation~~; or ~~and~~
1041 2. Was convicted, regardless of adjudication, or
1042 adjudicated delinquent of an offense in another jurisdiction
1043 that is similar to an offense listed in paragraph (a) and no
1044 longer meets the criteria for registration as a sexual offender

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1045 or sexual predator under the laws of the jurisdiction where the
1046 similar offense occurred; and
1047 (c) Is not more than 4 years older than the victim of this
1048 violation who was 13 ~~14~~ years of age or older but less ~~not more~~
1049 than 18 ~~17~~ years of age at the time the person committed this
1050 violation.
1051 (2) If a person meets the criteria in subsection (1) ~~and~~
1052 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~
1053 ~~847.0135(5) was committed on or after July 1, 2007~~, the person
1054 may move the criminal court of the circuit in which the offense
1055 occurred or the sentencing court or, for persons convicted or
1056 adjudicated delinquent of a qualifying offense in another
1057 jurisdiction, the criminal circuit court of the circuit in which
1058 the person resides ~~that will sentence or dispose of this~~
1059 ~~violation~~ to remove the requirement that the person register as
1060 a sexual offender or sexual predator. The person must allege in
1061 the motion that he or she meets the criteria in subsection (1)
1062 and that removal of the registration requirement will not
1063 conflict with federal law. Persons convicted or adjudicated
1064 delinquent of an offense in another jurisdiction that is similar
1065 to an offense listed in paragraph (1)(a) must provide the court
1066 written confirmation that he or she is not required to register
1067 in the state where the conviction or adjudication occurred. The
1068 state attorney and the department must be given notice of the
1069 motion at least 21 days before the date of sentencing, ~~or~~
1070 disposition of the ~~this~~ violation, or hearing on the motion and
1071 may present evidence in opposition to the requested relief or
1072 may otherwise demonstrate why the motion should be denied. At
1073 sentencing, ~~or~~ disposition of the ~~this~~ violation, or hearing on

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1074 the motion, the court shall rule on this motion and, if the
1075 court determines the person meets the criteria in subsection (1)
1076 and the removal of the registration requirement will not
1077 conflict with federal law, it may grant the motion and order the
1078 removal of the registration requirement. The court shall
1079 instruct the person to provide the department a certified copy
1080 of the order granting relief. If the court denies the motion,
1081 the person is not authorized under this section to file another
1082 motion ~~petition~~ for removal of the registration requirement.
1083 ~~(3)(a) This subsection applies to a person who:~~
1084 ~~1. Is not a person described in subsection (2) because the~~
1085 ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~
1086 ~~committed on or after July 1, 2007;~~
1087 ~~2. Is subject to registration as a sexual offender or~~
1088 ~~sexual predator for a violation of s. 794.011, s. 800.04, or s.~~
1089 ~~827.071; and~~
1090 ~~3. Meets the criteria in subsection (1).~~
1091 ~~(b) A person may petition the court in which the sentence~~
1092 ~~or disposition for the violation of s. 794.011, s. 800.04, or s.~~
1093 ~~827.071 occurred for removal of the requirement to register as a~~
1094 ~~sexual offender or sexual predator. The person must allege in~~
1095 ~~the petition that he or she meets the criteria in subsection (1)~~
1096 ~~and removal of the registration requirement will not conflict~~
1097 ~~with federal law. The state attorney must be given notice of the~~
1098 ~~petition at least 21 days before the hearing on the petition and~~
1099 ~~may present evidence in opposition to the requested relief or~~
1100 ~~may otherwise demonstrate why the petition should be denied. The~~
1101 ~~court shall rule on the petition and, if the court determines~~
1102 ~~the person meets the criteria in subsection (1) and removal of~~

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1103 ~~the registration requirement will not conflict with federal law,~~
1104 ~~it may grant the petition and order the removal of the~~
1105 ~~registration requirement. If the court denies the petition, the~~
1106 ~~person is not authorized under this section to file any further~~
1107 ~~petition for removal of the registration requirement.~~
1108 (3) ~~(4)~~ If a person provides to the Department of Law
1109 Enforcement a certified copy of the court's order removing the
1110 requirement that the person register as a sexual offender or
1111 sexual predator for the violation of s. 794.011, s. 800.04, s.
1112 827.071, or s. 847.0135(5), or a similar offense in another
1113 jurisdiction, the registration requirement will not apply to the
1114 person and the department shall remove all information about the
1115 person from the public registry of sexual offenders and sexual
1116 predators maintained by the department. However, the removal of
1117 this information from the public registry does not mean that the
1118 public is denied access to information about the person's
1119 criminal history or record that is otherwise available as a
1120 public record.
1121 Section 7. Subsection (2) and paragraph (a) of subsection
1122 (3) of section 943.0437, Florida Statutes, are amended to read:
1123 943.0437 Commercial social networking websites.—
1124 (2) The department may provide information relating to
1125 electronic mail addresses and Internet identifiers ~~instant~~
1126 ~~message names~~ maintained as part of the sexual offender registry
1127 to commercial social networking websites or third parties
1128 designated by commercial social networking websites. The
1129 commercial social networking website may use this information
1130 for the purpose of comparing registered users and screening
1131 potential users of the commercial social networking website

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1132 against the list of electronic mail addresses and Internet
1133 identifiers ~~instant message names~~ provided by the department.
1134 (3) This section shall not be construed to impose any civil
1135 liability on a commercial social networking website for:
1136 (a) Any action voluntarily taken in good faith to remove or
1137 disable any profile of a registered user associated with an
1138 electronic mail address or Internet identifier ~~instant message~~
1139 ~~name~~ contained in the sexual offender registry.
1140 Section 8. Paragraphs (b) and (d) of subsection (1) and
1141 paragraph (a) of subsection (3) of section 944.606, Florida
1142 Statutes, are amended to read:
1143 944.606 Sexual offenders; notification upon release.—
1144 (1) As used in this section:
1145 (b) "Sexual offender" means a person who has been convicted
1146 of committing, or attempting, soliciting, or conspiring to
1147 commit, any of the criminal offenses proscribed in the following
1148 statutes in this state or similar offenses in another
1149 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.
1150 787.02, or s. 787.025(2)(c), where the victim is a minor and the
1151 defendant is not the victim's parent or guardian; s.
1152 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
1153 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
1154 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
1155 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
1156 s. 916.1075(2); or s. 985.701(1); or any similar offense
1157 committed in this state which has been redesignated from a
1158 former statute number to one of those listed in this subsection,
1159 when the department has received verified information regarding
1160 such conviction; an offender's computerized criminal history

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1161 record is not, in and of itself, verified information.
1162 (d) "Internet identifier ~~Instant message name~~" has the same
1163 meaning as provided in s. 775.21 ~~means an identifier that allows~~
1164 ~~a person to communicate in real time with another person using~~
1165 ~~the Internet~~.
1166 (3)(a) The department must provide information regarding
1167 any sexual offender who is being released after serving a period
1168 of incarceration for any offense, as follows:
1169 1. The department must provide: the sexual offender's name,
1170 any change in the offender's name by reason of marriage or other
1171 legal process, and any alias, if known; the correctional
1172 facility from which the sexual offender is released; the sexual
1173 offender's social security number, race, sex, date of birth,
1174 height, weight, and hair and eye color; address of any planned
1175 permanent residence or temporary residence, within the state or
1176 out of state, including a rural route address and a post office
1177 box; if no permanent or temporary address, any transient
1178 residence within the state; address, location or description,
1179 and dates of any known future temporary residence within the
1180 state or out of state; date and county of sentence and each
1181 crime for which the offender was sentenced; a copy of the
1182 offender's fingerprints, palm prints, and a digitized photograph
1183 taken within 60 days before release; the date of release of the
1184 sexual offender; all ~~any~~ electronic mail addresses ~~address~~ and
1185 all Internet identifiers ~~any instant message name~~ required to be
1186 provided pursuant to s. 943.0435(4)(d); all ~~and~~ home telephone
1187 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information
1188 about any professional licenses the offender may have, if known;
1189 and passport information, if he or she has a passport, and, if

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1190 he or she is an alien, information about documents establishing
1191 his or her immigration status ~~number~~. The department shall
1192 notify the Department of Law Enforcement if the sexual offender
1193 escapes, absconds, or dies. If the sexual offender is in the
1194 custody of a private correctional facility, the facility shall
1195 take the digitized photograph of the sexual offender within 60
1196 days before the sexual offender's release and provide this
1197 photograph to the Department of Corrections and also place it in
1198 the sexual offender's file. If the sexual offender is in the
1199 custody of a local jail, the custodian of the local jail shall
1200 register the offender within 3 business days after intake of the
1201 offender for any reason and upon release, and shall notify the
1202 Department of Law Enforcement of the sexual offender's release
1203 and provide to the Department of Law Enforcement the information
1204 specified in this paragraph and any information specified in
1205 subparagraph 2. that the Department of Law Enforcement requests.
1206 2. The department may provide any other information deemed
1207 necessary, including criminal and corrections records,
1208 nonprivileged personnel and treatment records, when available.
1209 Section 9. Paragraphs (a) and (f) of subsection (1),
1210 subsection (4), and paragraph (c) of subsection (13) of section
1211 944.607, Florida Statutes, are amended to read:
1212 944.607 Notification to Department of Law Enforcement of
1213 information on sexual offenders.—
1214 (1) As used in this section, the term:
1215 (a) "Sexual offender" means a person who is in the custody
1216 or control of, or under the supervision of, the department or is
1217 in the custody of a private correctional facility:
1218 1. On or after October 1, 1997, as a result of a conviction

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1219 for committing, or attempting, soliciting, or conspiring to
1220 commit, any of the criminal offenses proscribed in the following
1221 statutes in this state or similar offenses in another
1222 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.
1223 787.02, or s. 787.025(2)(c), where the victim is a minor and the
1224 defendant is not the victim's parent or guardian; s.
1225 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
1226 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
1227 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
1228 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
1229 s. 916.1075(2); or s. 985.701(1); or any similar offense
1230 committed in this state which has been redesignated from a
1231 former statute number to one of those listed in this paragraph;
1232 or
1233 2. Who establishes or maintains a residence in this state
1234 and who has not been designated as a sexual predator by a court
1235 of this state but who has been designated as a sexual predator,
1236 as a sexually violent predator, or by another sexual offender
1237 designation in another state or jurisdiction and was, as a
1238 result of such designation, subjected to registration or
1239 community or public notification, or both, or would be if the
1240 person were a resident of that state or jurisdiction, without
1241 regard as to whether the person otherwise meets the criteria for
1242 registration as a sexual offender.
1243 (f) "Internet identifier ~~Instant message name~~" has the same
1244 meaning as provided in s. 775.21 ~~means an identifier that allows~~
1245 ~~a person to communicate in real time with another person using~~
1246 ~~the Internet~~.
1247 (4) A sexual offender, as described in this section, who is

1248 under the supervision of the Department of Corrections but is
1249 not incarcerated must register with the Department of
1250 Corrections within 3 business days after sentencing for a
1251 registrable offense and otherwise provide information as
1252 required by this subsection.
1253 (a) The sexual offender shall provide his or her name; date
1254 of birth; social security number; race; sex; height; weight;
1255 hair and eye color; tattoos or other identifying marks; all ~~any~~
1256 electronic mail addresses ~~address~~ and all Internet identifiers
1257 ~~any instant message name~~ required to be provided pursuant to s.
1258 943.0435(4)(d); all home telephone numbers and cellular
1259 telephone numbers; the make, model, color, registration number,
1260 and license tag number of all vehicles owned; permanent or legal
1261 residence and address of temporary residence within the state or
1262 out of state while the sexual offender is under supervision in
1263 this state, including any rural route address or post office
1264 box; if no permanent or temporary address, any transient
1265 residence within the state; and address, location or
1266 description, and dates of any current or known future temporary
1267 residence within the state or out of state. The sexual offender
1268 must also produce his or her passport, if he or she has a
1269 passport, and, if he or she is an alien, must produce or provide
1270 information about documents establishing his or her immigration
1271 status. The sexual offender must also provide information about
1272 any professional licenses he or she may have. The Department of
1273 Corrections shall verify the address of each sexual offender in
1274 the manner described in ss. 775.21 and 943.0435. The department
1275 shall report to the Department of Law Enforcement any failure by
1276 a sexual predator or sexual offender to comply with registration

1277 requirements.
1278 (b) If the sexual offender is enrolled, employed,
1279 volunteering, or carrying on a vocation at an institution of
1280 higher education in this state, the sexual offender shall
1281 provide the name, address, and county of each institution,
1282 including each campus attended, and the sexual offender's
1283 enrollment, volunteer, or employment status. Each change in
1284 enrollment, volunteer, or employment status shall be reported to
1285 the department within 48 hours after the change in status. The
1286 Department of Corrections shall promptly notify each institution
1287 of the sexual offender's presence and any change in the sexual
1288 offender's enrollment, volunteer, or employment status.
1289 (13)
1290 (c) The sheriff's office may determine the appropriate
1291 times and days for reporting by the sexual offender, which shall
1292 be consistent with the reporting requirements of this
1293 subsection. Reregistration shall include any changes to the
1294 following information:
1295 1. Name; social security number; age; race; sex; date of
1296 birth; height; weight; hair and eye color; address of any
1297 permanent residence and address of any current temporary
1298 residence, within the state or out of state, including a rural
1299 route address and a post office box; if no permanent or
1300 temporary address, any transient residence; address, location or
1301 description, and dates of any current or known future temporary
1302 residence within the state or out of state; ~~any~~ electronic mail
1303 addresses or Internet identifiers ~~address and any instant~~
1304 ~~message name~~ required to be provided pursuant to s.
1305 943.0435(4)(d); home telephone numbers or cellular telephone

1306 numbers; date and place of any employment; the ~~vehicle~~ make,
1307 model, color, registration number, and license tag number of any
1308 vehicles owned; fingerprints; palm prints; and photograph. A
1309 post office box shall not be provided in lieu of a physical
1310 residential address. The sexual offender must also produce his
1311 or her passport, if he or she has a passport, and, if he or she
1312 is an alien, must produce or provide information about documents
1313 establishing his or her immigration status. The sexual offender
1314 must also provide information about any professional licenses he
1315 or she may have.
1316 2. If the sexual offender is enrolled, employed,
1317 volunteering, or carrying on a vocation at an institution of
1318 higher education in this state, the sexual offender shall also
1319 provide to the department the name, address, and county of each
1320 institution, including each campus attended, and the sexual
1321 offender's enrollment, volunteer, or employment status.
1322 3. If the sexual offender's place of residence is a motor
1323 vehicle, trailer, mobile home, or manufactured home, as defined
1324 in chapter 320, the sexual offender shall also provide the
1325 vehicle identification number; the license tag number; the
1326 registration number; and a description, including color scheme,
1327 of the motor vehicle, trailer, mobile home, or manufactured
1328 home. If the sexual offender's place of residence is a vessel,
1329 live-aboard vessel, or houseboat, as defined in chapter 327, the
1330 sexual offender shall also provide the hull identification
1331 number; the manufacturer's serial number; the name of the
1332 vessel, live-aboard vessel, or houseboat; the registration
1333 number; and a description, including color scheme, of the
1334 vessel, live-aboard vessel or houseboat.

1335 4. Any sexual offender who fails to report in person as
1336 required at the sheriff's office, ~~or~~ who fails to respond to any
1337 address verification correspondence from the department within 3
1338 weeks of the date of the correspondence, ~~or~~ who fails to report
1339 all electronic mail addresses or Internet identifiers prior to
1340 use ~~or instant message names~~, or who knowingly provides false
1341 registration information by act or omission commits a felony of
1342 the third degree, punishable as provided in s. 775.082, s.
1343 775.083, or s. 775.084.
1344 Section 10. Subsection (11) of section 947.005, Florida
1345 Statutes, is amended to read:
1346 947.005 Definitions.—As used in this chapter, unless the
1347 context clearly indicates otherwise:
1348 (11) "Risk assessment" means an assessment completed by a
1349 ~~an independent~~ qualified practitioner to evaluate the level of
1350 risk associated when a sex offender has contact with a child.
1351 Section 11. Section 948.31, Florida Statutes, is amended to
1352 read:
1353 948.31 Evaluation and treatment of sexual predators and
1354 offenders on probation or community control.—The court may ~~shall~~
1355 require ~~an evaluation by a qualified practitioner to determine~~
1356 ~~the need of a probationer or community controllee for treatment.~~
1357 ~~If the court determines that a need therefor is established by~~
1358 ~~the evaluation process, the court shall require sexual offender~~
1359 ~~treatment as a term or condition of probation or community~~
1360 ~~control for~~ any probationer or community controllee ~~person~~ who
1361 is required to register as a sexual predator under s. 775.21 or
1362 sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to
1363 undergo an evaluation, at the probationer or community

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1364 controllee's expense, by a qualified practitioner to determine
1365 whether such person needs sexual offender treatment. If the
1366 qualified practitioner determines that sexual offender treatment
1367 is needed and recommends treatment, the probationer or community
1368 controllee must successfully complete and pay for the treatment.
1369 Such treatment must ~~shall be required to~~ be obtained from a
1370 qualified practitioner as defined in s. 948.001. Treatment may
1371 not be administered by a qualified practitioner who has been
1372 convicted or adjudicated delinquent of committing, or
1373 attempting, soliciting, or conspiring to commit, any offense
1374 that is listed in s. 943.0435(1)(a)1.a.(I). ~~The court shall~~
1375 ~~impose a restriction against contact with minors if sexual~~
1376 ~~offender treatment is recommended. The evaluation and~~
1377 ~~recommendations for treatment of the probationer or community~~
1378 ~~controllee shall be provided to the court for review.~~
1379 Section 12. Paragraph (a) of subsection (3) of section
1380 985.481, Florida Statutes, is amended to read:
1381 985.481 Sexual offenders adjudicated delinquent;
1382 notification upon release.—
1383 (3)(a) The department must provide information regarding
1384 any sexual offender who is being released after serving a period
1385 of residential commitment under the department for any offense,
1386 as follows:
1387 1. The department must provide the sexual offender's name,
1388 any change in the offender's name by reason of marriage or other
1389 legal process, and any alias, if known; the correctional
1390 facility from which the sexual offender is released; the sexual
1391 offender's social security number, race, sex, date of birth,
1392 height, weight, and hair and eye color; the make, model, color,

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1393 registration number, and license tag number of all vehicles
1394 owned, if known; address of any planned permanent residence or
1395 temporary residence, within the state or out of state, including
1396 a rural route address and a post office box; if no permanent or
1397 temporary address, any transient residence within the state;
1398 address, location or description, and dates of any known future
1399 temporary residence within the state or out of state; date and
1400 county of disposition and each crime for which there was a
1401 disposition; a copy of the offender's fingerprints and a
1402 digitized photograph taken within 60 days before release; the
1403 date of release of the sexual offender; all ~~and~~ home telephone
1404 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information
1405 about any professional licenses the offender may have, if known;
1406 and passport information, if he or she has a passport, and, if
1407 he or she is an alien, information about documents establishing
1408 his or her immigration status ~~number~~. The department shall
1409 notify the Department of Law Enforcement if the sexual offender
1410 escapes, absconds, or dies. If the sexual offender is in the
1411 custody of a private correctional facility, the facility shall
1412 take the digitized photograph of the sexual offender within 60
1413 days before the sexual offender's release and also place it in
1414 the sexual offender's file. If the sexual offender is in the
1415 custody of a local jail, the custodian of the local jail shall
1416 register the offender within 3 business days after intake of the
1417 offender for any reason and upon release, and shall notify the
1418 Department of Law Enforcement of the sexual offender's release
1419 and provide to the Department of Law Enforcement the information
1420 specified in this subparagraph and any information specified in
1421 subparagraph 2. which the Department of Law Enforcement

1422 requests.
1423 2. The department may provide any other information
1424 considered necessary, including criminal and delinquency
1425 records, when available.
1426 Section 13. Subsection (4) and paragraph (b) of subsection
1427 (13) of section 985.4815, Florida Statutes, are amended to read:
1428 985.4815 Notification to Department of Law Enforcement of
1429 information on juvenile sexual offenders.—
1430 (4) A sexual offender, as described in this section, who is
1431 under the supervision of the department but who is not committed
1432 must register with the department within 3 business days after
1433 adjudication and disposition for a registrable offense and
1434 otherwise provide information as required by this subsection.
1435 (a) The sexual offender shall provide his or her name; date
1436 of birth; social security number; race; sex; height; weight;
1437 hair and eye color; tattoos or other identifying marks; the
1438 make, model, color, registration number, and license tag number
1439 of all vehicles owned; permanent or legal residence and address
1440 of temporary residence within the state or out of state while
1441 the sexual offender is in the care or custody or under the
1442 jurisdiction or supervision of the department in this state,
1443 including any rural route address or post office box; if no
1444 permanent or temporary address, any transient residence;
1445 address, location or description, and dates of any current or
1446 known future temporary residence within the state or out of
1447 state; and the name and address of each school attended. The
1448 sexual offender must also produce his or her passport, if he or
1449 she has a passport, and, if he or she is an alien, must produce
1450 or provide information about documents establishing his or her

1451 immigration status. The offender must also provide information
1452 about any professional licenses he or she may have. The
1453 department shall verify the address of each sexual offender and
1454 shall report to the Department of Law Enforcement any failure by
1455 a sexual offender to comply with registration requirements.
1456 (b) If the sexual offender is enrolled, employed,
1457 volunteering, or carrying on a vocation at an institution of
1458 higher education in this state, the sexual offender shall
1459 provide the name, address, and county of each institution,
1460 including each campus attended, and the sexual offender's
1461 enrollment, volunteer, or employment status. Each change in
1462 enrollment, volunteer, or employment status shall be reported to
1463 the department within 48 hours after the change in status. The
1464 department shall promptly notify each institution of the sexual
1465 offender's presence and any change in the sexual offender's
1466 enrollment, volunteer, or employment status.
1467 (13)
1468 (b) The sheriff's office may determine the appropriate
1469 times and days for reporting by the sexual offender, which shall
1470 be consistent with the reporting requirements of this
1471 subsection. Reregistration shall include any changes to the
1472 following information:
1473 1. Name; social security number; age; race; sex; date of
1474 birth; height; weight; hair and eye color; fingerprints; palm
1475 prints; address of any permanent residence and address of any
1476 current temporary residence, within the state or out of state,
1477 including a rural route address and a post office box; if no
1478 permanent or temporary address, any transient residence;
1479 address, location or description, and dates of any current or

1480 known future temporary residence within the state or out of
1481 state; passport information, if he or she has a passport, and,
1482 if he or she is an alien, information about documents
1483 establishing his or her immigration status; name and address of
1484 each school attended; date and place of any employment; the
1485 ~~vehicle~~ make, model, color, registration number, and license tag
1486 number of all vehicles owned; ~~fingerprints;~~ and photograph. A
1487 post office box shall not be provided in lieu of a physical
1488 residential address. The offender must also provide information
1489 about any professional licenses he or she may have.
1490 2. If the sexual offender is enrolled, employed,
1491 volunteering, or carrying on a vocation at an institution of
1492 higher education in this state, the sexual offender shall also
1493 provide to the department the name, address, and county of each
1494 institution, including each campus attended, and the sexual
1495 offender's enrollment, volunteer, or employment status.
1496 3. If the sexual offender's place of residence is a motor
1497 vehicle, trailer, mobile home, or manufactured home, as defined
1498 in chapter 320, the sexual offender shall also provide the
1499 vehicle identification number; the license tag number; the
1500 registration number; and a description, including color scheme,
1501 of the motor vehicle, trailer, mobile home, or manufactured
1502 home. If the sexual offender's place of residence is a vessel,
1503 live-aboard vessel, or houseboat, as defined in chapter 327, the
1504 sexual offender shall also provide the hull identification
1505 number; the manufacturer's serial number; the name of the
1506 vessel, live-aboard vessel, or houseboat; the registration
1507 number; and a description, including color scheme, of the
1508 vessel, live-aboard vessel, or houseboat.

1509 4. Any sexual offender who fails to report in person as
1510 required at the sheriff's office, ~~or~~ who fails to respond to any
1511 address verification correspondence from the department within 3
1512 weeks after the date of the correspondence, or who knowingly
1513 provides false registration information by act or omission
1514 commits a felony of the third degree, punishable as provided in
1515 ss. 775.082, 775.083, and 775.084.
1516 Section 14. Paragraphs (g) and (i) of subsection (3) of
1517 section 921.0022, Florida Statutes, are amended to read:
1518 921.0022 Criminal Punishment Code; offense severity ranking
1519 chart.—
1520 (3) OFFENSE SEVERITY RANKING CHART
1521 (g) LEVEL 7
1522

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.

1526

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.

1535
461.012(1) 3rd Practicing podiatric medicine without a license.
1536
462.17 3rd Practicing naturopathy without a license.
1537
463.015(1) 3rd Practicing optometry without a license.
1538
464.016(1) 3rd Practicing nursing without a license.
1539
465.015(2) 3rd Practicing pharmacy without a license.
1540
466.026(1) 3rd Practicing dentistry or dental hygiene without a license.
1541
467.201 3rd Practicing midwifery without a license.
1542
468.366 3rd Delivering respiratory care services without a license.
1543
483.828(1) 3rd Practicing as clinical laboratory personnel without a license.
1544
483.901(9) 3rd Practicing medical physics without a license.
1545
484.013(1)(c) 3rd Preparing or dispensing optical devices without a prescription.

1546
484.053 3rd Dispensing hearing aids without a license.
1547
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.
1548
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.
1549
560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
1550
655.50(10)(b)1. 3rd Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
1551
775.21(10)(a) 3rd Sexual predator; failure to register; failure to renew driver ~~driver's~~ license or identification card; other registration violations.
1552
775.21(10)(b) 3rd Sexual predator working where children

regularly congregate.

1553 775.21(10)(g) 3rd Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

1554 782.051(3) 2nd Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

1555 782.07(1) 2nd Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

1556 782.071 2nd Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).

1557 782.072 2nd Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

1558 784.045(1)(a)1. 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.

1559 784.045(1)(a)2. 2nd Aggravated battery; using deadly weapon.

1560 784.045(1)(b) 2nd Aggravated battery; perpetrator aware victim pregnant.

1561 784.048(4) 3rd Aggravated stalking; violation of injunction or court order.

1562 784.048(7) 3rd Aggravated stalking; violation of court order.

1563 784.07(2)(d) 1st Aggravated battery on law enforcement officer.

1564 784.074(1)(a) 1st Aggravated battery on sexually violent predators facility staff.

1565 784.08(2)(a) 1st Aggravated battery on a person 65 years of age or older.

1566 784.081(1) 1st Aggravated battery on specified official or employee.

1567 784.082(1) 1st Aggravated battery by detained person on visitor or other detainee.

1568 784.083(1) 1st Aggravated battery on code inspector.

1569 787.06(3)(a) 1st Human trafficking using coercion for labor and services.

1570
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.

1571
790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

1572
790.16(1) 1st Discharge of a machine gun under specified circumstances.

1573
790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

1574
790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

1575
790.166(3) 2nd Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

1576
790.166(4) 2nd Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

1577

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

1578
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.

1579
796.03 2nd Procuring any person under 18 ~~16~~ years for prostitution.

1580
800.04(5)(c)1. 2nd Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

1581
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.

1582
806.01(2) 2nd Maliciously damage structure by fire or explosive.

1583
810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed; no assault or battery.

1584
810.02(3)(b) 2nd Burglary of unoccupied dwelling; unarmed; no assault or battery.

1585

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 an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
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.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.

874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
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.

(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.

1650

775.0844	1st	Aggravated white collar crime.

1651

782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.

1652

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.

1653

782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

1654

782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.

1655

787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.

1656

787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.

1657

787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.

1658

787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

1659

787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.

1660

787.06(3)(g)	1st,PBL	Human trafficking for commercial sexual activity of a child under the age of 18.

1661

787.06(4)	1st	Selling or buying of minors into human trafficking.

1662

790.161	1st	Attempted capital destructive device offense.

1663

790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.

1664

794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.

1665

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.

817.568(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 15. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR THAD ALTMAN
16th District

March 5, 2013

The Honorable Greg Evers
Senate Committee on Criminal Justice, Chair
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that SB 1114, related to *Sex Offenses,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/rk

CC: Amanda Cannon, Staff Director, 510 Knott Building

REPLY TO:
❒ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
❒ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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)

4/1/13
Meeting Date

Topic: Hearsay rule - Sex offenses / Amendment

Bill Number: SB 1114 *(if applicable)*

Name: Ron Book

Amendment Barcode: *(if applicable)*

Job Title:

Address: 204 West Jefferson St
Street

TLH. 32301
City *State* *Zip*

Phone: 850-224-3427

E-mail:

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

Representing: Lauren's Kids

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)

4/1/13
Meeting Date

Topic: Sex Offenses

Bill Number: 1114 *(if applicable)*

Name: Keri Rayborn

Amendment Barcode: *(if applicable)*

Job Title:

Address: PO Box 1565
Street

Tallahassee FL 32302
City *State* *Zip*

Phone: 850-524-2394

E-mail: keri@rayborn consultants.com

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)

4-1-13
Meeting Date

Topic: Sex offenses

Bill Number: 1114 *(if applicable)*

Name: Jordan Connors

Amendment Barcode: *(if applicable)*

Job Title: President

Address: 2145 SW Cape Cod Dr
Street

Port St. Lucie FL 34953
City *State* *Zip*

Phone: 7724186068

E-mail: jordan@jordanconnors.com

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

Representing: City of Port St. Lucie

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)

4-1-13
Meeting Date

Topic: Sex Offenses

Bill Number: 1114 *(if applicable)*

Name: Robert Steinkraus

Amendment Barcode: *(if applicable)*

Job Title: Police Officer

Address: 121 SW Port St. Lucie Blvd
Street

Port St. Lucie, FL 34984
City, State, Zip

Phone: 772-871-5001

E-mail: robert.steinkraus@pslpd.us

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

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 1126

INTRODUCER: Criminal Justice Committee and Senator Joyner

SUBJECT: Unlawful Possession of the Personal Identification of Another Person

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	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 1126 provides that it is unlawful for a person to intentionally or knowingly possess, without authorization, certain personal identification information of another person in any form. It is a first degree misdemeanor if a person commits this offense and in doing so possesses the personal identification information of four or fewer persons. It is a third degree felony if the person commits this offense and in doing so possesses the personal identification information of five or more persons.

Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

The bill also provides a number of statutory exceptions are provided so that innocuous conduct is not criminalized, such as parents possessing their child's social security number. Additionally, an affirmative defense is provided in which the person possessing the personal identification information of another did so under the reasonable belief that the possession was authorized by

law or by the consent of the other person, or obtained the information from a forum or resource that is open or available to the general public or from a public record.

This bill creates the following section of the Florida Statutes: 817.5685.

II. Present Situation:

Criminal Possession of Another Individual's Personal Identification Information

Section 817.568(2)(a), F.S., provides that it is a third degree felony[1] for any person to willfully and without authorization fraudulently use or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. This person commits the offense of fraudulent use of personal identification information.

Section 817.568(1)(b), F.S., defines "authorization" as empowerment, permission, or competence to act.

Section 817.568(1)(d), F.S., defines "individual" as a single human being. It does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- 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;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.

III. Effect of Proposed Changes:

The bill creates s. 817.5685, F.S., which provides that it is unlawful for a person to intentionally or knowingly possess, without authorization, personal identification information of another person in any form including, but not limited to, mail, physical documents, identification cards,

[1] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S.

or information stored in digital form. It is a first degree misdemeanor if a person commits this offense and in doing so possesses the personal identification information of four or fewer persons. It is a third degree felony if the person commits this offense and in doing so possesses the personal identification information of five or more persons.

As used in this new section, the term "personal identification information" means a person's social security number, official state-issued or United States-issued driver 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, and medical records. This definition of "personal identification information" encompasses fewer types of information than the definition of the same term in s. 817.568(1)(f), F.S.

Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

The offense does not apply to any of the following persons:

- A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child.
- A person who is the guardian of another person under ch. 744, F.S., and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information.
- An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business.
- A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business.
- A person who finds a card or document issued by a governmental agency which contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

It is an affirmative defense to the alleged violation if the person who possesses the personal identification information of another person:

- Did so under the reasonable belief that such possession was authorized by law or by the consent of the other person; or
- Obtained that personal identification information from a forum or resource that is open or available to the general public or from a public record.

This new section does not preclude prosecution for the unlawful possession of personal identification information pursuant to s. 817.568, F.S., or any other law, including prosecution for the criminal use of personal identification information that was otherwise lawfully possessed.

The effective date of the bill is October 1, 2013.

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:

In *Schmitt v. State*,[2] the Florida Supreme Court stated that "a due process violation occurs if a criminal statute's means is not rationally related to its purposes and, as a result, it criminalizes innocuous conduct."

The bill addresses this constitutional concern in a number of ways:

- The bill provides that a person must "intentionally or knowingly" possess, without authorization, personal identification information of another person.
- The definition of "personal identification information" relevant to the new offense is far more limited than the definition of that term in s. 817.568, F.S. The information covered by the definition in the bill is information to which relatively few persons would have access, unlike names, addresses, phone numbers, and birth dates.
- The bill creates a number of exceptions in which specified persons would not be subject to this offense, such as parents possessing their child's social security number.
- The bill provides for an affirmative defense if the person who possesses the personal identification information of another person:
  - Did so under the reasonable belief that such possession was authorized by law or by the consent of the other person; or
  - Obtained that personal identification information from a forum or resource that is open or available to the general public or from a public record.

The bill provides that proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization. This inference is somewhat similar to stolen property inferences in s. 812.022, F.S. For example, s. 812.022(2), F.S., provides that, with the exception of dealer possession of stolen property (which is covered by a different inference), proof of possession of

[2] 590 So.2d 404, 413 (Fla. 1991), *cert. denied*, 503 U.S. 964 (1992), citing Article I, Section 9, of the Florida Constitution.

property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen. The Florida Supreme Court has held that this inference does not violate a defendant's due process rights or force a defendant to testify in violation of his or right against self-incrimination.[3]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the original bill will have an insignificant prison bed impact. The committee substitute does not change penalty provisions of the original bill.

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 April 1, 2013:
Provides that proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

B. Amendments:

None.

[3] *Edwards v. State*, 381 So.2d 696 (Fla. 1980).

393438

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 43 and 44
insert:
(c) Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

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

393438

13 And the title is amended as follows:
14 Delete line 9
15 and insert:
16
17 criminal penalties; providing that possession of
18 identification information of multiple individuals
19 gives rise to an inference of illegality; providing
20 that certain specified

By Senator Joyner

19-00006-13 20131126__

A bill to be entitled

An act relating to the unlawful possession of the personal identification information of another person; creating s. 817.5685, F.S.; defining the term "personal identification information"; providing that it is unlawful for a person to intentionally or knowingly possess, without authorization, any personal identification information of another person; creating criminal penalties; providing that certain specified persons are exempt from provisions regarding the unlawful possession of personal identification information of another person; creating affirmative defenses; providing that the act does not preclude prosecution for the unlawful possession of personal identification information of another person under any other law; providing an effective date.

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

Section 1. Section 817.5685, Florida Statutes, is created to read:

817.5685 Unlawful possession of the personal identification information of another person.—

(1) As used in this section, the term "personal identification information" means a person's social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account

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

19-00006-13 20131126__

number, credit or debit card number, and medical records.

(2) It is unlawful for a person to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including, but not limited to, mail, physical documents, identification cards, or information stored in digital form.

(3)(a) A person who violates subsection (2) and in doing so possesses the personal identification information of four or fewer persons commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates subsection (2) and in doing so possesses the personal identification information of five or more persons commits a felony of third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Subsection (2) does not apply to:

(a) A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child.

(b) A person who is the guardian of another person under chapter 744 and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information.

(c) An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business.

(d) A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business.

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

59 (e) A person who finds a card or document issued by a
60 governmental agency which contains the personal identification
61 information of another person and who takes reasonably prompt
62 action to return that card or document to its owner, to the
63 governmental agency that issued the card or document, or to a
64 law enforcement agency.
65 (5) It is an affirmative defense to an alleged violation of
66 subsection (2) if the person who possesses the personal
67 identification information of another person:
68 (a) Did so under the reasonable belief that such possession
69 was authorized by law or by the consent of the other person; or
70 (b) Obtained that personal identification information from
71 a forum or resource that is open or available to the general
72 public or from a public record.
73 (6) This section does not preclude prosecution for the
74 unlawful possession of personal identification information
75 pursuant to s. 817.568 or any other law, including prosecution
76 for the criminal use of personal identification information that
77 was otherwise lawfully possessed.
78 Section 2. 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 ARTHENIA L. JOYNER
19th District

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations Subcommittee on General Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

February 28, 2013

Senator Greg Evers, Chair
Senate Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chair:

This is to request that Senate Bill 1126, Unlawful Possession of the Personal Identification Information of Another Person, be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

ALJ/rr

REPLY TO:
❒ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
❒ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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)

4 / 1 /2013
Meeting Date

Topic _____

Bill Number 1126 *(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)

4/1/13
Meeting Date

Topic: Personal Identification Information

Bill Number: 1126 *(if applicable)*

Name: Robert Ura

Amendment Barcode: *(if applicable)*

Job Title: Major

Address: 2008 E. 8th Avenue
Street

Tampa FL 33605
City *State* *Zip*

Phone: 813 363-0375

E-mail: LBowden@bcso.tampa.fl.us

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

Representing: Hillsborough County Sheriff and Associah Florida Sheriffs

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)

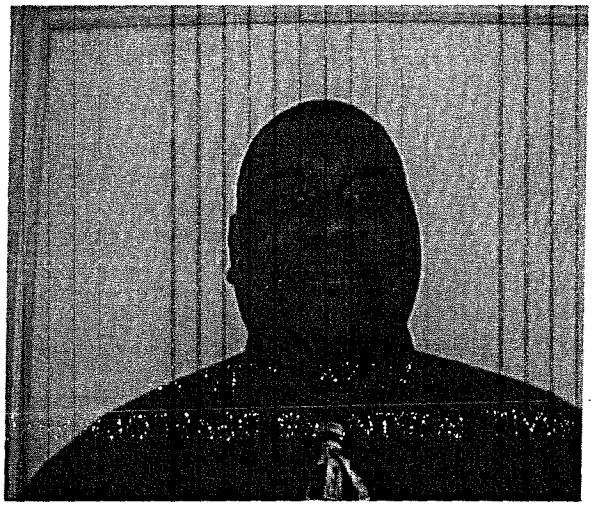
SB 1126

Tampa Bay Times

State Juvenile Justice probation officer charged in tax fraud

Thursday, March 21, 2013 4:42pm

TAMPA — A probation officer for Florida's Department of Juvenile Justice has been federally charged in a conspiracy to use the identities of minors on probation to collect fraudulently obtained income tax refunds.



Florida Department of Juvenile Justice

Corey A. Coley Sr., a probation officer for Florida's Department of Juvenile Justice, has been federally charged in a scheme to use the identities of juveniles on probation to collect fraudulently obtained income tax refunds.

Corey A. Coley Sr., the officer, and Albert E. Moore Jr., a Walmart employee, were arrested and appeared Thursday in U.S. District Court in Tampa.

Almost simultaneously, the state fired Coley, and department Secretary Wansley Walters called the alleged mining of sensitive identity information "shameful" and "a blatant betrayal of trust."

The scheme, described in court records, married the stolen identities of living delinquents to borrowed identities of dead adults.

The juvenile names were used to order reloadable debit cards from banks. But the IRS rejected tax claims on kids. So a third conspirator combed the Internet to find dead people with the same names and used their identifiers to request refunds. The refunds were deposited onto the debit cards, the records show.

Last year, more than 200 returns seeking $1.4 million in refunds were filed from the address of a woman who told authorities she conspired with Coley and Moore. Another $250,000 in claims came from an Internet address assigned to Moore's residence.

Coley, 36, had been a juvenile probation officer in Hillsborough County since 2001.

He got paid $33,309 a year to review delinquency complaints, recommend detention or release, develop case plans and, in an array of ways, keep tabs on the progress of juveniles in trouble.

As part of his job, he had access to the state's primary repository for delinquency information, a database that includes the names, dates of birth and Social Security numbers of current and former juvenile defendants, said Meghan Speakes Collins, communications director for the department.

Thousands of workers must access the system to do their jobs, she said.

"It's really one of those bad egg situations," she said of Coley.

In the past five years, the agency has taken steps to protect identity information, she said. Casual users might see only partial Social Security numbers. A record is created when someone views the full number, perhaps to qualify an offender for Medicaid.

Authorities believe Coley accessed a screen showing complete Social Security numbers from a laptop in a way that left little trail.

Coley had no disciplinary record, she said, and state records show no prior arrests.

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 1140

INTRODUCER: Criminal Justice Committee and Senator Stargel

SUBJECT: Drug Paraphernalia

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	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 1140 makes it unlawful for a person to knowingly and willfully sell or offer for sale at retail certain drug paraphernalia, which are objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body. Wooden pipes are specifically excluded. A first violation is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

The bill also repeals s. 569.0073, F.S. (providing that it is unlawful for a person to offer for sale certain smoking pipes and smoking devices unless the person has a retail tobacco products dealer permit and meets other specified criteria).

This bill substantially amends section 893.147 of the Florida Statutes. The bill also repeals section 569.0073, Florida Statutes.

II. Present Situation:

Drug Paraphernalia Laws

Smoking pipes and devices are commonly found at specialty stores that sell a variety of accessories associated with the use of illegal drugs.

Section 893.145, F.S., defines "drug paraphernalia" as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this ch. 893, F.S., or s. 877.111, F.S. (prohibiting inhaling, etc. certain substances). Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to a list of items specified in the definition. Relevant to the bill, the list includes objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
- Water pipes.
- Carburetion tubes and devices.
- Smoking and carburetion masks.
- Chamber pipes.
- Carburetor pipes.
- Electric pipes.
- Air-driven pipes.
- Chillums.
- Bongs.
- Ice pipes or chillers.

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.[1]

It is a first degree misdemeanor[2] to use or possess drug paraphernalia to produce a controlled substance or introduce a controlled substance into the body,[3] or to advertise objects in a

[1] Section 893.146, F.S.
[2] A first degree misdemeanor is punishable by up to 1 year in a county jail, a fine of up to $1,000, or both. Sections 775.082 and 775.083, F.S.
[3] Section 893.147(1), F.S.

publication when it is known or reasonable to know that the purpose is to promote the sale of such objects for use as drug paraphernalia.[4]

It is a third degree felony[5] to deliver, manufacture with intent to deliver, or possess with intent to deliver drug paraphernalia when it is known or reasonable to know that it will be used to produce a controlled substance or introduce a controlled substance into the body.[6]

It is also a third degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia when it is known or reasonable to know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1, F.S.[7]

It is a second degree felony[8] to deliver drug paraphernalia to a minor when it is known or reasonable to know that it will be used to produce or introduce into the body a controlled substance.[9]

Other Restrictions on Smoking Pipes and Devices

Section 569.0073, F.S., provides that it is a first degree misdemeanor for any person to offer for sale at retail any item listed in the bill as a smoking pipe and smoking device (such as a "bong") unless such person:

- Has a retail tobacco products dealer permit under s. 569.003, F.S;
- Derives at least 75 percent of its annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derives no more than 25 percent of its annual gross revenues from the retail sale of items listed as "smoking pipes and smoking devices."

The following "smoking pipes and smoking devices" are subject to the provisions of this statute:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls.
- Water pipes.
- Carburetion tubes and devices.
- Chamber pipes.
- Carburetor pipes.
- Electric pipes.
- Air-driven pipes.
- Chillums.
- Bongs.

[4] Section 893.147(5), F.S.
[5] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S.
[6] Section 893.147(2), F.S.
[7] Section 893.147(4), F.S.
[8] A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S.
[9] Section 893.147(3), F.S.

- Ice pipes or chillers.

In the case of *Kelsher Enterprises, Inc. v. John R. Powell*,[10] a Leon County circuit court held that s. 569.0073, F.S., is facially constitutional. On a substantive due process challenge regarding the absence of an expressed scienter requirement, the court stated that without such a requirement, s. 569.0073, F.S., would violate substantive due process; however, the court inferred such a requirement so that the offense applies only to those persons who knowingly offer the prohibited items for retail sale without a permit or to those who have a permit but knowingly offer the items for sale without meeting the percentage requirements.

While the court found that s. 569.0073, F.S., gave no guidance on certain questions regarding its proper application, it did not find the statute to be unconstitutionally vague. The court indicated it was possible that the statute could be unconstitutionally applied but a person would be able to argue an unconstitutional application. However, since the court found an interpretation by which s. 569.0073, F.S., can be constitutionally applied, the statute is not facially unconstitutional.

III. Effect of Proposed Changes:

The bill amends s. 893.147, F.S., to make it unlawful for a person to knowingly and willfully sell or offer for sale at retail certain drug paraphernalia, which are objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body. The specific items are:

- Metal, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
- Water pipes.
- Carburetion tubes and devices.
- Smoking and carburetion masks.
- Chamber pipes.
- Carburetor pipes.
- Electric pipes.
- Air-driven pipes.
- Chillums.
- Bongs.
- Ice pipes or chillers

Wooden pipes are specifically excluded.

A first violation is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

[10] Case No. 2010 CA 3043, Circuit Court of the Second Judicial Circuit (Leon County), "Final Summary Judgment for Defendant" (dated January 30, 2013) (on file with the Committee on Criminal Justice). According to Attorney General staff, the plaintiff has appealed the court's order to the First District Court of Appeal.

The bill also repeals s. 569.0073, F.S. (providing that it is unlawful for a person to offer for sale certain smoking pipes and smoking devices unless the person has a retail tobacco products dealer permit and meets other specified criteria).

The effective date of the bill is 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:

Retailers who knowingly and willfully sell the listed drug paraphernalia could face arrest and prosecution.

The Department of Business and Professional Regulation (DBPR) analyzed HB 49, which repeals s. 569.0073, F.S.[11] The DBPR states that 136 licensees will no longer need to buy tobacco permits if s. 569.0073, F.S., is repealed.

The DBPR further states that it is possible the criminal prohibition of the specified objects of drug paraphernalia "indicates intent to prohibit the sale of smoking pipes and devices by 'head shops.' However, it is possible the bill will also minimally impact other businesses that sell the kinds of smoking pipes and devices identified, but for purposes other than as drug paraphernalia. Such businesses might include estate auctioneers, antique dealers, pawn shops, flea markets, specialty gift shops and large retail stores."[12]

In regard to the DBPR's comment, staff notes that the listing of an object in s. 893.145, F.S., does not of itself make the listed object "drug paraphernalia." Some of the objects listed have multiple uses or could be construed as applying to common items for sale

[11] Analysis of HB 49 (dated October 1, 2013), Department of Business and Professional Regulation. The original bill repeals this statute. The committee substitute for the bill amends the statute. *See* CS/HB 49.
[12] *Id.*

rather than items used in the drug trade. For example, "water pipes" could be construed as objects referred to in the drug trade as "water pipes" or pipes that convey water for household use, irrigation, and other recognized legitimate uses. However, the law provides that certain requirements must be met before a listed item can be determined to be "drug paraphernalia."

In order for listed items to be "drug paraphernalia," they must be equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S. Additionally, the objects listed in the bill must be used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body. Further, the fact finder is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia. Finally, the offense created by the bill involves *knowingly and willfully* selling or offering for sale at retail this drug paraphernalia.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimated that the original bill would have an indeterminate prison bed impact. The committee substitute does not modify penalty provisions of the original bill.

According to the DBPR, as of July 1, 2012, there were 208 licensees that had tobacco permits solely for the purpose of complying with s. 569.0073, F.S. If this statute is repealed, 136 licensees will no longer be required to obtain a tobacco permit. The permits cost $25 annually; therefore the state will have a revenue reduction of $3,400 ($25 x 136 licensees).[13]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[13] *Id.*

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 April 1, 2013:
Removes a section of the original bill that amended s. 569.006, F.S., to authorize the Division of Alcoholic Beverages and Tobacco to suspend or revoke the permit of a retail tobacco products dealer upon sufficient cause appearing of the violation of s. 893.147, F.S. (offense involving drug paraphernalia), by the dealer's agent or employee, and that also authorized the division to assess and accept administrative fines against the dealer for each violation.

B. Amendments:

None.

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

292906

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 31 - 44.
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 5 - 8.

By Senator Stargel

15-00372A-13 20131140__

A bill to be entitled

An act relating to drug paraphernalia; amending s. 893.147, F.S.; prohibiting the retail sale of certain drug paraphernalia; providing criminal penalties; amending s. 569.006, F.S.; authorizing the imposition of administrative penalties upon retail tobacco products dealers who commit certain offenses related to drug paraphernalia; making a technical change; repealing s. 569.0073, F.S., relating to the retail sale of certain smoking pipes and smoking devices; providing an effective date.

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

Section 1. Subsection (6) is added to section 893.147, Florida Statutes, to read:

893.147 Use, possession, manufacture, delivery, transportation, ~~or~~ advertisement, or retail sale of drug paraphernalia.—

(6) RETAIL SALE OF DRUG PARAPHERNALIA.—

(a) It is unlawful for a person to knowingly and willfully sell or offer for sale at retail any drug paraphernalia described in s. 893.145(12)(a)-(c) or (g)-(m), other than a wooden pipe.

(b) A person who violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon a second or subsequent violation, commits a felony of the third degree, punishable as

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

15-00372A-13 20131140__

provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 569.006, Florida Statutes, is amended to read:

569.006 Retail tobacco products dealers; administrative penalties.—The division may suspend or revoke the permit of the dealer upon sufficient cause appearing of the violation of ~~any of the provisions of~~ this chapter or s. 893.147, by a dealer or by a dealer's agent or employee. The division may also assess and accept administrative fines of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 3. Section 569.0073, Florida Statutes, is repealed.

Section 4. 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 KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 5, 2013

The Honorable Greg Evers
Criminal Justice Committee, Chair
308 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I am respectfully requesting that SB 1140, related to *Drug Paraphernalia,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Amanda Cannon/ Staff Director
Sue Arnold/ AA

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 12, 2013

The Honorable Greg Evers
Senate Criminal Justice Committee, Chair
308 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I am respectfully requesting that SB 1140, related to *Drug Paraphernalia,* be placed on the committee agenda at your earliest convenience. This is the second committee agenda request for SB 1140.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Amanda Cannon/ Staff Director
Sue Arnold /AA
Michael Bascom/ Legislative Assistant

REPLY TO:
❒ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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)

4/ 1 /2013
Meeting Date

Topic _____ Bill Number 1140 *(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.

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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)

4/1/13
Meeting Date

Topic: Drug Paraphernelia

Bill Number: 1140 *(if applicable)*

Name: Carl Hassel

Amendment Barcode: *(if applicable)*

Job Title: Sergeant

Address: 2008 E. 8th Avenue
Street

Tampa FL 33605
City *State* *Zip*

Phone: 813 363 0375

E-mail: LBowden@hcso.tampa.fl.us

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

Representing: Hillsborough County Sheriffs 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.

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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)

4-1-13
Meeting Date

Topic: Drug Abuse

Bill Number: SB 1140 *(if applicable)*

Name: MARK FONTAINE

Amendment Barcode: *(if applicable)*

Job Title: Executive Director

Address: 2868 Mahan Drive
Street

TALLAHASSEE, FL 32308
City, State, Zip

Phone: 878-2196

E-mail:

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

Representing: Florida Alcohol + Drug Abuse 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.

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)

4/1/13
Meeting Date

Topic: Drug Paraphernalia

Bill Number: 1140 (if applicable)

Name: Mike Martinez

Amendment Barcode: 292906 (if applicable)

Job Title: Deputy General Counsel

Address: 1940 N. Monroe
Street

Tallahassee, FL 32308
City, State, Zip

Phone: 850-487-4827

E-mail:

Speaking: ☐ For ☐ Against ☑ Information

Representing: DBPR, Department of Business and Professional Regulation

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)

Meeting Date: _____

Topic: Drug Paraphernalia

Bill Number: 1140 (if applicable)

Name: Beth LABASKY

Amendment Barcode: _____ (if applicable)

Job Title: B Consultant

Address: 13211 Boney Rd
Street

Jacksonville Fla 32226
City State Zip

Phone: 8503227335

E-mail: bethlabasky@aol.com

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

Representing: Informed Families 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: SB 1162

INTRODUCER: Senator Bradley

SUBJECT: Mandatory Reports of Child Abuse

DATE: March 26, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Favorable**
2.	Dugger	Cannon	CJ	**Favorable**
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

SB 1162 amends s. 39.201, F.S., to create the following two exceptions relating to the mandatory reporting of child abuse:

- An officer or employee of a law enforcement agency is not required to provide notice to the Department of Children and Families' (DCF or department) central abuse hotline (hotline) when an incident of suspected child abuse by an adult other than a parent, legal custodian or other person responsible for the child's welfare under investigation by law enforcement was originally reported to law enforcement by the hotline through the electronic transfer; and

- The central abuse hotline is not required to electronically transfer calls and reports to the county sheriff's office if the incident of alleged child abuse by an adult other than a parent, legal custodian or other person responsible for the child's welfare was originally reported to the hotline by the county sheriff's office or another law enforcement agency.

This bill is anticipated to have no fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends section 39.201 of the Florida Statutes.

II. Present Situation:

Section 39.201, F.S., requires any person who knows, or has reasonable cause to suspect any of the following to report such knowledge or suspicion to the department's hotline:

- That a child was abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare;[1] or
- That a child was in need of supervision and care and had no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.[2]

Hotline personnel are required to determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions must be accepted for a protective investigation under s. 39.301, F.S.[3]

Current law provides two exceptions to the reporting requirements:

- A professional who is hired by DCF for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment;[4] and
- An officer or employee of the judicial branch is not required to again provide notice of child abuse, abandonment, or neglect when there is reasonable cause to believe the information is already known to the department.[5]

In 2012, s. 39.201, F.S., was amended to add an additional reporting requirement:[6]

- Any person who knows, or has reasonable cause to suspect that a child is abused by an adult **other** than a parent, legal custodian, caregiver, or other person responsible for the child's welfare is required to report such knowledge or suspicion to the hotline. The hotline is required to immediately electronically transfer such reports or calls to the appropriate county sheriff's office.[7]

The 2012 legislation did not create any exceptions to the new reporting requirement.

During implementation of the newly required reporting requirement, hotline staff and law enforcement agencies recognized a "circular reporting requirement"[8] between the hotline and law enforcement. In instances where a law enforcement officer was the entity who initially

---

[1] Section 39.01(47), F.S., defines the term "other person responsible for a child's welfare" as including employees of any school, day care center, residential home, facility, institution, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. The definition exempts law enforcement officers; employees of municipal or county detention facilities; and employees of the Department of Corrections acting in an official capacity, except as otherwise provided in the subsection.
[2] Section 39.201(1), F.S.
[3] Section 39.201(2)(a), F.S.
[4] Section 39.201(1)(e), F.S.
[5] Section 39.201(1)(f), F.S., applies when the child is currently being investigated by DCF, there is an existing dependency case, or the matter has previously been reported to the department; and only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.
[6] Chapter 2012-155, s.1, Laws of Fla.
[7] Section 39.201(2)(b), F.S. (2012).
[8] Department of Children and Families, *Senate Bill 1162 Staff Analysis and Economic Impact*. (Feb. 22, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

identified that a child was being abused by someone other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, law enforcement was required to report the incident under investigation to the hotline that was then required to immediately transfer the information back to the law enforcement agency.[9]

III. Effect of Proposed Changes:

The bill amends s. 39.201, F.S., creating the following two exceptions to the requirement that any person who knows, or has reasonable cause to suspect that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare report such knowledge or suspicion to the hotline:

- An officer or employee of a law enforcement agency is not required to provide notice to the hotline when an incident of suspected child abuse by an adult other than a parent, legal custodian or other person responsible for the child's welfare under investigation by law enforcement was originally reported to law enforcement by the hotline through electronic transfer; and

- The central abuse hotline is not required to electronically transfer calls and reports to the county sheriff's office if the incident of alleged child abuse by an adult other than a parent, legal custodian or other person responsible for the child's welfare was originally reported to the hotline by the county sheriff's office or another law enforcement agency.

These exceptions only apply when the information related to the alleged child abuse was provided to an officer or employee of a law enforcement agency or a hotline employee in the course of official duties.

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.

[9] *Id*.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The elimination of the redundant reporting requirement inadvertently created in 2012 should result in a reduced workload on local law enforcement agencies.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

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.

[10] *Id.*

By Senator Bradley

7-01105A-13 20131162__

A bill to be entitled

An act relating to mandatory reports of child abuse; amending s. 39.201, F.S.; limiting the duty of an officer or employee of a law enforcement agency to provide notice to the Department of Children and Families of reasonable cause to suspect child abuse under certain circumstances; limiting the duty of the Central Abuse Hotline to electronically transfer certain calls and reports to the county sheriff's office under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (1) of section 39.201, Florida Statutes, to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(1)

(h) An officer or employee of a law enforcement agency is not required to provide notice to the department of reasonable cause to suspect child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare when the incident under investigation by the law enforcement agency was reported to law enforcement by the Central Abuse Hotline through the electronic transfer of the report or call. The department's Central Abuse Hotline is not required to electronically transfer calls and reports received pursuant to paragraph (2)(b) to the county sheriff's office if

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

7-01105A-13 20131162__

the matter was initially reported to the department by the county sheriff's office or another law enforcement agency. This paragraph applies only when the information related to the alleged child abuse has been provided to the officer or employee of a law enforcement agency or Central Abuse Hotline employee in the course of carrying out his or her official duties.

Section 2. 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 19, 2013

I respectfully request that **Senate Bill #1162**, relating to Mandatory Reports of Child Abuse, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

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)

4/1/13
Meeting Date

Topic: Mandatory Reports of Child Abuse

Bill Number: 1162 *(if applicable)*

Name: Keri Rayborn

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: PO Box 1565
Street

Tallahassee, FL 32302
City *State* *Zip*

Phone: 850-524-2394

E-mail: Keri@rayborncontsultants.com

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

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 1216

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Wage Theft

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	**Fav/CS**
2.			JU	
3.			CM	
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 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.

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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).

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."

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

[7] Section 760.10, F.S.
[8] Sections 448.20-26 and 487.2011-2071, F.S.
[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*.

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 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.

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[16] *Id.*
[17] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d. 880, 886 (Fla. 2010).
[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.

From the inception of the ordinance through December 31, 2012, Miami-Dade County reports that a total of 1,223 claims have been made, with a total of $1,567,755 recovered in 882 of the claims through either conciliation between the parties or an award after hearing.[24]

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 Broward 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]

Small Claims Court Costs

Fees for filing an action in Small Claims Court, which is a part of the County Court, are set by s. 34.041(1)(a), F.S., as follows:

- $50 for claims less than $100
- $75 for claims from $100 - $500
- $170 for claims from $500.01 - $2500

[24] E-mail from Miami-Dade County to Senate Criminal Justice Committee dated March 7, 2013 (on file with the Senate Committee on Criminal Justice).
[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.*

- $295 for claims of more than $2,500

In addition to the filing fee, the claimant must serve the employer with notice of the suit. Process may be served on a Florida defendant by certified mail, which costs approximately six dollars. If that is unsuccessful, process must be served by the sheriff or an authorized process server. The cost for service by the sheriff is $40 as provided in s. 30.231(1)(a), F.S.

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 when the employee should have been paid. If there is no established pay schedule, a reasonable time for payment is deemed to be two weeks 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. The bill provides for a filing fee of $50 for wage theft claims brought pursuant to the new statute. Prior to filing a claim, the employee must give the employer oral or 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 7 days 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. If the employee proves the claim by a preponderance of the evidence, he or she is entitled to an award of damages equal to twice the amount of compensation that is owed. The court cannot award any other damages. Costs, but not attorney fees, may be awarded to the prevailing party pursuant to s. 448.08, F.S.

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: The bill preempts any local regulation, ordinance, or provision for recovery of unpaid compensation, except for those that establish an administrative process as

described above or a local ordinance governing wage theft that was enacted before January 1, 2011. The Miami-Dade County wage theft ordinance is the only local wage theft ordinance that is excluded from preemption.

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.

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. It would remove the option for employee/claimants in Broward County to seek payment under the local wage theft ordinance. Since that ordinance appears to require little cost for the claimant, employees would presumably incur the $50 filing fee and costs of service of process (subject to reimbursement if their claim is successful).[28] However, the bill permits local governments to provide for payment of the filing fee on behalf of the claimant.

With the exception of Miami-Dade county, the bill provides a new means for employees in Florida to redress wage theft claims. It seems reasonable to expect that this will result in an increase in filed claims, or the resolution of claims prior to filing, due to the possibility that the employer could have to pay double the amount of compensation owed.

[28] Process may be served on a Florida defendant by certified mail. If that is unsuccessful, process must be served by the sheriff or an authorized process server.

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.)

CS by Criminal Justice on April 1, 2013:

- Deletes the prohibition against jury trials.
- Limits the court filing fee to $50.
- Allows notice to the employer to be made either orally or in writing, and reduces the time for the employer to resolve the claim from 15 days to 7 days.
- Requires a prevailing plaintiff to be awarded twice the compensation owed.
- Allows the prevailing party to recover costs, but not attorney's fees.
- Deletes the specific authority for the Attorney General to bring a civil action injunctive relief and civil penalties.
- Deletes the preemption of local rules and ordinances governing any condition of employment**,** but retains the preemption as it relates to employee compensation.
- Removes the limitation that prohibited application of the Miami-Dade County wage theft ordinance to claims against employers with more than $500,000 annual business volume.

B. Amendments:

None.

420660

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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.

663082

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/01/2013	.	
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	.	
	.	

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.

312628

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

Senate Amendment to Amendment (420660) (with title amendment)

Delete line 44
and insert:
s. 34.01. Notwithstanding section 34.041, the filing fee for a claim brought pursuant to this section may not exceed $50.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Between lines 111 and 112
insert:

312628

13 limiting filing fee to no more than $50;

769992

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

1 **Senate Amendment to Amendment (420660)**
2
3 Delete lines 51 - 56
4 and insert:
5 intent to initiate a civil action orally or in writing.
6 (b) The notice must identify the amount that the claimant
7 alleges is owed, the actual or estimated work dates and hours
8 for which compensation is sought, and the total amount of
9 compensation unpaid through the date of the notice.
10 (c) The employer has 7 days after the date of service of

609582

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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	.	

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

1 **Senate Amendment to Amendment (420660) (with title**
2 **amendment)**
3
4 Delete line 64
5 and insert:
6 limited to twice the amount of compensation due and owing. The
7 court may
8
9 ========== T I T L E A M E N D M E N T ==========
10 And the title is amended as follows:
11 Delete line 117
12 and insert:

609582

13 the evidence; limiting compensatory damages to twice
14 the amount owed; prohibiting certain damages;
15 authorizing

329850

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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	.	

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

1 **Senate Amendment to Amendment (420660)**
2
3 Delete line 66
4 and insert:
5 subsection, and may not award noneconomic or punitive damages,
6 or attorney fees to a prevailing party notwithstanding section
7 448.08.

721972

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
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	.	

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

1 **Senate Amendment to Amendment (420660)**
2
3 Delete lines 89 - 93
4 and insert:
5 preempted by this section.

929198

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2013	.	
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	.	
	.	

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

411024

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/13/2013	.	
	.	
	.	
	.	

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

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

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 1, 2013

I respectfully request that **Senate Bill # 1216**, relating to Wage Theft, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

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)

4/1/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Melissa Craig

Amendment Barcode: _____ (if applicable)

Job Title: FSU Law Student

Address: 209 W. 4th Avenue
Street

Tallahassee, Fl. 32303
City, State, Zip

Phone: (850) 980-3626

E-mail: Mac10@my.fsu.edu

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

APPEARANCE RECORD

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

4/01/13
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.

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: Wage Theft

Bill Number: 1216 (if applicable)

Name: Gabe Landry

Amendment Barcode: _____ (if applicable)

Job Title: _____

Address: 1117 Brickwood Ct
Street

Tallahassee
City State Zip

Phone: 813 476 2607

E-mail: _____

Speaking: ☐ For ☑ Against ☐ Information

Representing: FL Coalition for Local Control

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)

4/1/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Karen Woodall

Amendment Barcode: (if applicable)

Job Title:

Address: 579 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.

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)

4/1/13
Meeting Date

Topic: WAGE THEFT

Bill Number: 1216 (if applicable)

Name: Arthur Rosenberg

Amendment Barcode: (if applicable)

Job Title: Attorney

Address: 3000 Biscayne BLVD #102
Street

Miami FL 33137
City State Zip

Phone: 850-509-2085

E-mail: arthur@floridalegal.org

Speaking: ☐ For ☑ Against ☐ Information

Representing: Florida Legal Services

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)

4/1/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Ron Bilbao

Amendment Barcode: *(if applicable)*

Job Title: Sr. Legis. Assoc.

Address: 4500 Biscayne
Street

Miami, FL 33137
City *State* *Zip*

Phone: 919-923-7288

E-mail: rbilbao@aclufl.org

Speaking: ☐ For ☑ Against ☐ Information

Representing: ACLU of 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)

4-1-13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Larry Kidd

Amendment Barcode: _____ *(if applicable)*

Job Title: Electrician

Address: 220 Colens Dr
Street

Orlando Fl 32807
City *State* *Zip*

Phone: 407-273-3758

E-mail: LKidd01@Aol.com

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)

4/1/2013
Meeting Date

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Dwight Mattingly

Amendment Barcode: (if applicable)

Job Title:

Address: 8907 SE Ane Cone Lane
Street

Hobe Sound, FL 33455
City, State, Zip

Phone: 561-523-0525

E-mail: atu1577@bellsouth.net

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)

4/1/13
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

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4/1/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Brenda Roman

Amendment Barcode: *(if applicable)*

Job Title: FSU Law Student

Address: 4119 Cornish Drive
Street

Tallahassee, FL 32303
City, State, Zip

Phone: (850) 380-1434

E-mail: brenda.roman44@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: 3 FSU Law Students

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)

4/1/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Sheila Hopkins

Amendment Barcode: *(if applicable)*

Job Title: Director of Social Concerns / Respect Life

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

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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)

4/1/13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 (if applicable)

Name: Lisa Hurley

Amendment Barcode: (if applicable)

Job Title:

Address: 100 S Monroe St
Street

City: State: Zip:

Phone: 850.922.4300

E-mail: lhurley@flcounties.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)

4-1-13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Mark Sexton

Amendment Barcode: *(if applicable)*

Job Title: Communications Coordinator

Address: 12 SE 1st Street
Street

Gainesville, FL 32601
City *State* *Zip*

Phone: 352-283-2317

E-mail: MSexton@alachuacounty.us

Speaking: ☐ For ☑ Against ☐ Information

Representing: The Alachua County Commission

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)

4-1-13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Marty Cassini

Amendment Barcode: *(if applicable)*

Job Title: Legislative

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

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)

4-1-13
Meeting Date

Topic: Wage theft

Bill Number: SB 1216 *(if applicable)*

Name: Amy Datz

Amendment Barcode: *(if applicable)*

Job Title: Retired

Address: 1130 Crestview Ave
Street

Tallahassee FL 32303
City *State* *Zip*

Phone: 850 322-7599

E-mail: Amaliedatz@mac.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Self. Mother of a Restaurant Worker

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)

4 / 1 /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)

4/1/13
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
Street

Tallahassee
City State Zip

Phone: 850 222-0720

E-mail:

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

Representing: ABC of FL

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)

4/1/13
Meeting Date

Topic: Wage Theft

Bill Number: SB 1216 *(if applicable)*

Name: Carolyn Johnson

Amendment Barcode: *(if applicable)*

Job Title: Director of Business, Economic Development & Innovation

Address: 136 S Bronough St
Street

Tallahassee — *City*
FL — *State*
32311 — *Zip*

Phone: 850-521-1235

E-mail: cjohnson@flchamber.com

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

Representing: FL Chamber of Commerce

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)

4/1/13
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

Tallahassee FL 32301
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)

4/1/13
Meeting Date

Topic: Wage theft

Bill Number: 1216 *(if applicable)*

Name: Teye Reeves (pronounced "Tia")

Amendment Barcode: *(if applicable)*

Job Title:

Address: 108 S. Monroe St.
Street

32301
City *State* *Zip*

Phone: 8506810024

E-mail: treeves@flapartners.com

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

Representing: AIF

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)

April 1, 2013
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: *(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: [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)

4-1-13
Meeting Date

Topic: Wage Theft

Bill Number: 1216 *(if applicable)*

Name: Marty Cassini

Amendment Barcode: 66 3082 *(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: [x] For [ ] Against [ ] Information

Representing: Broward County

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)

Florida Senate

VOTING — DISCLOSURE OF CONFLICT

Pursuant to Senate Rule 1.39, a Senator, even though he or she may vote, must disclose the nature of any interest in a matter if the interest would inure to the special private gain or loss of certain, specified persons or entities listed in Rule 1.39.

DISCLOSURE OF CONFLICT

4/1/2013
Date

Pursuant to Senate Rule 1.39, I am disclosing that certain provisions in

SB 1216

(Bill Number; Appointment; Suspension)

(Amendment Barcode)

provide a special private gain or loss to (circle one):

1. A principal by whom I or my spouse, parent, or child is retained or employed;
2. A parent organization or subsidiary of a corporate principal by which I am retained or employed; or
3. An immediate family member or business associate of mine.

The nature of the interest and the persons or entities involved are specified below.

While I do not believe I have a conflict, out of an abundance of caution, I hereby disclose that my spouse may represent one or more clients that may be opposed to this bill and/or amendments to this bill. My spouse is an attorney and bound by the confidentiality rules of The Florida Bar, pursuant to Rule 4-1.6 of the Rules Regulating The Florida Bar. Pursuant to a voluntary agreement between my spouse and myself, she does not discuss client positions with me, nor does she advocate to me regarding client positions.

As permitted by Senate Rule, I may vote on this matter.

Greg Evers, 2
Senator *District*

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 1268

INTRODUCER: Criminal Justice Committee and Senator Detert

SUBJECT: Service of Process

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.			JU	
3.				
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 1268 amends the service of process laws as follows:

- Provides that a fee of $40 will be charged by the sheriff for each summons served.
- Provides that execution must be accompanied by an affidavit containing a statement directing distribution of proceeds of public sale.
- Provides immunity to the sheriff for wrongful levy or distribution of the proceeds of sale.
- Requires that the party requesting service of process or the process server file the return-of-service form.
- Provides for changes to service of process on certain businesses.
- Adds a first degree misdemeanor penalty for an employer, employee, or a representative or agent of the employer who refuses to accommodate service on an employee.

This bill substantially amends the following sections of the Florida Statutes: 30.231, 48.031, 48.081, and 56.27.

II. Present Situation:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the defendant is located.[1] The sheriff may appoint special process servers who meet specified statutory minimum requirements.[2] The chief judge of the circuit court may establish an approved list of certified process servers.[3] Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.[4] Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.[5]

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas are made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.[6] Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.[7]

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process. The sheriffs must charge $40 for docketing and indexing each writ of execution, regardless of the number of persons involved. It is the responsibility of the party requesting service of process to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.[8]

Service on Employees and Businesses

Section 48.031, F.S., provides that employers "shall permit" service of process on employees in a private area designated by the employer. Substitute service may only be made on a person in

---

[1] Section 48.021, F.S.
[2] *Id.*
[3] Section 48.27, F.S.
[4] *Vidal v. SunTrust Bank*, 41 So.3d 401, 402-03 (Fla. 4th DCA 2010).
[5] Section 48.031, F.S.; *Vidal*, 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).
[6] Sections 48.031(1), (3), F.S.
[7] Sections 48.29 and 48.031(5), F.S.
[8] *See* s. 30.321, F.S.

charge of a business when the owner is absent after two or more attempts at service. The person making service of process files a return with the court to show service has been made.

Service on Corporations

Section 48.081, F.S., provides that service of process on a corporation is made on the registered agent, president, vice president, or other head of the corporation, and in their absence, upon another officer, and in their absence, a director. If the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service of process may be made in accordance with s. 48.031, F.S.

Sheriff's Fees for Service

Section 30.231, F.S., provides that if a sheriff is serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee.

Sheriff Sales in Execution of Judgments

Sheriffs may levy upon assets in satisfaction of a judgment, and sell those assets for payment of the judgment when they are provided a writ of execution by the court.[9] There is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid.

III. Effect of Proposed Changes:

Service on Employees and Businesses

The bill creates a first degree misdemeanor for employers and their agents, or other employees who fail to permit service of process on employees in a private area designated by the employer.[10] The bill provides that a sole proprietorship may be served by serving the person on the first attempt even if the owner is temporarily absent from the office. The bill adds that the person requesting service may also file the return-of-service form.

Service on Corporations

The bill deletes "provided" from s. 48.081, F.S., which results in permitting a process server to serve process at any address where the registered agent, president, vice president, or other head of the corporation is located.

Sheriff's Fees for Service

The bill amends s. 30.231, F.S., allowing the sheriff to charge $40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.[11]

---

[9] *See* s. 30.30, F.S.

[10] A first degree misdemeanor is punishable by up to one year in county jail and/or a fine of up to $1,000. Sections 775.082 and 775.083, F.S.

[11] For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may be brought against the same person in two capacities. Therefore, that person would be served twice with the complaint.

Sheriff Sales in Execution of Judgments

The bill amends s. 56.27, F.S., by providing that a writ of execution must be accompanied by a statement directing the sheriff how to pay out the proceeds of sale. Additionally, it provides that the sheriff is not liable for damages in the event of a wrongful levy and/or payout.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an impact on local jails to the extent that the bill's misdemeanor offense results in persons being sentenced to jail.

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 April 1, 2013:

- Deletes the provisions relating to service of process on a limited liability company, involuntary examinations, injunctions, and warrantless arrests.
- Permits a process server to serve process at any address where the registered agent, president, vice president, or other head of a corporation is located.

B. Amendments:

None.

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

367026

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Between lines 93 and 94
4 insert:
5 Section 3. Paragraph (b) of subsection (3) of section
6 48.081, Florida Statutes, is amended to read:
7 48.081 Service on corporation.—
8 (3)
9 (b) If the address ~~provided~~ for the registered agent,
10 officer, director, or principal place of business is a residence
11 or private mailbox, service on the corporation may be made by
12 serving the registered agent, officer, or director in accordance

367026

13 with s. 48.031.
14
15 ========== T I T L E A M E N D M E N T ==========
16 And the title is amended as follows:
17 Delete line 15
18 and insert:
19 form; revising provisions relating to address used for
20 service on a registered agent; amending s. 56.27,
21 F.S.; requiring the levying

910698

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 107 - 315
4 and insert:
5 Section 4. This act shall take effect July 1, 2013.
6
7 ========== T I T L E A M E N D M E N T ==========
8 And the title is amended as follows:
9 Delete lines 20 - 47
10 and insert:
11 providing

By Senator Detert

28-00979A-13 20131268__

A bill to be entitled

An act relating to service of process; amending s. 30.231, F.S.; requiring sheriffs to charge a uniform fee for service of process; amending s. 48.031, F.S.; requiring an employer, employee, or representative or agent of an employer to permit an authorized individual to make service on an employee in a private area designated by the employer; providing criminal penalties for persons failing to comply with the process; authorizing substitute service during the first attempt of service at a business that is a sole proprietorship under certain circumstances; requiring the person requesting service or the person authorized to serve the process to file the return-of-service form; amending s. 56.27, F.S.; requiring the levying creditor to deliver to the sheriff an affidavit setting forth how to pay out moneys received under an execution sale; providing that the sheriff is not liable for damages under certain circumstances; amending s. 394.463, F.S.; requiring a mental health receiving facility to accept an electronic order for involuntary examination served by a law enforcement agency; amending s. 397.6818, F.S.; requiring a substance abuse licensed service provider to accept an electronic order for involuntary assessment and stabilization which is served by a law enforcement agency on the service provider; establishing procedures to serve process; amending s. 608.463, F.S.; providing that service of process on a limited

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liability company occurs as if it were a corporation; amending s. 741.30, F.S.; setting forth the effectiveness of a temporary injunction in a domestic violence proceeding; amending ss. 741.31, 784.046, and 784.0485, F.S.; requiring that if a final order of injunction for protection against domestic violence, dating violence, or stalking is issued but not served, the terms of the temporary injunction, if served, remain in full force and effect until service of the final order is effected upon the respondent; amending s. 784.0487, F.S.; providing that it is unlawful for a person to violate a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition; amending s. 901.15, F.S.; conforming provisions; expanding situations in which an arrest without a warrant is lawful to include probable cause of stalking, cyberstalking, and child abuse; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 30.231, Florida Statutes, is amended to read:

30.231 Sheriffs' fees for service of summons, subpoenas, and executions.—

(1) The sheriffs of all counties of the state in civil cases shall charge fixed, nonrefundable fees for ~~docketing and~~ service of process, according to the following schedule:

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(a) All summons or writs except executions: $40 for each summons or writ to be served~~, except when more than one summons or writ is issued at the same time out of the same cause of action to be served upon one person or defendant at the same time, in which case the sheriff shall be entitled to one fee~~.

Section 2. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and subsection (5) of section 48.031, Florida Statutes, are amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(1)

(b) An employer ~~Employers~~, employee, or a representative or agent of the employer, when contacted by an individual authorized to make service of process, must ~~shall~~ permit the authorized individual to make service on employees in a private area designated by the employer. If the employer, employee, or a representative or agent of the employer fails to comply with this paragraph, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)

(b) Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business during the first attempt of service even if the owner is temporarily absent from his or her office ~~at the time of service if two or more attempts to serve the owner have been made at the place of business~~.

(5) A person serving process shall place, on the first page of at least one of the processes served, the date and time of

service and his or her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person requesting service or the person authorized to serve ~~issuing~~ the process shall file the return-of-service form with the court.

Section 3. Paragraph (d) is added to subsection (4) of section 56.27, Florida Statutes, to read:

56.27 Executions; payment of money collected.—

(4) Before the date of the first publication or posting of the notice of sale provided for under s. 56.21, at the time of the levy request to the sheriff, the levying creditor shall deliver to the sheriff an affidavit setting forth all of the following as to the judgment debtor:

(d) A statement directing the sheriff how to pay out all moneys received under an execution sale pursuant to subsections (1) and (2). The sheriff paying pursuant to the affidavit is not liable to anyone for damages arising from a wrongful levy and pay out.

Section 4. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn

117 testimony, written or oral. If other less restrictive means are
118 not available, such as voluntary appearance for outpatient
119 evaluation, a law enforcement officer, or other designated agent
120 of the court, shall take the person into custody and deliver him
121 or her to the nearest receiving facility for involuntary
122 examination. If the order was received electronically by the law
123 enforcement agency, the receiving facility shall accept the
124 electronic copy as the executable copy. The order of the court
125 shall be made a part of the patient's clinical record. A fee may
126 not ~~No fee shall~~ be charged for the filing of an order under
127 this subsection. Any receiving facility accepting the patient
128 based on this order shall ~~must~~ send a copy of the order to the
129 Agency for Health Care Administration on the next working day.
130 The order is ~~shall be~~ valid only until executed or, if not
131 executed, for the period specified in the order itself. If no
132 time limit is specified in the order, the order is ~~shall be~~
133 valid for 7 days after the date that the order was signed.
134 2. A law enforcement officer shall take a person who
135 appears to meet the criteria for involuntary examination into
136 custody and deliver the person or have him or her delivered to
137 the nearest receiving facility for examination. The officer
138 shall execute a written report detailing the circumstances under
139 which the person was taken into custody, and the report shall be
140 made a part of the patient's clinical record. Any receiving
141 facility accepting the patient based on this report shall ~~must~~
142 send a copy of the report to the Agency for Health Care
143 Administration on the next working day.
144 3. A physician, clinical psychologist, psychiatric nurse,
145 mental health counselor, marriage and family therapist, or

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146 clinical social worker may execute a certificate stating that he
147 or she has examined a person within the preceding 48 hours and
148 finds that the person appears to meet the criteria for
149 involuntary examination and stating the observations upon which
150 that conclusion is based. If other less restrictive means are
151 not available, such as voluntary appearance for outpatient
152 evaluation, a law enforcement officer shall take the person
153 named in the certificate into custody and deliver him or her to
154 the nearest receiving facility for involuntary examination. The
155 law enforcement officer shall execute a written report detailing
156 the circumstances under which the person was taken into custody.
157 The report and certificate shall be made a part of the patient's
158 clinical record. Any receiving facility accepting the patient
159 based on this certificate shall ~~must~~ send a copy of the
160 certificate to the Agency for Health Care Administration on the
161 next working day.
162 Section 5. Subsection (3) of section 397.6818, Florida
163 Statutes, is amended to read:
164 397.6818 Court determination.—At the hearing initiated in
165 accordance with s. 397.6811(1), the court shall hear all
166 relevant testimony. The respondent must be present unless the
167 court has reason to believe that his or her presence is likely
168 to be injurious to him or her, in which event the court shall
169 appoint a guardian advocate to represent the respondent. The
170 respondent has the right to examination by a court-appointed
171 qualified professional. After hearing all the evidence, the
172 court shall determine whether there is a reasonable basis to
173 believe the respondent meets the involuntary admission criteria
174 of s. 397.675.

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175 (3) If the court finds it necessary, it may order the
176 sheriff to take the respondent into custody and deliver him or
177 her to the licensed service provider specified in the court
178 order or, if none is specified, to the nearest appropriate
179 licensed service provider for involuntary assessment. If the
180 order was received electronically by a law enforcement agency,
181 the receiving licensed service provider shall accept the
182 electronic copy as the executable copy. The order is valid only
183 until executed or, if not executed, for the period specified in
184 the order itself. If no time limit is specified in the order,
185 the order is valid for 7 days after the date that the order was
186 signed.
187 (a) A law enforcement officer acting in accordance with an
188 involuntary assessment and stabilization order issued pursuant
189 to this section may serve and execute such order on any day of
190 the week, at any time of the day or night.
191 (b) A law enforcement officer acting in accordance with an
192 involuntary assessment and stabilization order issued pursuant
193 to this section may use such reasonable physical force as is
194 necessary to gain entry to the premises and any dwellings,
195 buildings, or other structures located on the premises to take
196 custody of the person who is the subject of the involuntary
197 assessment and stabilization order.
198 Section 6. Subsection (1) of section 608.463, Florida
199 Statutes, is amended to read:
200 608.463 Service of process.—
201 (1) Process against a limited liability company may be
202 served:
203 (a) In accordance with chapter 48 or chapter 49, as if the

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204 limited liability company were a corporation ~~partnership~~.
205 (b) Upon the registered agent at the agent's street
206 address.
207 Section 7. Paragraph (c) of subsection (5) of section
208 741.30, Florida Statutes, is amended to read:
209 741.30 Domestic violence; injunction; powers and duties of
210 court and clerk; petition; notice and hearing; temporary
211 injunction; issuance of injunction; statewide verification
212 system; enforcement; public records exemption.—
213 (5)
214 (c) Any such ex parte temporary injunction is ~~shall be~~
215 effective for a fixed period not to exceed 15 days unless a
216 final injunction is issued on the same case, which extends the
217 effectiveness of the temporary injunction until such time as the
218 final injunction is served. A full hearing, as provided by this
219 section, shall be set for a date no later than the date when the
220 temporary injunction ceases to be effective. The court may grant
221 a continuance of the hearing before or during a hearing for good
222 cause shown by any party, which must ~~shall~~ include a continuance
223 to obtain service of process. An ~~Any~~ injunction shall be
224 extended, if necessary, so that it remains ~~to remain~~ in full
225 force and effect during any period of continuance.
226 Section 8. Paragraph (c) is added to subsection (4) of
227 section 741.31, Florida Statutes, to read:
228 741.31 Violation of an injunction for protection against
229 domestic violence.—
230 (4)
231 (c) If a final injunction is issued but has not been
232 served, the terms of the temporary injunction, if served, remain

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233 in full force and effect until service of the final injunction
234 is effected upon the respondent.
235 Section 9. Paragraph (c) of subsection (6) of section
236 784.046, Florida Statutes, is amended to read:
237 784.046 Action by victim of repeat violence, sexual
238 violence, or dating violence for protective injunction; dating
239 violence investigations, notice to victims, and reporting;
240 pretrial release violations; public records exemption.—
241 (6)
242 (c) Any such ex parte temporary injunction is ~~shall be~~
243 effective for a fixed period not to exceed 15 days unless a
244 final injunction is issued on the same case, which extends the
245 effectiveness of the temporary injunction until such time as the
246 final injunction is served. However, an ex parte temporary
247 injunction granted under subparagraph (2)(c)2. is effective for
248 15 days following the date the respondent is released from
249 incarceration unless a final injunction is issued on the same
250 case, which extends the effectiveness of the temporary
251 injunction until such time as the final injunction is served. A
252 full hearing, as provided by this section, shall be set for a
253 date no later than the date when the temporary injunction ceases
254 to be effective. The court may grant a continuance of the ex
255 parte injunction and the full hearing before or during a
256 hearing, for good cause shown by any party.
257 Section 10. Paragraph (c) of subsection (5) of section
258 784.0485, Florida Statutes, is amended to read:
259 784.0485 Stalking; injunction; powers and duties of court
260 and clerk; petition; notice and hearing; temporary injunction;
261 issuance of injunction; statewide verification system;

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262 enforcement.—
263 (5)
264 (c) Any such ex parte temporary injunction is effective for
265 a fixed period not to exceed 15 days unless a final injunction
266 is issued on the same case, which shall extend the effectiveness
267 of the temporary injunction until such time as the final
268 injunction is served. A full hearing, as provided in this
269 section, shall be set for a date no later than the date when the
270 temporary injunction ceases to be effective. The court may grant
271 a continuance of the hearing before or during a hearing for good
272 cause shown by any party, which shall include a continuance to
273 obtain service of process. An injunction shall be extended if
274 necessary, so that it remains ~~to remain~~ in full force and effect
275 during any period of continuance.
276 Section 11. Present subsection (5) of section 784.0487,
277 Florida Statutes, is redesignated as subsection (6), and a new
278 subsection (5) is added to that section, to read:
279 784.0487 Violation of an injunction for protection against
280 stalking or cyberstalking.—
281 (5) A person who violates a final injunction for protection
282 against stalking or cyberstalking by having in his or her care,
283 custody, possession, or control any firearm or ammunition
284 commits a violation of s. 790.233, a misdemeanor of the first
285 degree, punishable as provided in s. 775.082 or s. 775.083.
286 Section 12. Subsections (6) and (7) of section 901.15,
287 Florida Statutes, are amended to read:
288 901.15 When arrest by officer without warrant is lawful.—A
289 law enforcement officer may arrest a person without a warrant
290 when:

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291 (6) There is probable cause to believe that the person has
292 committed a criminal act according to s. 790.233 or according to
293 s. 39.504, s. 741.31, ~~or~~ s. 784.047, or s. 785.0487 which
294 violates an injunction for protection entered pursuant to s.
295 39.504, s. 741.30, ~~or~~ s. 784.046, or s. 784.0485 or a foreign
296 protection order accorded full faith and credit pursuant to s.
297 741.315, over the objection of the petitioner, if necessary.
298 (7) There is probable cause to believe that the person has
299 committed an act of domestic violence, as defined in s. 741.28,
300 ~~or~~ dating violence, repeat violence or sexual violence, as
301 provided in s. 784.046, stalking or cyberstalking as provided in
302 s. 784.048, or an act of child abuse as provided in s. 39.01.
303 The decision to arrest does ~~shall~~ not require consent of the
304 victim or consideration of the relationship of the parties. It
305 is the public policy of this state to strongly discourage arrest
306 and charges of both parties for domestic violence or dating
307 violence on each other and to encourage training of law
308 enforcement and prosecutors in these areas. A law enforcement
309 officer who acts in good faith and exercises due care in making
310 an arrest under this subsection, under s. 39.504, s. 741.31(4),
311 ~~or~~ s. 784.047, or s. 784.0487 or pursuant to a foreign order of
312 protection accorded full faith and credit pursuant to s.
313 741.315, is immune from civil liability that otherwise might
314 result by reason of his or her action.
315 Section 13. This act shall take effect July 1, 2013.

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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 6, 2013

I respectfully request that **Senate Bill #1268**, relating to Service of Process, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

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)

4/1
Meeting Date

Topic _____

Bill Number 1268 *(if applicable)*

Name Jose Diaz

Amendment Barcode 367026 *(if applicable)*

Job Title _____

Address 108 E. Jefferson St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-294-2583

E-mail jdiaz@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Representing FL Association of Professional Process Servers

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)

4/1/13
Meeting Date

Topic: Service of Process

Bill Number: 1268 *(if applicable)*

Name: Keri Rayborn

Amendment Barcode: *(if applicable)*

Job Title:

Address: PO Box 1565
Street

Tallahassee, FL 32302
City *State* *Zip*

Phone: (850) 524-2394

E-mail: keri@rayborn consultants.com

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 1350

INTRODUCER: Senator Bradley

SUBJECT: Criminal Penalties

DATE: March 21, 2013 REVISED:

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

I. Summary:

SB 1350 conforms Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment as set forth in recent opinions of the United States Supreme Court. It provides that a juvenile offender who is convicted of murder may be sentenced to life imprisonment only after a mandatory hearing at which the judge considers specified factors relating to the offender's age and attendant circumstance. The bill also limits the maximum sentence for a juvenile offender who does not commit homicide to a term of not more than 50 years.

This bill substantially amends section 775.082 of the Florida Statutes.

II. Present Situation:

In recent years, the United States Supreme Court has issued several opinions addressing the application of the Eighth Amendment's prohibition against cruel and unusual punishment in relation to the punishment of juvenile offenders.[1] The first of these was *Roper v. Simmons*, 543

[1] The term "juvenile offender" refers to an offender who was under 18 years of age at the time of committing the offense for which he or she was sentenced. Most crimes committed by juveniles are dealt with through delinquency proceedings as set forth in ch. 985, F.S. However, the law provides a mechanism for juveniles to be tried and handled as adults. A juvenile who commits a crime while 13 years old or younger may only be tried as an adult if a grand jury indictment is returned. A juvenile who is older than 13 may be tried as an adult for certain felony offenses if a grand jury indictment is returned, if juvenile court jurisdiction is waived and the case is transferred for prosecution as an adult pursuant to s. 985.556, F.S., or if the state attorney direct files an information in adult court pursuant to s. 985.557, F.S. Regardless of age, s. 985.58, F.S., requires a grand jury indictment to try a juvenile as an adult for an offense that is punishable by death or life imprisonment.

U. S. 551 (2005), in which the Court found that juvenile offenders cannot be subject to the death penalty for any offense. More recently, the Court expanded constitutional doctrine regarding punishment of juvenile offenders in *Graham v. Florida*, 130 S.Ct. 2011 (2010) and *Miller v. Alabama,* 132 S.Ct. 2455 (2012).

Graham v. Florida

In *Graham*, the Court held that a juvenile offender cannot be sentenced to life in prison without the possibility of parole for any offense other than a homicide. More specifically, the Court found that if a non-homicide juvenile offender is sentenced to life in prison, the state must "provide him or her with some realistic opportunity to obtain release before the end of that term."[2] Because Florida has abolished parole[3] and the Court deems the possibility of executive clemency to be remote,[4] currently a juvenile offender in Florida cannot be given a life sentence for a non-homicide offense.

Graham applies retroactively to previously sentenced offenders because it established a fundamental constitutional right.[5] Therefore, any juvenile offender serving a life sentence for a non-homicide offense that was committed after parole eligibility was eliminated is entitled to be resentenced to a term less than life.

The Supreme Court did not give any guidance as to the maximum permissible sentence for a non-homicide juvenile offender other than to exclude the possibility of life without parole. This has led to different results among the circuits in reviewing sentences for a lengthy term of years. The First Circuit Court of Appeals recognizes that a lengthy term of years is a *de facto* life sentence if it exceeds the juvenile offender's life expectancy.[6] On the other hand, the Fourth and Fifth Circuit Courts of Appeal have strictly construed *Graham* to apply only to life sentences and not to affect sentences for a lengthy term of years.[7]

Miller v. Alabama

In *Miller*, the Court held that juvenile offenders who commit homicide cannot be sentenced to life in prison without the possibility of parole as the result of a mandatory sentencing scheme. The Court did not find that the Eighth Amendment prohibits sentencing a juvenile murderer to life without parole, but rather that individualized consideration of factors related to the offender's

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[2] *See Graham* at 2034
[3] Parole was abolished in 1983 for all non-capital felonies committed on or after October 1, 1983, and was completely abolished in 1995 for any offense committed on or after October 1, 1995.
[4] *Graham* at 2027
[5] *See, e.g.,*
[6] *Adams v. State*, --- So.3d ---, 37 Fla.L.Weekly D1865 (Fla. 1st DCA 2012). The First District Court of Appeals has struck down sentences of 60 years (*Adams)* and 80 years (*Floyd v. State*, 87 So.3d 45 (Fla. 1st DCA 2012)), while approving sentences of 50 years (*Thomas v. State*, 78 So.3d 644 (Fla. 1st DCA 2011)) and 70 years (*Gridine v. State*, 89 So.3d 909 (Fla. 1st DCA 2011)).
[7] *See Guzman v. State*, --- So.3d ----, 2013 WL 949889 (Fla. 4th Dist. 2013)*; Henry v. State*, 82 So.3d 1084 (Fla. 5th DCA 2012). It also appears that the Second District Court of Appeal may agree with this line of reasoning - *see Young v. State*, --- So.3d --, 2013 WL 614247(Fla. 2d DCA 2013). The reported longest sentence under the 85% law that was allowed to stand was 100 years for burglary of a dwelling while armed (*Johnson v. State*, --- So.3d ----, 2013 WL 1007663 (Fla. 5th Dist. 2013).

age must be considered before a life without parole sentence can be imposed. The Court also indicated that it expects that few juvenile offenders will be found to merit life without parole sentences.

Section 775.082, F.S., provides that the only permissible punishments for a capital offense are the death penalty or life imprisonment. As the result of the Court's holdings in *Roper* (invalidating the death penalty for juvenile offenders) and *Miller*, there is currently no statutory punishment for a juvenile who commits capital murder.

The majority opinion in *Miller* noted that mandatory life-without-parole sentences "preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."[8] Although the Court did not require consideration of specific factors, it highlighted the following considerations:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. See, *e.g.*, *Graham*, 560 U.S., at ––––, 130 S.Ct., at 2032 ("[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings"); *J.D.B. v. North Carolina*, 564 U.S. ––––, ––––, 131 S.Ct. 2394, 2400–2401, 180 L.Ed.2d 310 (2011) (discussing children's responses to interrogation). And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.[9]

The First and Third District Courts of Appeal view *Miller* as a procedural change in the law and have held that it does not apply retroactively to sentences that were final before the opinion was issued.[10] Neither the Florida Supreme Court nor the United States Supreme Court have addressed the retroactivity issue.

Graham and Miller Inmates

The Department of Corrections reports that it currently has custody of 222 juvenile offenders who received a mandatory life sentence for capital murder (*Miller* inmates); 43 inmates who received life sentences for non-homicide offenses (*Graham* inmates);[11] and 39 inmates who

[8] *Miller* at 2467.
[9] *Miller* at 2468.
[10] *See Gonzalez v. State*, 101 So.3d 886 (Fla. 1st DCA 2012); *Geter v. State*, --- So.3d ----, 2012 WL 4448860 (Fla. 3d DCA 2012).
[11] This includes inmates who were sentenced for attempted murder. In Manuel v. State, 48 So.3d 94 (Fla. 2d DCA 2010), the Second District Court of Appeals held that attempted murder is a nonhomicide offense because the act did not result in the death of a human being.

received life sentences for committing second degree murder, but who could have been sentenced to a lesser term.[12]

Life Expectancy

The Center for Disease Control's United States Life Tables for 2008 (the most recent published) reflect the following remaining life expectancies for 17-18 year olds in the United States:[13]

Remaining Life Expectancy: 17-18 Year Old Persons in the United States	
Hispanic Females	67.0 years
White Females	64.5 years
Hispanic Males	62.1 years
Black Females	61.3 years
White Males	59.8 years
Black Males	54.9 years

Parole

A January 2008 Blueprint Commission and Department of Juvenile Justice report, "Getting Smart about Juvenile Justice in Florida," included a recommendation that juveniles who received more than a 10 year adult prison sentence should be eligible for parole consideration. Florida Tax Watch also recommended parole consideration for inmates who were under 18 when they committed their offense, have served more than 10 years, were not convicted of capital murder, have no prior record, and demonstrated exemplary behavior while in prison.[14]

III. Effect of Proposed Changes:

The bill amends s. 775.082, F.S., to conform Florida law concerning the sentencing of juvenile offenders to the requirements of the Eighth Amendment set forth by the United States Supreme Court in the *Graham* and *Miller* decisions. It does so by making changes at the sentencing phase, rather than by creating parole or another post-sentencing release process.

***Graham* Defendants**

The bill provides that a juvenile offender who commits a non-homicide offense that is punishable by life imprisonment[15] may be punished by a term of imprisonment not exceeding 50 years. This provision applies to offenses committed on or after July 1, 2013. Non-homicide juvenile offenders who commit such an offense prior to July 1, 2013, or who have already been sentenced

[12] The information is derived from an attachment to an e-mail dated March 22, 2013 from Department of Corrections staff to Senate Criminal Justice Committee staff, which is on file with the Senate Criminal Justice Committee.
[13] The information is from Tables 5, 6, 8, 9, 11 and 12 in the *United States Life Tables, 2008*, National Vital Statistics Reports, Volume 61, Number 3 (September 24, 2012), available at www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_03.pdf (last visited on March 28, 2013).
[14] "Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force to Save More than $3 Billion," Florida Tax Watch, March 2010, p.47.
[15] This includes life felonies and first-degree felonies punishable by a term of years not exceeding life imprisonment.

to life imprisonment for such an offense, can be sentenced or resentenced to any punishment authorized by law at the time the crime was committed other than life imprisonment.[16]

Miller defendants and other juvenile offenders who commit homicides

The bill provides that a juvenile offender who is convicted of a capital offense must be sentenced to either life imprisonment or to imprisonment for a term of not less than 50 years. The sentencing court is required to consider the following factors in determining the appropriate sentence:

1. The nature and circumstances of the offense committed by the defendant.
2. The effect of the crime on the victim's family and on the community.
3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.
4. The defendant's background, including his or her family, home, and community environment.
5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.
6. The extent of the defendant's participation in the offense.
7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.
8. The nature and extent of the defendant's prior criminal history.
9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.
10. The possibility of rehabilitating the defendant.

This list includes all of the factors from the portion of the *Miller* opinion that was quoted previously in this analysis.

Consideration of these factors is mandatory in the sentencing of a juvenile offender who has been convicted of a capital offense, or of a life felony or first-degree felony punishable by a term of years not exceeding life imprisonment for committing murder under s. 782.04, F.S.[17]

Under current law, Florida Statutes provide that any offender who is convicted of a life felony under s. 782.04, F.S., can be punished by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. The bill does not change these punishments except to provide that a juvenile offender cannot be sentenced to life imprisonment or to a term of years equal to life imprisonment unless the sentencing court has considered the required factors and concluded that such punishment is appropriate.[18]

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[16] As previously discussed, Florida intermediate appellate courts have split on the question of whether *Graham* requires resentencing for a juvenile offender who has been sentenced to a lengthy term of years if the court determines that it is functionally equivalent to a life sentence.

[17] Although *Miller* technically does not apply to non-mandatory life sentences, requiring consideration of the sentencing factors avoids the possibility of an equal protection claim by a juvenile offender who receives a life sentence after less consideration than is required for a juvenile offender who commits a more serious offense.

[18] The bill creates the phrase "term of years equal to life imprisonment," leaving the courts to decide whether a particular term of years is the equivalent of a life sentence.

Florida Statutes currently provide that any offender who is convicted of murder under s. 782.04, F.S., that is a first-degree felony punishable by a term of years not exceeding life imprisonment can be sentenced to a term of years not exceeding life imprisonment or to a lesser term of years. The bill allows a sentence to a term of years equal to life imprisonment only if the sentencing court has considered the required factors and concluded that such punishment is appropriate.[19]

The bill states that its provisions concerning sentencing for a murder under s. 782.04, F.S., that is a life felony or a first-degree felony punishable by a term of years not exceeding life imprisonment are retroactive only to the extent necessary to meet constitutional requirements set forth in *Miller*. This will permit application of the bill's provisions even if a higher appellate court determines that *Miller* applies retroactively to sentences that were final before the opinion was issued, or that it applies to non-mandatory life sentences of juvenile offenders.[20]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact conference determined that the bill will have no impact on the need for prison beds. The bill would potentially have an impact on the court system to the extent that sentencing hearings for the offenders affected by the bill may require more time and resources than current sentencing hearings.

[19] *See* note 21.

[20] The bill does not address whether its provisions concerning sentencing for capital offenses apply retroactively. It is appears that this is an error and that it should apply the same as for the other offenses.

VI. Technical Deficiencies:

The bill addresses whether its provisions apply retroactively for sentencing of all offenses other than capital offenses. It is recommended that the bill be amended to provide its provisions concerning sentencing for capital offenses be retroactive to the extent required by *Miller*.

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.

308100

LEGISLATIVE ACTION

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

1 **Senate Amendment**
2
3 Delete lines 17 - 31
4 and insert:
5 (1)(a) Except as provided in paragraph (b), a person who
6 has been convicted of a capital felony shall be punished by
7 death if the proceeding held to determine sentence according to
8 the procedure set forth in s. 921.141 results in findings by the
9 court that such person shall be punished by death, otherwise
10 such person shall be punished by life imprisonment and shall be
11 ineligible for parole.
12 (b) A person who is convicted of a capital felony, or an

308100

13 offense that was reclassified as a capital felony, that was
14 committed before the person was 18 years of age shall be
15 punished by life imprisonment and is ineligible for parole if
16 the judge at a mandatory sentencing hearing concludes that life
17 imprisonment is an appropriate sentence. In determining whether
18 life imprisonment is an appropriate sentence, the judge shall
19 consider factors relevant to the offense and to the defendant's
20 youth and attendant circumstances, including, but not limited
21 to:

832422

LEGISLATIVE ACTION

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

1 **Senate Amendment**
2
3 Delete line 55
4 and insert:
5 imprisonment for a term of not less than 50 years. This
6 paragraph applies retroactively only to the extent necessary to
7 meet constitutional requirements for imposing a life sentence on
8 a defendant who is convicted of committing a murder that was
9 committed before the person was 18 years of age as set forth by
10 the United States Supreme Court in Miller v. Alabama, 132 S. Ct.
11 2455 (2012).

806648

LEGISLATIVE ACTION

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

1 **Senate Amendment**
2
3 Delete lines 79 - 120
4 and insert:
5 5. Notwithstanding subparagraphs 1.-4., a person convicted
6 under s. 782.04 for an offense that was reclassified as a life
7 felony that was committed before the person was 18 years of age
8 is eligible to be punished by a term of imprisonment for life or
9 by a term of years equal to life imprisonment if the judge at a
10 mandatory sentencing hearing considers factors relevant to the
11 offense and to the defendant's youth and attendant
12 circumstances, including, but not limited to, the factors listed

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13 in paragraph (1)(b) and concludes that imprisonment for life or
14 a term of years equal to life imprisonment is an appropriate
15 sentence. This subparagraph applies retroactively only to the
16 extent necessary to meet constitutional requirements for
17 imposing a life sentence on a defendant who is convicted of
18 committing a murder that was committed before the person was 18
19 years of age as set forth by the United States Supreme Court in
20 Miller v. Alabama, 132 S. Ct. 2455 (2012).
21 6. For offenses committed on or after July 1, 2013, a
22 person convicted of a life felony or of an offense that was
23 reclassified as a life felony, other than an offense listed in
24 s. 782.04, that was committed before the person was 18 years of
25 age shall be punished by a term of imprisonment not to exceed 50
26 years.
27 (b) Except as provided in paragraphs 1. and 2., for a
28 felony of the first degree, by a term of imprisonment not
29 exceeding 30 years or, when specifically provided by statute, by
30 imprisonment for a term of years not exceeding life
31 imprisonment.
32 1. A person convicted under s. 782.04 of a first-degree
33 felony punishable by a term of years not exceeding life
34 imprisonment, or an offense that was reclassified as a first-
35 degree felony punishable by a term of years not exceeding life
36 imprisonment, that was committed before the person was 18 years
37 of age is eligible for a term of years equal to life
38 imprisonment if the judge at a mandatory sentencing hearing
39 considers factors relevant to the offense and to the defendant's
40 youth and attendant circumstances, including, but not limited
41 to, the factors listed in paragraph (1)(b) and concludes that a

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42 term of years equal to life imprisonment is an appropriate
43 sentence. This subparagraph applies retroactively only to the
44 extent necessary to meet constitutional requirements for
45 imposing a life sentence on a defendant who is convicted of
46 committing a murder that was committed before the person was 18
47 years of age as set forth by the United States Supreme Court in
48 Miller v. Alabama, 132 S. Ct. 2455 (2012).
49 2. For offenses committed on or after July 1, 2013, a
50 person convicted for a first-degree felony punishable by a term
51 of years not exceeding life imprisonment or of an offense that
52 was reclassified as a first-degree felony punishable by a term
53 of years not exceeding life imprisonment, other than an offense
54 listed in s. 782.04, that was committed before the person was
55 18 years of age shall be punished by a term of imprisonment not
56 to exceed 50 years.

By Senator Bradley

7-00910F-13 20131350__

A bill to be entitled

An act relating to criminal penalties; amending s. 775.082, F.S.; providing criminal sentences applicable to a person who was under the age of 18 years at the time the offense was committed; requiring that a judge consider certain factors before determining if life imprisonment is an appropriate sentence; providing retroactive application; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)(a) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) A person who is convicted of a capital felony that occurred before the person was 18 years of age shall be punished by life imprisonment and is ineligible for parole if the judge at a mandatory sentencing hearing concludes that life imprisonment is an appropriate sentence. In determining whether life imprisonment is an appropriate sentence, the judge shall consider factors relevant to the offense and to the defendant's

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

7-00910F-13 20131350__

youth and attendant circumstances, including, but not limited to, the following:

1. The nature and circumstances of the offense committed by the defendant.

2. The effect of the crime on the victim's family and on the community.

3. The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

4. The defendant's background, including his or her family, home, and community environment.

5. The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

6. The extent of the defendant's participation in the offense.

7. The effect, if any, of familial pressure or peer pressure on the defendant's actions.

8. The nature and extent of the defendant's prior criminal history.

9. The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

10. The possibility of rehabilitating the defendant.

If the judge concludes that life imprisonment is not an appropriate sentence, the defendant shall be punished by imprisonment for a term of not less than 50 years.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before ~~prior to~~ October

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

1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. A person convicted under s. 782.04 for a life felony who was under the age of 18 at the time of the offense is eligible to be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to, the factors listed in paragraph (1)(b) and concludes that imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence. This paragraph

shall apply retroactively only to the extent necessary to meet constitutional requirements for imposing a life sentence on a defendant who is convicted of committing a murder while a juvenile as set forth by the United States Supreme Court in Miller v. Alabama, 132 S.Ct. 2455 (2012).

6. For offenses committed on or after July 1, 2013, a person convicted of any other life felony who was under 18 years of age at the time of the offense shall be punished by a term of imprisonment not to exceed 50 years.

(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

1. A person convicted under s. 782.04 of a first-degree felony punishable by a term of years not exceeding life imprisonment who was under the age of 18 years at the time of the offense is eligible for a term of years equal to life imprisonment if the judge at a mandatory sentencing hearing considers factors relevant to the offense and to the defendant's youth and attendant circumstances, including, but not limited to, the factors listed in paragraph (1)(b) and concludes that a term of years equal to life imprisonment is an appropriate sentence. This paragraph shall apply retroactively only to the extent necessary to meet constitutional requirements for imposing a life sentence on a defendant who is convicted of committing a murder while a juvenile as set forth by the United States Supreme Court in Miller v. Alabama, 132 S.Ct. 2455 (2012).

2. For offenses committed on or after July 1, 2013, a

117 person convicted for any other first-degree felony punishable by
118 a term of years not exceeding life imprisonment who was under 18
119 years of age at the time of the offense shall be punished by a
120 term of imprisonment not exceeding 50 years.
121 (c) For a felony of the second degree, by a term of
122 imprisonment not exceeding 15 years.
123 (d) For a felony of the third degree, by a term of
124 imprisonment not exceeding 5 years.
125 Section 2. 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 # 1350**, relating to Criminal Penalties, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

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)

4/1/13
Meeting Date

Topic: Juvenile Sentencing

Bill Number: 1350 (if applicable)

Name: Jeff Siegmeister

Amendment Barcode: _____ (if applicable)

Job Title: State Attorney, Third Circuit

Address: 100 SE Court St
Street

Live Oak, FL 32064
City State Zip

Phone: 386 362-2390

E-mail: ~~[illegible]~~ jeff.siegmeister@sa3.state.fl.us

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

Representing: Florida Prosecuting Attorneys Association (FPAA)

Appearing at request of Chair: [ ] Yes [ ] 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)

April 1, 2013
Meeting Date

Topic _____ Bill Number 1350 *(if applicable)*

Name Nancy Daniels Amendment Barcode _____ *(if applicable)*

Job Title Public Defender

Address 301 S. Monroe Street
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 488-1010

E-mail nancy.daniels@flpd2.org

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Public Defender 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)

4/1/13
Meeting Date

Topic: Criminal Penalties

Bill Number: 1350

Name: Sheila Hopkins

Amendment Barcode: 832422 (if applicable) 308100 806648 (if applicable)

Job Title: Director of Social Concerns/Respect Life

Address: 201 W. Park Ave.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 2056826

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.

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)

4/1/13
Meeting Date

Topic: Criminal Penalties

Bill Number: 1350 (if applicable)

Name: Ron Bilbao

Amendment Barcode: (if applicable)

Job Title: Sr. Legis. Assoc.

Address: 4500 Biscayne
Street

Mia 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)

4/1/13
Meeting Date

Topic: Criminal Penalties

Bill Number: 1350 (if applicable)

Name: Barney T. Bishop, III

Amendment Barcode: (if applicable)

Job Title: President + CEO, Florida Smart Justice Alliance

Address: 204 South Monroe St. Suite 201
Street

Tallahassee, FL 32301
City, State, Zip

Phone: ~~(407)~~ (850) 907-3436

E-mail: barney@barneybishop.com

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

Representing: Florida Smart Justice 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

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Criminal Penalties

Bill Number: 1350 *(if applicable)*

Name: Janet E. Ferris

Amendment Barcode: *(if applicable)*

Job Title: Retired Circuit Judge

Address: 525 Bobbin Brook Lane
Street

Tallahassee, FL 32312
City *State* *Zip*

Phone: 8508938585

E-mail: Ferris2009@gmail.com

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

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 1372

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Pretrial Detention

DATE: March 25, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	Cellon	Cannon	CJ	**Favorable**
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 1372 provides an additional factor for a court to consider in determining whether to order the pretrial detention of a criminal defendant.

The court may order pretrial detention if:

- The defendant was previously sentenced, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as such;
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds that no conditions of release can reasonably protect the community from risk of physical harm or ensure the defendant's presence at trial.

This bill substantially amends section 907.041, Florida Statutes.

II. Present Situation:

Pretrial Release in the Constitution

Article I, Section 14, of the Florida Constitution provides, in part:

> Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of a municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Florida Law on Pretrial Release

Florida law provides a presumption in favor of release on nonmonetary conditions for a defendant pending trial.[1] The presumption applies unless the person is charged with a dangerous crime, including:

- Arson;
- Aggravated assault;
- Aggravated battery;
- Illegal use of explosives;
- Child abuse or aggravated child abuse;
- Abuse, or aggravated abuse of an elderly person or disabled adult;
- Aircraft piracy;
- Kidnapping;
- Homicide;
- Manslaughter;
- Sexual battery;
- Robbery;
- Carjacking;
- Sexual offenses against children;
- Burglary of a dwelling;
- Stalking and aggravated stalking;
- Domestic violence;
- Home invasion robbery;
- Terrorism;
- Manufacturing of controlled substances; or
- Attempting or conspiring to commit any of these crimes.[2]

[1] Section 907.041(3), F.S.
[2] Section 907.041(4)(a), F.S.

A court must impose monetary conditions upon the pretrial release of a defendant charged with one of the enumerated dangerous crimes if the court finds that monetary conditions are necessary to:

- Assure the presence of the defendant at criminal proceedings including trial;
- Protect the community from the risk of physical harm; or
- Ensure the integrity of the judicial process.[3]

Section 907.041(4)(c), F.S., authorizes the court to order pretrial detention of the defendant if the court finds a substantial probability that:

- The defendant previously violated conditions of release and no other conditions of release are reasonably likely to assure the defendant's presence at court proceedings.
- The defendant attempted to, or has engaged in witness, juror, or judicial officer tampering and no condition of release will reasonably prevent the defendant from obstructing the judicial process.
- The defendant is charged with, and a substantial probability exists that the defendant committed the crime of trafficking in controlled substances, and that no conditions of release will reasonably assure the defendant's presence at court proceedings.
- The defendant is charged with, and a substantial probability exists that the defendant committed DUI manslaughter, and the defendant poses a threat of harm to the community as evidenced through other driving violations, including driving while with a suspended license.
- The defendant poses a threat of harm to the community, which the court can glean from the dangerous nature of the present crime itself.
- The defendant was on probation, parole, or other release for a dangerous crime at the time of the current offense.
- The defendant violated a condition of pretrial release or bond, and the court finds that no conditions of release can reasonably protect the community from risk of physical harm or assure the presence of the defendant at court proceedings.

The court is required to hold a pretrial detention hearing within 5 days after the pretrial detention filing by the state attorney.[4] The burden of proof is on the state attorney to demonstrate the need for pretrial detention.[5]

Enhanced Penalties

Prison Release Reoffender

A state attorney can seek enhanced sentencing of a defendant whom the court designates as a prison releasee reoffender.[6] To establish a defendant as a prison releasee reoffender, the prosecutor must show:

[3] Section 907.041(3)(a), F.S.
[4] Section 907.041(4)(f), F.S.
[5] Section 907.041(4)(g), F.S.
[6] Section 775.082(9)(a)3., F.S.

- The defendant committed or attempted to commit certain crimes. These include the crimes of treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery or robbery; arson; kidnapping; aggravated assault with a deadly weapon, battery, or stalking; aircraft piracy; and felonies involving physical force;[7] and
- The defendant attempted or committed the crime within 3 years after release from incarceration at a state correctional facility or while incarcerated at or as an escapee from a state correctional facility.[8]

Enhanced sentencing requires the court to sentence the defendant to the maximum prison sentence provided in law for a criminal charge.[9] A court sentencing a prison releasee reoffender must impose the following sentence:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.[10]

Habitual Felony Offender

The court can sentence a defendant as a habitual felony offender if the defendant has two or more prior felony convictions and committed the current felony:

- While serving a sentence, in prison or while under state supervision; or
- Within 5 years after the date of conviction of the last prior felony or 5 years after release from a sentence or state supervision.

The court can impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment.
- For a second degree felony, up to 30 years imprisonment.
- For a third degree felony, up to 10 years imprisonment.[11]

Habitual Violent Felony Offender

The court can sentence a defendant as a habitual violent felony offender if the defendant has a current felony charge and was previously convicted of a qualifying felony or an attempt or conspiracy to commit a qualifying felony. Prior qualifying felony convictions include convictions for crimes such as arson, sexual battery, robbery, kidnapping, aggravated abuse of a child or an elderly or disabled person, murder, manslaughter, armed burglary, or aggravated battery or stalking.

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[7] Section 775.082(9)(a)1., F.S.
[8] Section 775.082(9)(a)2., F.S.
[9] Section 775.082(3), F.S. provides: Unless otherwise designated in law, for a first degree felony, imprisonment may not exceed 30 years, unless law provides for a life felony, in which case, a term of up to life imprisonment. For a second degree felony, a term of up to 15 years and for a third degree felony, a term of up to 5 years.
[10] Section 775.082(9)(a)3., F.S.
[11] Section 775.084(4)(a), F.S.

For the court to designate a defendant as a habitual violent felony offender, the defendant must have committed the current felony:

- While serving a prison sentence or while under state supervision; or
- Within 5 years after the date of the prior conviction or release from a prison sentence or state supervision.

The court may impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment and no eligibility for release for 15 years.
- For a second degree felony, for up to 30 years, and no eligibility for release for 10 years.
- For a third degree felony, for up to 10 years, and no eligibility for release for 5 years.[12]

Three-time Violent Felony Offender

The court must sentence a defendant as a three-time violent felony offender if:

- The defendant has been previously convicted of committing or attempting to commit, two or more qualifying felony offenses as an adult. The offenses include arson; sexual battery; robbery; kidnapping; murder; manslaughter; aggravated battery or stalking; and carjacking;[13] and
- At the time of the current offense, the defendant was serving a prison sentence or other sentence; or
- The defendant committed the current offense within 5 years after the conviction of the most recent qualifying offense or within 5 years after release from a prison sentence or state supervision.[14]

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.[15]

Violent Career Criminal

A violent career criminal is a defendant with three or more previous adult qualifying convictions.[16] The court must impose imprisonment for a violent career criminal who:

[12] Section 775.084(4)(b), F.S.
[13] Section 775.084(1)(c)1., F.S.
[14] Section 775.084(1)(c)2., F.S.
[15] Section 775.084(4)(c), F.S.
[16] Section 775.084(1)(d), F.S.

- Previously served in a state or federal correctional facility; and
- Commits a qualifying offense while serving a prison sentence, other sentence, or while under state supervision; or
- Commits a qualifying offense within 5 years after the conviction of another qualifying felony.[17]

Qualifying convictions include forcible felonies; aggravated stalking; aggravated abuse against children, elderly persons, or disabled adults; lewd or lascivious battery, molestation, conduct, or exhibition; or escape.[18]

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony or a first degree felony, life imprisonment.
- For a second degree felony, up to 40, and no less than 30 years imprisonment.
- For a third degree felony, up to 15 years, and no less than 10 years imprisonment.[19]

III. Effect of Proposed Changes:

This bill provides an additional basis for the court to consider in determining whether to order pretrial detention.

The bill authorizes the court to order pretrial detention if:

- The defendant has been previously sentenced as a prison releasee reoffender, habitual violent felony offender, a three-time violent felony offender, or a violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as one of these offenders; and
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds no conditions of release to reasonably protect the community from risk of physical harm or assure the defendant's presence at trial.

The provisions of this bill are permissive. Due to the nature of the circumstances surrounding this type of defendant's criminal record, a court may be authorized to order pretrial detention under other existing laws.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[17] Section 775.084(1)(d)2. and 3., F.S.
[18] Section 775.084(1)(d)1., F.S.
[19] Section 775.084(4)(d), F.S.

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:

Any effect on jail beds is indeterminate at this time. The Criminal Justice Impact Conference discussed this bill on March 21, 2013, and determined that there will be an insignificant impact on prison beds if this bill becomes law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 12, 2013:
The committee substitute clarifies that:

- The sentence that may serve as the basis for pretrial detention of a defendant is a previous sentence as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal.
- The offense referred to for purposes of the substantial probability standard is the current offense.

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 the Committee on Judiciary; and Senator Bradley

590-02287-13 20131372c1

A bill to be entitled

An act relating to pretrial detention; amending s. 907.041, F.S.; providing additional factors a court may consider when ordering pretrial detention; providing an effective date.

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

Section 1. Paragraph (c) of subsection (4) of section 907.041, Florida Statutes, is amended to read:

907.041 Pretrial detention and release.—

(4) PRETRIAL DETENTION.—

(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exists:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the

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

590-02287-13 20131372c1

defendant's appearance at subsequent criminal proceedings; ~~or~~

4. The defendant is charged with DUI manslaughter, as defined by s. 316.193, and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community; conditions that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community include, but are not limited to, any of the following:

a. The defendant has previously been convicted of any crime under s. 316.193, or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193;

b. The defendant was driving with a suspended driver's license when the charged crime was committed; or

c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver's license was suspended or revoked in violation of s. 322.34;

5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;~~.~~

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;

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

59 ~~or~~
60 7. The defendant has violated one or more conditions of
61 pretrial release or bond for the offense currently before the
62 court and the violation, in the discretion of the court,
63 supports a finding that no conditions of release can reasonably
64 protect the community from risk of physical harm to persons or
65 assure the presence of the accused at trial; or
66 8.a. The defendant has previously been sentenced pursuant
67 to s. 775.082(9) or s. 775.084 as a prison releasee reoffender,
68 habitual violent felony offender, three-time violent felony
69 offender, or violent career criminal, or the state attorney
70 files a notice seeking that the defendant be sentenced pursuant
71 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
72 habitual violent felony offender, three-time violent felony
73 offender, or violent career criminal;
74 b. There is a substantial probability that the defendant
75 committed the current offense; and
76 c. There are no conditions of release that can reasonably
77 protect the community from risk of physical harm or ensure the
78 presence of the accused at trial.
79 Section 2. 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 15, 2013

I respectfully request that **Senate Bill # 1372**, relating to Pretrial Detention, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

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)

4/1/13
Meeting Date

Topic: Pretrial Detention

Bill Number: 1372 (if applicable)

Name: Barney T. Bishop, III

Amendment Barcode: (if applicable)

Job Title: President + CEO, Florida Smart Justice Alliance

Address: 204 South Monroe St. Suite 201
Street

Tallahassee, FL 32301
City, State, Zip

Phone: (850) 907-3436

E-mail: barney@barneybishop.com

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

Representing: Florida Smart Justice 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

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Pretrial Detention

Bill Number: 1372 *(if applicable)*

Name: Keri Rayborn

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: PO Box 1565
Street

Tallahassee, FL 32302
City *State* *Zip*

Phone: 850-524-2394

E-mail: Keri@raybornconsultants.com

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)

4 / 1 /2013
Meeting Date

Topic _____

Bill Number 1372 *(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

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 1404

INTRODUCER: Criminal Justice Committee and Senator Stargel

SUBJECT: Florida Communications Fraud Act

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	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 1404 amends s. 817.034, F.S., the Communications Fraud Act (CFA). The CFA makes it a crime for a person to engage in a scheme to defraud and obtain property; or engage in a scheme to defraud and, in furtherance of that scheme, communicate with any person with intent to obtain property from that person.

The CFA does not contain a provision specifying a statute of limitation for violations; therefore, the general statutes of limitation contained in s. 775.15, F.S., apply. This requires that violations be prosecuted as follows:

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

The bill extends the statute of limitation for violations of the Communications Fraud Act to 5 years after the cause of action accrues.

The bill tolls the statute of limitation for up to an additional year if the defendant is outside the jurisdiction of the court.

The Criminal Punishment Code is amended to elevate violations of the CFA from Level 6 to Level 7. This amendment has the effect of increasing the total sentencing points and therefore could result in more defendants being sentenced to prison for violations of the Act.

This bill substantially amends sections 817.034 and 921.0022 of the Florida Statutes.

II. Present Situation:

Statutes of Limitation

Statutes of limitation are a statutory creation. In *State v. Hickman*, the court found that:

> Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.[1]

In *State v. Garofalo*, the court found that "The sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable."[2]

Section 775.15, F.S., establishes the following general statutes of limitation for commencing criminal prosecutions:

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

[1] *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).
[2] 453 So.2d 905, 906 (Fla. 4th DCA 1984) (citing *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966)).

The statute provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.[3]

The statutes of limitation in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitation only applicable to that crime. For example, s. 812.035(10), F.S., allows for any criminal or civil action under ss. 812.012-812.037 or 812.081, F.S. (all relating to theft), to be commenced at any time within 5 years after the cause of action accrues. The statute further specifies that in criminal proceedings, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state.[4] However, this provision can only extend the limitation period by 1 year.[5]

Communications Fraud Act

When creating the Communications Fraud Act (CFA), the Legislature recognized that schemes to defraud were on the rise and that those operating the schemes were using communications technology to further their schemes to defraud.[6]

The following criminal offenses are codified in s. 817.034(4), F.S. (the CFA):

> (a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:
> 1. If the amount of property obtained has an aggregate value of $50,000 or more, the violator is guilty of a felony of the first degree,[7] ranked in Level 6 of the Criminal Punishment Code offense severity ranking chart;[8]
> 2. If the amount of property obtained has an aggregate value of $20,000 or more, but less than $50,000, the violator is guilty of a felony of the second degree;[9] or

[3] Section 775.15(3), F.S.
[4] Section 812.035(10), F.S.
[5] *Id*.
[6] Section 817.034(1), F.S.
[7] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[8] The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.
[9] The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the

3. If the amount of property obtained has an aggregate value of less than $20,000, the violator is guilty of a felony of the third degree.[10]

(b) Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:
1. If the value of property obtained or endeavored to be obtained by the communication is valued at $300 or more, the violator is guilty of a third degree felony; or
2. If the value of the property obtained or endeavored to be obtained by the communication is valued at less than $300, the violator is guilty of a misdemeanor of the first degree.[11]

The CFA does not currently contain a specific statute of limitation for the above-described crimes. As such, the general statutes of limitation contained in s. 775.15, F.S., apply. Prosecutions for these organized fraud cases must be commenced within 4 years of the commission of a first degree felony, within 3 years of the commission of any other felony, and within 2 years of the commission of a first degree misdemeanor.

III. Effect of Proposed Changes:

The bill amends s. 817.034, F.S., to add a specific statute of limitation for scheme to defraud cases. The bill provides that any criminal or civil action under the CFA may commence any time within 5 years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by 1 year.

The bill amends s. 921.0022, F.S., to move s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of $50,000 or more), from Level 6 in the offense severity ranking chart (36 points) to Level 7 (56 points). This has the effect of increasing the lowest permissible sentence for such offense. It is much more likely that a defendant will score a prison sentence at this Level.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

---

defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.

[10] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.

[11] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.

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:

On March 11, 2013, the Department of Corrections provided the following information on community supervision and prison admissions for the crimes addressed in this bill:

Felony Class	PRIMARY OFFENSE DESCRIPTION	SUPERVISION ADMISSION YEARS		
		FY0910	FY1011	FY1112
1st	ORG.FRAUD-$50,000 AND OVER	0	0	0
2nd	ORG.FRAUD-$20K BUT < $50K	58	52	62
3rd	ORG.FRAUD - UNDER $20,000	452	363	379

Felony Class	PRIMARY OFFENSE DESCRIPTION	PRISON ADMISSION YEARS		
		FY0910	FY1011	FY1112
1st	ORG.FRAUD-$50,000 AND OVER	0	0	1
2nd	ORG.FRAUD-$20K BUT < $50K	31	29	24
3rd	ORG.FRAUD - UNDER $20,000	103	83	74

The Criminal Justice Impact Conference met on March 21, 2013, and considered the potential prison bed impact of the bill. It is expected that there will be an insignificant impact if the bill passes and becomes law.

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 April 1, 2013:
Removes the provision requiring the statute of limitation to be suspended following the end of criminal or civil cases related to the CFS.

B. Amendments:

None.

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

419602

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 25 - 33
4 and insert:
5 otherwise applicable by more than 1 year.
6
7 ========== T I T L E A M E N D M E N T ==========
8 And the title is amended as follows:
9 Delete lines 5 - 6
10 and insert:
11 actions under the act; amending s. 921.0022,

By Senator Stargel

15-01373-13 20131404__

A bill to be entitled

An act relating to the Florida Communications Fraud Act; amending s. 817.034, F.S.; establishing a statute of limitations for criminal and civil causes of actions under the act; specifying circumstances that toll the statute of limitations; amending s. 921.0022, F.S.; increasing the severity of a violation of the act for purposes of the criminal punishment code; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (4) of section 817.034, Florida Statutes, to read:

817.034 Florida Communications Fraud Act.—

(4) OFFENSES.—

(d) Notwithstanding any other provision of law, a criminal action, civil action, or proceeding under this act may be commenced at any time within 5 years after the cause of action accrues; however, in a criminal action under this act, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state, but in no case shall this extend the period of limitation otherwise applicable by more than 1 year. If a criminal action, civil action, or other proceeding is brought or intervened in to punish, prevent, or restrain any violation of this act, the running of the period of limitation prescribed by this subsection with respect to any cause of action arising under

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15-01373-13 20131404__

this act which is based in whole or in part upon any matter complained of in any such action or proceeding shall be suspended during the pendency of such action or proceeding and for 2 years following its termination.

Section 2. Paragraphs (f) and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(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

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		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.

65

806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

66

810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.

67

810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.

68

812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.

69

812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.

70

812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.

71

812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.

72

812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

73

~~817.034(4)(a)1.~~	~~1st~~	~~Communications fraud, value greater than $50,000.~~

74

817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

75

825.102(1)	3rd	Abuse of an elderly person or disabled adult.

76

825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.

77

825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

78

825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $20,000.

79

827.03(2)(c)	3rd	Abuse of a child.

80

827.03(2)(d)	3rd	Neglect of a child.

81

827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.

82

836.05	2nd	Threats; extortion.

83

836.10	2nd	Written threats to kill or do bodily injury.

843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
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.
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.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
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.

790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
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.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
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.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
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.

817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
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 an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
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.
827.03(2)(b)	2nd	Neglect of a child causing great bodily

		harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or

		supervises criminal gang-related activity.
186		
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.
187		
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.
188		
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).
189		
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
190		
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
191		

893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
192		
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
193		
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
194		
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
195		
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
196		
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
197		
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
198		
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
199		
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.

200

896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.

201

896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.

202

943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.

203

943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

204

943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.

205

943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

206

943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

207

944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.

208

944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

209

944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

210

944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

211

985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.

212

985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

213

985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

214

215 Section 3. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: Organized Retail Theft

Bill Number: 1404 (if applicable)

Name: Andrew Fay

Amendment Barcode: _____ (if applicable)

Job Title: Assistant Attorney General

Address: The Plaza 07 (Street)

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

Phone: 850-245-0155

E-mail: _____

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

Representing: Attorney General

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)

April 11, 2013
Meeting Date

Topic: Communications Fraud Act

Bill Number: 1404 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: _____ *(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: [X] For [ ] Against [ ] Information

Representing: Florida Retail Federation

Appearing at request of Chair: [redacted] [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 1420

INTRODUCER: Health Policy Committee and Senator Sobel

SUBJECT: Mental Health Treatment

DATE: March 27, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Fav/CS**
2.	Cellon	Cannon	CJ	**Favorable**
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 1420 amends certain statutes that govern mental health issues of criminal defendants and juveniles charged with delinquent acts. Defendants whose competency to proceed is in question or found by a court to be lacking, are committed to the Department of Children and Family Services (DCF) for "competency training" in an effort to restore them to competency. If a defendant meets the definition of mental retardation or autism, the Agency for Persons with Disabilities (APD) generally serves their needs in this process. Defendants who are found not guilty by reason of insanity are likewise committed to the DCF.

The bill provides for the continuation of treatment with psychotherapeutic drugs, under limited circumstances, by the DCF for defendants and forensic clients that have been administered such treatment in a jail prior to relocation to a department facility.

The bill provides for the dismissal of charges against any defendant adjudicated mentally incompetent if he or she remains incompetent three (rather than five) years after the initial competency decision was made, unless the court believes that he or she will become competent in the future. If the defendant was committed in relation to an allegation of certain specified crimes, the period before charge dismissal remains five years.

The bill also provides additional details for how incompetency is determined in juvenile delinquency cases. It provides a definition for when a child is considered competent and specifies certain components which must be included in a competency evaluation report. Concerning competency evaluations related to mental retardation or autism, the bill requires the evaluator to provide a clinical opinion as to whether the child is competent to proceed with delinquency hearings.

The bill provides an effective date of July 1, 2013.

This bill amends sections 916.107, 916.13, 916.145, 916.15, and 985.19 of the Florida Statutes.

II. Present Situation:

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.[1] The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.[2] Specifically, defendants (and juveniles charged with having committed felony-level delinquent acts) must be able to appreciate the range and nature of the charges and penalties that may be imposed, and must be able to understand the adversarial nature of the legal process and disclose to counsel facts pertinent to the proceedings at issue. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.[3]

If a defendant is suspected of being incompetent, the court or counsel for the defendant or the state may file a motion for examination to have the defendant's cognitive state assessed. If the motion is well-founded the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing. If the defendant is found to be competent, the criminal proceeding resumes. If, however, the defendant is found to be incompetent to proceed, competency must be restored before the criminal proceeding may resume.[4]

Restoration of Competency

Competency restoration is designed to help defendants meaningfully participate in their own defense. The DCF has oversight of felony defendants who are found incompetent to proceed due to mental illness, while the APD is charged with oversight of felony defendants who are incompetent to proceed due to developmental disabilities.[5] Competency restoration training and mental health services are provided in four state forensic facilities, that have a total of 1,108 beds (two facilities are state-operated and two are operated under contract with a private provider).[6]

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[1] See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).
[2] *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P., Rule 8.095(d)(1), Fla.R.Juv.P.
[3] *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.
[4] Rule 3.210(b), 3.211, 3.212, Fla.R.Crim.P.; Rule 8.095(a)(1)-(6), Fla.R.Juv.P.
[5] Ch. 916, F.S.
[6] DCF Analysis of SB 1420 dated March 7, 2013. On file with Health Policy Committee staff.

The DCF served 2,531 adults who were committed for competency restoration services during fiscal year 2011-2012.[7]

The DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.[8] The DCF contracts with a provider who provides competency restoration training in both the community and secure residential settings. The DCF served a total of 405 incompetent to proceed children in FY 2011-12.[9]

If the court determines that a defendant is a danger to himself or others, it may involuntarily commit the defendant to a secure forensic facility.[10] Defendants may be placed on conditional release to receive competency restoration training in the community if the court finds they do not pose a risk to public safety.[11]

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.[12] 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.[13]

Qualifications of Competency Experts

Section 916.115 (1)(a), F.S., provides that experts appointed by the court to conduct competency evaluations shall, to the extent possible, have completed forensic evaluator training approved by the DCF and each shall be a psychiatrist, licensed psychologist, or physician. The DCF is required by s. 916.115 (1)(b), F.S., to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts. However, current law does not require attendance at a department-authorized training or training renewal.

In the juvenile system, the court appoints mental health experts to conduct competency evaluations although there does not appear to be a specific requirement in the juvenile competency statute that the expert be a psychiatrist, licensed psychologist, or physician as is the case in the adult system.[14] As in the adult system, the DCF provides the court a list of experts who have completed a department-approved training program but there is no statute that requires any attendance or on-going forensic training for the purpose of competency evaluation and reporting.[15] The APD conducts the evaluations and makes the reports to the court regarding juveniles who meet the definition of "retardation" or "autism."[16] Although there is a requirement

[7] *Id.*
[8] s. 985.19(4), F.S.
[9] DCF Analysis of SB 1420 dated March 7, 2013. On file with Health Policy Committee staff.
[10] s. 916.13, F.S.
[11] s. 916.17, F.S.
[12] Rule 3.212, Fla.R.Crim.P.
[13] *Id.*
[14] s. 985.19(1)(b), F.S.
[15] s. 985.19(1)(d), F.S.
[16] s. 985.19(1)(e), F.S.

in s. 916.301(2)(b)1., F.S., that the expert appointed to examine adult defendants be a psychologist, the juvenile statute does not make such a specification.

Hearing to Determine Restoration of Competency or Need for Continued Commitment

When the court adjudicates a defendant incompetent to proceed and the defendant is committed to the DCF to be restored to competency, or if the defendant has been found not guilty by reason of insanity and committed to the DCF, the defendant is returned to court periodically for a review and report on his or her condition.[17] Generally, a review is conducted:

- No later than six 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; or
- Upon counsel's Motion for Review having been granted.

Rules of Criminal and Juvenile Procedure require that a hearing be held within 30 days of the court's receiving the administrator's pre-hearing report.[18] There is no corresponding statutory time constraint on the court conducting a hearing.

The court also retains jurisdiction for purposes of dismissing charges if a defendant has not become competent within five years.[19]

Psychotropic Medication

Forensic clients of the DCF, which includes defendants who have been committed to the DCF for competency restoration or because they have been found not guilty by reason of insanity, must be treated with dignity and respect. The DCF, however, is responsible for providing treatment deemed necessary to fulfill its obligation under the statutes governing competency restoration and mental illness.

Forensic clients are, therefore, asked to give express and informed consent for treatment.[20] When treatment is refused, it may nonetheless be provided in an emergency situation for periods of up to 48 hours (excluding weekends and holidays, subject to review in 48-hour increments by a physician until a court rules) unless or until the DCF obtains a court order authorizing continued treatment.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 916.107, F.S., concerning administration of psychotherapeutic medications to forensic clients. If a client has been receiving psychotherapeutic medications in jail at the time

[17] 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.
[18] Rules 3.212 and 3.218, Fla.R.Crim.P.; Rule 8.095(a)(5), Fla.R.Juv.P. See also Rule 8.095(e), Fla.R.Juv.P.
[19] s. 916.145, 916.303, F.S. Regarding dismissal of charges of juvenile delinquency, see s. 985.19(5)(c), F.S.
[20] s. 916.107(3), F.S.
[21] *Id.*

of transfer to the forensic or civil facility and lacks informed decision-making capacity with respect to mental health treatment, the admitting physician at the facility may order continued administration of these medications if he or she judges that abrupt cessation could jeopardize the health or safety of the client during the period before acquisition of a court order for medication administration. To continue the psychotherapeutic medication, the facility administrator or his or her designee must petition the committing court or the local circuit court for an authorization order. This petition must be made within five business days after admission of the client. The jail physician must also provide a current therapeutic medication order for the client at the admitting physician's request or at the time of transfer to the facility.

The bill also makes some technical changes to s. 916.107(3)(a), F.S.

Section 2 amends s. 916.13, F.S., to require the court to hold a competency hearing within 30 days after receiving notification that any facility client adjudicated mentally incompetent no longer meets the criteria for continued commitment. The bill also makes some technical changes.

Section 3 amends s. 916.145, F.S., to state that charges against any defendant adjudicated mentally incompetent will be dismissed without prejudice, which allows for refiling the case, if he or she remains incompetent three (rather than five) years after the initial competency decision was made, unless the court believes that he or she will become competent in the future. If the defendant was committed in relation to an allegation of certain crimes, the period before charge dismissal is five years. Such crimes include arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

Section 4 amends s. 916.15, F.S., to require the court to hold a competency hearing within 30 days after receiving notification that any facility client adjudicated not guilty by reason of insanity no longer meets the criteria for continued commitment.

Section 5 amends s. 985.19, F.S., to change references to the Department of Children and Family Services to the Department of Children and Families. The bill also provides additional details for how incompetency is determined in juvenile delinquency cases. A child is considered competent to proceed if he or she has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and has a rational and factual understanding of the proceedings.[22]

A child's competency evaluation report must specifically state the basis for the determination of his or her mental condition and must also include written findings that:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;

[22] This definition is very similar to how competency and incompetency are described in s. 916.12(1), F.S., governing adults.

- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Assess the child's capacity to:
  - Appreciate the charges or allegations against him or her;
  - Appreciate the range and nature of possible penalties that may be imposed in proceedings against him or her, if applicable;
  - Understand the adversarial nature of the legal process;
  - Disclose to counsel facts pertinent to the proceedings at issue;
  - Display appropriate courtroom behavior; and
  - Testify relevantly.

The evaluation report must also include a summary of findings which presents the factual basis for the expert's clinical findings and opinions of the child's mental condition; this factual basis must be supported by the diagnostic criteria found in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association. The summary of findings must include:

- The day, month, year, and length of time of the face-to-face diagnostic clinical interview to determine the child's mental condition;
- A statement that identifies the DSM clinical name and associated diagnostic code for the specific mental disorder that forms the basis of the child's incompetency;
- A statement of how the child would benefit from competency restoration services in the community or in a secure residential treatment facility;
- An assessment of the probable duration of the treatment to restore competence and the probability that the child will attain competence to proceed in the foreseeable future; and
- A description of recommended treatment or education appropriate for the mental disorder.

If the evaluator finds the child to be incompetent to proceed to trial, he or she must report on the mental disorder that forms the basis of the incompetency.

The bill also changes the term "incompetency evaluations" to "competency evaluations" in this section.

Concerning competency evaluations related to mental retardation or autism, the bill requires the evaluator to provide a clinical opinion as to whether the child is competent to proceed with delinquency hearings.

Section 6 provides an effective date of 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:

Adults and children with mental illness will be evaluated and treated differently in the justice system. Some adults with mental illness may be released from facilities earlier.

C. Government Sector Impact:

The Office of the State Courts Administrator reports that the bill should significantly reduce the workload of the judiciary and the state court system. The bill's amendment to s. 916.145, F.S., allows for the dismissal of charges against nonviolent defendants found incompetent to proceed after 3 years instead of the current 5 years. The bill maintains the current 5 year period for alleged violent crimes specifically enumerated in the bill. The criminal courts have to monitor and hold status hearings for these defendants until their charges are dismissed or competency is restored. The majority of these defendants are non-violent and on conditional release in community placements. Reducing the period to 3 years would eliminate 2 years of monitoring and status hearings by the criminal courts. The amendments to current law requiring the courts to hold competency and commitment hearings within 30 days will have no impact because the courts are already required to do so pursuant to the Florida Rules of Criminal Procedure 3.212 and 3.218.[23] However, as it is difficult to accurately quantify any effect on judicial workload without data that incorporates changes made by the bill, any judicial workload impact in the future as a result of legislation that passes this session will be reflected in the Supreme Court's annual opinion *In re: Certification of Need for Additional Judges*.

The DCF reports no fiscal impact.[24]

VI. Technical Deficiencies:

The bill is entitled "an act relating to mental health treatment." However, since the bill could also be read to relate to the mental health *evaluation* of patients within the justice system, it may be subject to challenge as a single-subject violation.

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[23] Office of the State Courts Administrator, Analysis of CS/SB 1420, March 26, 2012. On file with Senate Criminal Justice Committee staff.
[24] DCF Analysis of SB 1420 dated March 7, 2013. On file with Senate Health Policy Committee staff.

VII. Related Issues:

Lines 52-70 of the bill, which amend s. 916.107, F.S., refer frequently to administration of psychotherapeutic medications to facility clients. However, ch. 916, F.S., provides no definition for "psychotherapeutic medications." This chapter does, however, provide a detailed definition for "psychotropic medications" in s. 916.12(5), F.S. Perhaps "psychotherapeutic medications" could be changed to "psychotropic medications" in the bill to create greater congruency with existing statute.

Lines 54-56 state that a client who has been receiving psychotherapeutic medications in jail and "lacks the capacity to make an informed decision regarding mental health treatment at the time of admission" may continue to receive psychotherapeutic medications upon court order. However, there is no provision in the bill as to who determines that the client lacks decision-making capacity or how this determination is made.

Lines 60-61 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situations under s. 916.107(3)(a)1., F.S.

The term "mental disorder" is found nowhere in ch. 985, F.S., but is found frequently in lines 208-255, which amend a section of this chapter. Perhaps this term could be changed to "mental condition" or "psychological or psychiatric disorder" to provide congruity with terms in existing statute.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on March 20, 2013:
The CS specifies the crimes for which the period before charge dismissal for a defendant adjudicated mentally incompetent is five years.

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 the Committee on Health Policy; and Senator Sobel

A bill to be entitled

An act relating to mental health treatment; amending s. 916.107, F.S.; authorizing forensic and civil facilities to order the continuation of psychotherapeutics for individuals receiving such medications in the jail before admission; amending s. 916.13, F.S.; providing timeframes within which competency hearings must be held; amending s. 916.145, F.S.; revising the time for dismissal of certain charges for defendants that remain incompetent to proceed to trial; amending s. 916.15, F.S.; providing a timeframe within which commitment hearings must be held; amending s. 985.19, F.S.; standardizing the protocols, procedures, diagnostic criteria, and information and findings that must be included in an expert's competency evaluation report; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following

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

circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client or others.

2. In a situation other than an emergency situation, the administrator or designee of the facility shall petition the court for an order authorizing necessary and essential treatment for the client.

a. If the client has been receiving psychotherapeutic medications at the jail at the time of transfer to the forensic or civil facility and lacks the capacity to make an informed decision regarding mental health treatment at the time of admission, the admitting physician may order continued administration of psychotherapeutic medications if, in the clinical judgment of the physician, abrupt cessation of

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59 psychotherapeutic medications could pose a risk to the health or
60 safety of the client during the time a court order to medicate
61 is pursued. The administrator or designee of the civil or
62 forensic facility shall, within 5 days after admission,
63 excluding weekends and legal holidays, petition the committing
64 court or the circuit court serving the county in which the
65 facility is located, at the option of the facility administrator
66 or designee, for an order authorizing the continued treatment of
67 a client. The jail physician shall provide a current
68 psychotherapeutic medication order at the time of transfer to
69 the forensic or civil facility or upon request of the admitting
70 physician after the client is evaluated.
71 b. The court order shall allow such treatment for up to ~~a~~
72 ~~period not to exceed~~ 90 days after ~~following~~ the date of the
73 entry of the order. Unless the court is notified in writing that
74 the client has provided express and informed consent in writing
75 or that the client has been discharged by the committing court,
76 the administrator or designee shall, before ~~prior to~~ the
77 expiration of the initial 90-day order, petition the court for
78 an order authorizing the continuation of treatment for another
79 90 days ~~90-day period~~. This procedure shall be repeated until
80 the client provides consent or is discharged by the committing
81 court.
82 3. At the hearing on the issue of whether the court should
83 enter an order authorizing treatment for which a client was
84 unable to or refused to give express and informed consent, the
85 court shall determine by clear and convincing evidence that the
86 client has mental illness, retardation, or autism, that the
87 treatment not consented to is essential to the care of the

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88 client, and that the treatment not consented to is not
89 experimental and does not present an unreasonable risk of
90 serious, hazardous, or irreversible side effects. In arriving at
91 the substitute judgment decision, the court must consider at
92 least the following factors:
93 a. The client's expressed preference regarding treatment;
94 b. The probability of adverse side effects;
95 c. The prognosis without treatment; and
96 d. The prognosis with treatment.
97
98 The hearing shall be as convenient to the client as may be
99 consistent with orderly procedure and shall be conducted in
100 physical settings not likely to be injurious to the client's
101 condition. The court may appoint a general or special magistrate
102 to preside at the hearing. The client or the client's guardian,
103 and the representative, shall be provided with a copy of the
104 petition and the date, time, and location of the hearing. The
105 client has the right to have an attorney represent him or her at
106 the hearing, and, if the client is indigent, the court shall
107 appoint the office of the public defender to represent the
108 client at the hearing. The client may testify or not, as he or
109 she chooses, and has the right to cross-examine witnesses and
110 may present his or her own witnesses.
111 Section 2. Subsection (2) of section 916.13, Florida
112 Statutes, is amended to read:
113 916.13 Involuntary commitment of defendant adjudicated
114 incompetent.—
115 (2) A defendant who has been charged with a felony and who
116 has been adjudicated incompetent to proceed due to mental

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117 illness, and who meets the criteria for involuntary commitment
118 ~~to the department~~ under ~~the provisions of~~ this chapter, may be
119 committed to the department, and the department shall retain and
120 treat the defendant.
121 (a) Within ~~No later than~~ 6 months after the date of
122 admission and at the end of any period of extended commitment,
123 or at any time the administrator or designee has ~~shall have~~
124 determined that the defendant has regained competency to proceed
125 or no longer meets the criteria for continued commitment, the
126 administrator or designee shall file a report with the court
127 pursuant to the applicable Florida Rules of Criminal Procedure.
128 (b) A competency hearing must be held within 30 days after
129 the court receives notification that the defendant is competent
130 to proceed or no longer meets the criteria for continued
131 commitment.
132 Section 3. Section 916.145, Florida Statutes, is amended to
133 read:
134 (Substantial rewording of section.
135 See s. 916.145, F.S., for present text.)
136 916.145 Dismissal of charges.—
137 (1) The charges against any defendant adjudicated
138 incompetent to proceed due to mental illness shall be dismissed
139 without prejudice to the state if the defendant remains
140 incompetent to proceed:
141 (a) 3 years after such determination; or
142 (b) 5 years after such determination if the charge related
143 to commitment is:
144 1. Arson;
145 2. Sexual Battery;

146 3. Robbery;
147 4. Kidnapping;
148 5. Aggravated child abuse;
149 6. Aggravated abuse of an elderly person or disabled adult;
150 7. Aggravated assault with a deadly weapon;
151 8. Murder;
152 9. Manslaughter;
153 10. Aggravated manslaughter of an elderly person or
154 disabled adult;
155 11. Aggravated manslaughter of a child;
156 12. Unlawful throwing, placing or discharging of a
157 destructive device or bomb;
158 13. Armed burglary;
159 14. Aggravated battery; or
160 15. Aggravated stalking.
161
162 Unless the court, in an order, specifies reasons for believing
163 that the defendant will become competent to proceed, and
164 specifies a reasonable time within which the defendant is
165 expected to become competent.
166 (2) Nothing in this section of law shall be construed to
167 prohibit the state from refiling dismissed charges, should the
168 defendant be declared to be competent to proceed in the future.
169 Section 4. Subsection (5) is added to section 916.15,
170 Florida Statutes, to read:
171 916.15 Involuntary commitment of defendant adjudicated not
172 guilty by reason of insanity.—
173 (5) The commitment hearing must be held within 30 days
174 after the court receives notification that the defendant no

175 longer meets the criteria for continued commitment.
176 Section 5. Subsection (1) of section 985.19, Florida
177 Statutes, is amended to read:
178 985.19 Incompetency in juvenile delinquency cases.—
179 (1) If, at any time prior to or during a delinquency case,
180 the court has reason to believe that the child named in the
181 petition may be incompetent to proceed with the hearing, the
182 court on its own motion may, or on the motion of the child's
183 attorney or state attorney must, stay all proceedings and order
184 an evaluation of the child's mental condition.
185 (a) Any motion questioning the child's competency to
186 proceed must be served upon the child's attorney, the state
187 attorney, the attorneys representing the Department of Juvenile
188 Justice, and the attorneys representing the Department of
189 Children and Families ~~Family Services~~. Thereafter, any motion,
190 notice of hearing, order, or other legal pleading relating to
191 the child's competency to proceed with the hearing must be
192 served upon the child's attorney, the state attorney, the
193 attorneys representing the Department of Juvenile Justice, and
194 the attorneys representing the Department of Children and
195 Families ~~Family Services~~.
196 (b) All determinations of competency must ~~shall~~ be made at
197 a hearing, with findings of fact based on an evaluation of the
198 child's mental condition made by at least ~~not less than~~ two but
199 not ~~nor~~ more than three experts appointed by the court. ~~The~~
200 ~~basis for the determination of incompetency must be specifically~~
201 ~~stated in the evaluation. In addition, a recommendation as to~~
202 ~~whether residential or nonresidential treatment or training is~~
203 ~~required must be included in the evaluation.~~ Experts appointed

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204 by the court to determine the mental condition of a child shall
205 be allowed reasonable fees for services rendered. State
206 employees may be paid expenses pursuant to s. 112.061. The fees
207 shall be taxed as costs in the case.
208 (c) A child is competent to proceed if the child has
209 sufficient present ability to consult with counsel with a
210 reasonable degree of rational understanding and the child has a
211 rational and factual understanding of the present proceedings.
212 The expert's competency evaluation report must specifically
213 state the basis for the determination of the child's mental
214 condition and must include written findings that:
215 1. Identify the specific matters referred for evaluation.
216 2. Identify the sources of information used by the expert.
217 3. Describe the procedures, techniques, and diagnostic
218 tests used in the examination to determine the basis of the
219 child's mental condition.
220 4. Address the child's capacity to:
221 a. Appreciate the charges or allegations against the child.
222 b. Appreciate the range and nature of possible penalties
223 that may be imposed in the proceedings against the child, if
224 applicable.
225 c. Understand the adversarial nature of the legal process.
226 d. Disclose to counsel facts pertinent to the proceedings
227 at issue.
228 e. Display appropriate courtroom behavior.
229 f. Testify relevantly.
230 5. Present the factual basis for the expert's clinical
231 findings and opinions of the child's mental condition. The
232 expert's factual basis of his or her clinical findings and

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233 opinions must be supported by the diagnostic criteria found in
234 the most recent edition of the Diagnostic and Statistical Manual
235 of Mental Disorders (DSM) published by the American Psychiatric
236 Association and must be presented in a separate section of the
237 report entitled "summary of findings." This section must
238 include:
239 a. The day, month, year, and length of time of the face-to-
240 face diagnostic clinical interview to determine the child's
241 mental condition.
242 b. A statement that identifies the DSM clinical name and
243 associated diagnostic code for the specific mental disorder that
244 forms the basis of the child's incompetency.
245 c. A statement of how the child would benefit from
246 competency restoration services in the community or in a secure
247 residential treatment facility.
248 d. An assessment of the probable duration of the treatment
249 to restore competence and the probability that the child will
250 attain competence to proceed in the foreseeable future.
251 e. A description of recommended treatment or education
252 appropriate for the mental disorder.
253 6. If the evaluator determines the child to be incompetent
254 to proceed to trial, the evaluator must report on the mental
255 disorder that forms the basis of the incompetency.
256 (d) ~~(c)~~ All court orders determining incompetency must
257 include specific written findings by the court as to the nature
258 of the incompetency and whether the child requires secure or
259 nonsecure treatment or training environment ~~environments~~.
260 (e) ~~(d)~~ For competency ~~incompetency~~ evaluations related to
261 mental illness, the Department of Children and Families ~~Family~~

262 ~~Services~~ shall maintain and annually provide the courts with a
263 list of available mental health professionals who have completed
264 a training program approved by the Department of Children and
265 Families ~~Family Services~~ to perform the evaluations.
266 (f) ~~(e)~~ For competency ~~incompetency~~ evaluations related to
267 mental retardation or autism, the court shall order the Agency
268 for Persons with Disabilities to examine the child to determine
269 if the child meets the definition of "retardation" or "autism"
270 in s. 393.063 and, provide a clinical opinion as to ~~if so~~,
271 whether the child is competent to proceed with delinquency
272 proceedings.
273 ~~(f) A child is competent to proceed if the child has~~
274 ~~sufficient present ability to consult with counsel with a~~
275 ~~reasonable degree of rational understanding and the child has a~~
276 ~~rational and factual understanding of the present proceedings.~~
277 ~~The report must address the child's capacity to:~~
278 ~~1. Appreciate the charges or allegations against the child.~~
279 ~~2. Appreciate the range and nature of possible penalties~~
280 ~~that may be imposed in the proceedings against the child, if~~
281 ~~applicable.~~
282 ~~3. Understand the adversarial nature of the legal process.~~
283 ~~4. Disclose to counsel facts pertinent to the proceedings~~
284 ~~at issue.~~
285 ~~5. Display appropriate courtroom behavior.~~
286 ~~6. Testify relevantly.~~
287 (g) Immediately upon the filing of the court order finding
288 a child incompetent to proceed, the clerk of the court shall
289 notify the Department of Children and Families ~~Family Services~~
290 and the Agency for Persons with Disabilities and fax or hand

291 deliver to the department and to the agency a referral packet
292 that includes, at a minimum, the court order, the charging
293 documents, the petition, and the court-appointed evaluator's
294 reports.
295 (h) After placement of the child in the appropriate
296 setting, the Department of Children and Families ~~Family Services~~
297 in consultation with the Agency for Persons with Disabilities,
298 as appropriate, must, within 30 days after placement of the
299 child, prepare and submit to the court a treatment or training
300 plan for the child's restoration of competency. A copy of the
301 plan must be served upon the child's attorney, the state
302 attorney, and the attorneys representing the Department of
303 Juvenile Justice.
304 Section 6. 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)

April 1, 2013
Meeting Date

Topic _____

Bill Number 1420 *(if applicable)*

Name Bob Dillinger

Amendment Barcode _____ *(if applicable)*

Job Title Public Defender

Address 14250 49th Street
Street

Clearwater FL 33762
City *State* *Zip*

Phone 727-464-6516

E-mail bdilling@wearethehope.org

Speaking: ☐ For ☐ Against ☑ Information

Representing Florida Public Defender Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1438

INTRODUCER: Senator Simpson

SUBJECT: Juvenile Restitution

DATE: March 22, 2013 REVISED:

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

I. Summary:

SB 1438 makes it mandatory for a juvenile court judge to order an adjudicated delinquent youth and his or her parent or guardian to make restitution in money or in kind to the victim. If the youth and parent or guardian are unable to pay in one lump-sum payment, the bill allows the court to set up a payment plan reflecting their ability to pay restitution. Furthermore, the bill deletes the provision absolving a parent or guardian of their restitution liability if the parent or guardian has made diligent and good faith efforts to prevent the youth from engaging in delinquent acts.

This bill substantially amends sections 985.437 and 985.513 of the Florida Statutes.

II. Present Situation:

It is currently discretionary whether a judge in juvenile court orders an adjudicated delinquent youth and his or her parent or guardian to make restitution to the victim.[1] The court can order restitution to be made in money, through a promissory note cosigned by the parent or guardian, or in kind for any damage or loss caused by the youth's offense in a reasonable amount or manner to be determined by the court.[2] The amount of restitution may not exceed an amount the

[1] Section 985.437, F.S.

[2] The court can establish the amount of restitution owed by the youth, but only at a restitution hearing and upon proper notice to the youth. *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). Moreover, it is a denial of due process not to afford a youth a formal hearing on the amount of restitution. *L.S. v. State*, 975 So.2d 554, 555 (Fla. 4th DCA 2008). *See also A.B. v. State*, 910 So.2d 415, 417 (Fla. 4th DCA 2005) (the trial court should have held a restitution hearing first addressing the youth's ability to pay and setting the restitution amount; failure to do so was reversible error.) Just as the court is required to give proper notice and opportunity to be heard before imposing a restitution order against a youth, it is also required to do so for a parent

youth and parent or guardian can reasonably be expected to pay or make.[3] The clerk of the circuit court serves as the receiving and dispensing agent for restitution under this section.[4]

If after a restitution hearing, the court finds that the parent or guardian has made diligent and good faith efforts to prevent the youth from engaging in delinquent acts, it can absolve the parent or guardian of any restitution liability under the statute.[5] The court may also retain jurisdiction over the youth and parent or guardian until the restitution order is satisfied or until the court orders otherwise, as provided in s. 985.0301, F.S.[6]

The statutory authority of the court to make a parent or guardian of an adjudicated delinquent youth responsible for restitution is also reiterated under s. 985.513, F.S.[7]

III. Effect of Proposed Changes:

This bill makes it mandatory for a juvenile court judge to order an adjudicated delinquent youth and his or her parent or guardian to make restitution in money or in kind to the victim.[8] If the youth and parent or guardian are unable to pay in one lump-sum payment, the bill allows the court to set up a payment plan reflecting their ability to pay restitution. Furthermore, the bill deletes the provision absolving a parent or guardian of their restitution liability if the parent or guardian has made diligent and good faith efforts to prevent the youth from engaging in delinquent acts.

Finally, the bill amends s. 985.513, F.S., conforming it to changes made in the bill, namely requiring the court to order the youth and parent or guardian to make restitution to the victim.

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or guardian. *S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing.)

[3] Section 985.437(2), F.S. Just as the court is required to consider the youth's ability to pay before ordering restitution, it must do the same when considering the parent or guardian's ability to pay restitution. *A.T. v. State*, 706 So.2d 109 (Fla. 2nd DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so.) *See also C.D.D. v. State*, 684 So.2d 866, 867 (Fla. 2nd DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order.)

[4] Section 985.437(3), F.S. A youth, parent or guardian must pay the office of the clerk an amount not exceeding the actual cost incurred by the clerk as a result of receiving and dispensing restitution payments. The clerk must notify the court if restitution is not made so the court can take appropriate action against the youth, parent, or guardian.

[5] Section 985.437(4), F.S.

[6] Section 985.437(5), F.S. Subsection 985.0301(5)(h), F.S., provides that the terms of the restitution order are subject to subsection 775.089(5), F.S. Subsection 775.089(5), F.S., states that a restitution order may be enforced in the same manner as a judgment in a civil action, meaning the amount owed becomes a lien on the real property of the youth or parent. Moreover, the court is not prohibited from providing a restitution order to a collection court or a private collection agency to collect unpaid restitution under s. 985.045(5), F.S.

[7] Section 985.513(1)(b), F.S. This section allows the court to order the parent or guardian to make restitution for any damage or loss caused by the youth's offense. In addition, it allows the court to require the parent or guardian to be responsible for any restitution ordered against the youth, as provided in s. 985.437, F.S.

[8] It appears that under the bill, a parent or guardian could be ordered to make restitution even when he or she is the victim of the offense.

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:

Adjudicated delinquent youth and their parents or guardians will be required to make restitution to victims in money or in kind for damages caused by the youth's offense under the bill. As a result, there exists a greater potential for victims to receive restitution.

C. Government Sector Impact:

To the extent there are more mandatory restitution hearings conducted as a result of the bill, there may also be an additional workload on the courts.

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.

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LEGISLATIVE ACTION

Senate	.	House
	.	
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	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (4), and subsection (2) and present subsection (4) of that section are amended, to read:

985.437 Restitution.—

(2)(a) The court shall ~~may~~ order the child and the child's parent or guardian to make restitution in money, through a promissory note cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in

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13 a reasonable amount or manner to be determined by the court.
14 When restitution is ordered by the court, the amount of
15 restitution may not exceed an amount the child and the parent or
16 guardian could reasonably be expected to pay or make. If the
17 child and the child's parent or guardian are unable to pay the
18 restitution in one lump-sum payment, the court may set up a
19 payment plan that reflects their ability to pay the restitution
20 amount.
21 (b) Notwithstanding paragraph (a), the court may not order
22 the child or the child's parent or guardian to make restitution
23 in money if the offense committed by the child is a first
24 nonviolent offense. A child who commits a second or subsequent
25 offense shall pay restitution in money as required under
26 paragraph (a)
27 ~~(4) A finding by the court, after a hearing, that the~~
28 ~~parent or guardian has made diligent and good faith efforts to~~
29 ~~prevent the child from engaging in delinquent acts absolves the~~
30 ~~parent or guardian of liability for restitution under this~~
31 ~~section~~.
32 Section 2. Subsection (1) of section 985.513, Florida
33 Statutes, is amended to read:
34 985.513 Powers of the court over parent or guardian at
35 disposition.—
36 (1) The court that has jurisdiction over an adjudicated
37 delinquent child may, by an order stating the facts upon which a
38 determination of a sanction and rehabilitative program was made
39 at the disposition hearing, ~~:~~
40 ~~(a)~~ order the child's parent or guardian, together with the
41 child, to render community service in a public service program

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42 or to participate in a community work project. In addition to
43 the sanctions imposed on the child, the court may order the
44 child's parent or guardian to perform community service if the
45 court finds that the parent or guardian did not make a diligent
46 and good faith effort to prevent the child from engaging in
47 delinquent acts.
48 ~~(b) Order the parent or guardian to make restitution in~~
49 ~~money or in kind for any damage or loss caused by the child's~~
50 ~~offense. The court may also require the child's parent or legal~~
51 ~~guardian to be responsible for any restitution ordered against~~
52 ~~the child, as provided under s. 985.437. The court shall~~
53 ~~determine a reasonable amount or manner of restitution, and~~
54 ~~payment shall be made to the clerk of the circuit court as~~
55 ~~provided in s. 985.437. The court may retain jurisdiction, as~~
56 ~~provided under s. 985.0301, over the child and the child's~~
57 ~~parent or legal guardian whom the court has ordered to pay~~
58 ~~restitution until the restitution order is satisfied or the~~
59 ~~court orders otherwise.~~
60 Section 3. This act shall take effect July 1, 2013.
61
62 ========== T I T L E A M E N D M E N T ==========
63 And the title is amended as follows:
64 Delete everything before the enacting clause
65 and insert:
66 A bill to be entitled
67 An act relating to restitution for juvenile offenses;
68 amending s. 985.437, F.S.; requiring a child's parent
69 or guardian, in addition to the child, to make
70 restitution for damage or loss caused by the child's

975030

71 offense; providing for payment plans in certain
72 circumstances; prohibiting a court from ordering a
73 child or his or her parent or guardian to make
74 restitution in money if the offense committed by the
75 child is his or her first nonviolent offense;
76 requiring a child or his or her parent or guardian to
77 pay restitution if the child commits a second or
78 subsequent offense; deleting provisions for absolving
79 the parent or guardian of liability for restitution in
80 certain circumstances; amending s. 985.513, F.S.;
81 removing duplicate language authorizing the court to
82 require a parent or guardian to be responsible for any
83 restitution ordered against the child; providing an
84 effective date.

By Senator Simpson

18-00995-13 20131438__

A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; providing for payment plans in certain circumstances; deleting provisions for absolving the parent or guardian of liability for restitution in certain circumstances; amending s. 985.513, 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:

Section 1. Present subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (4), and subsections (2) and (4) of that section are amended to read:

985.437 Restitution.—

(2) The court shall ~~may~~ order the child and the child's parent or guardian to make restitution in money, through a promissory note cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. If the child and the child's parent or guardian are unable to pay the restitution in one lump-sum payment, the court may set up a payment plan that reflects their ability to pay the restitution

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18-00995-13 20131438__

amount.

~~(4) A finding by the court, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts absolves the parent or guardian of liability for restitution under this section.~~

Section 2. Paragraph (b) of subsection (1) of section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing:

(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court shall ~~may~~ also require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437. The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437. The court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or the court orders otherwise.

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

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)

April 1, 2013
Meeting Date

Topic _____

Bill Number 1438 *(if applicable)*

Name Bob Dillinger

Amendment Barcode _____ *(if applicable)*

Job Title Public Defender

Address 14250 49th Street
Street

Clearwater FL 33762
City *State* *Zip*

Phone 727-464-6516

E-mail bdilling@wearethehope.org

Speaking: ☐ For ☐ Against ☑ Information

Representing Florida Public Defender 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)

4/1/2013
Meeting Date

Topic _____

Bill Number 1438 *(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

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 1734

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Public Records Exemption/Expunged Criminal History Records of Human Trafficking Victims

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/CS**
2.			GO	
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/SB 1734 which is linked to the passage of Senate Bill 1644, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by the Florida Department of Law Enforcement (FDLE) is confidential and exempt from public record requirements and cannot be disclosed to any person or entity except upon order of a court of competent jurisdiction.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

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

This bill substantially amends a nonexistent section of the Florida Statutes that is created by the linked bill, SB 1644.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

---

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act[10] requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.[11] It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.[12]

Public Record Exemption for Expunged Criminal History Records

A criminal history record of a minor or an adult that is ordered expunged must be physically destroyed by any criminal justice agency having custody of such record, except that the FDLE must retain criminal history records in all cases. Current law provides that a criminal history record ordered expunged that is retained by FDLE is confidential and exempt[13] from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution, and is not available to any person or entity except upon order of the court with jurisdiction.[14]

In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to specified entities for their respective licensing, access authorization, and employment purposes as well as to criminal justice agencies for their respective criminal justice purposes.[15] Disclosure of the existence of such record to unauthorized persons is a first degree misdemeanor.[16]

SB 1644 (Linked to this bill)

SB 1644 creates s. 943.0583, F.S., entitled "human trafficking victim expunction." The bill authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1., F.S., committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme. A "victim of human trafficking" is defined as a person subjected to coercion for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

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[10] Section 119.15, F.S.
[11] Section 119.15(3), F.S.
[12] Section 119.15(5)(b), F.S.
[13] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).
[14] Section 943.0585(4), F.S.
[15] Section 943.0585(4)(c), F.S.
[16] Id. A first degree misdemeanor is punishable by serving up to one year in county jail and/or paying a fine not exceeding $1,000. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

The bill, which is linked to the passage of Senate Bill 1644, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged and for information relating to the existence of such expunged criminal history record. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and cannot be disclosed to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

The bill also provides the following statement of public necessity as required by the Florida Constitution:[17]

> The Legislature finds that it is a public necessity that persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

Finally, the bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

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

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

[17] Article 1, Sec. 24(c), FLA. CONST.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to expunged criminal records of victims of human trafficking.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive impact on victims of human trafficking to the extent that they are able to get their criminal history records expunged under the bill.

C. Government Sector Impact:

According to the FDLE, there is no fiscal impact as a result of this bill.[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The First Amendment Foundation is neutral on this bill.

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 April 1, 2013:
Deletes the provision making information related to the existence of an expunged criminal history record that is provided under paragraph (8) (b) confidential and exempt.

B. Amendments:

None.

[18] FDLE Legislative Analysis for SB 1734, dated March 14, 2013, on file with the Senate Criminal Justice Committee.

377098

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (9) of section 943.0583, Florida
6 Statutes, is created to read:
7 943.0583 Human trafficking victim expunction.—
8 (9)(a) A criminal history record ordered expunged under
9 this section that is retained by the department is confidential
10 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
11 Constitution and shall not be disclosed to any person or entity
12 except upon order of a court of competent jurisdiction. A

377098

13 criminal justice agency may retain a notation indicating
14 compliance with an order to expunge.
15 (b) This subsection is subject to the Open Government
16 Sunset Review Act in accordance with s. 119.15 and shall stand
17 repealed on October 2, 2018, unless reviewed and saved from
18 repeal through reenactment by the Legislature.
19 Section 2. The Legislature finds that it is a public
20 necessity that persons who are victims of human trafficking and
21 who have been convicted of crimes committed at the behest of
22 their traffickers are themselves victims of crimes. Such victims
23 face barriers to employment and other life opportunities as long
24 as these criminal convictions remain on record and accessible to
25 potential employers and others. It is necessary that these
26 records be made confidential in order for human trafficking
27 victims to have the chance to rebuild their lives and reenter
28 society.
29 Section 3. This act shall take effect on the same date that
30 SB 1644 or similar legislation takes effect, if such legislation
31 is adopted in the same legislative session or an extension
32 thereof and becomes law.
33
34 ========== T I T L E A M E N D M E N T ==========
35 And the title is amended as follows:
36 Delete everything before the enacting clause
37 and insert:
38 A bill to be entitled
39 An act relating to public records; amending s.
40 943.0583, F.S.; providing an exemption from public
41 records requirements for criminal history records of

377098

42 victims of human trafficking expunged under s.
43 943.0583, F.S.; providing for future legislative
44 review and repeal of the exemption under the Open
45 Government Sunset Review Act; providing a statement of
46 public necessity; providing a contingent effective
47 date.

By Senator Flores

37-01689A-13 20131734__

A bill to be entitled

An act relating to public records; amending s. 943.0583, F.S.; providing an exemption from public records requirements for criminal history records of victims of human trafficking expunged under s. 943.0583, F.S., and information relating to the existence of such an expunged criminal history record that is provided in accordance with specified provisions; prohibiting violations relating to certain confidential information; providing criminal penalties; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) is added to section 943.0583, Florida Statutes, to read:

943.0583 Human trafficking victim expunction.—

(9)(a) A criminal history record ordered expunged under this section that is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall not be disclosed to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(b) Information relating to the existence of an expunged criminal history record that is provided in accordance with

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37-01689A-13 20131734__

paragraph (8)(b) is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (8)(b)1., 4., 5., 6., and 7. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity or contractor set forth in subparagraph (8)(b)1., subparagraph (8)(b)4., subparagraph (8)(b)5., subparagraph (8)(b)6., or subparagraph (8)(b)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) This subsection 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 persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to

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59 potential employers and others. It is necessary that these
60 records and information concerning these convictions be made
61 confidential in order for human trafficking victims to have the
62 chance to rebuild their lives and reenter society.
63 Section 3. This act shall take effect, on the same date
64 that SB _____ or similar legislation takes effect, if such
65 legislation is adopted in the same legislative session or an
66 extension thereof and becomes 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)

4 / 1 /2013
Meeting Date

Topic _____ Bill Number 1734 *(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

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utitlies, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Ethics and Elections
Health Policy
Regulated Industries

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

SENATOR ANITERE FLORES
37th District

April 1, 2013

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

Dear Chairman Evers,

I respectfully request that my Legislative Aide, Patricia Flor, present Senate Bill 1734, Public Records Exemption/Victims of Human Trafficking, to the Committee on Criminal Justice.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Anitere Flores

Anitere Flores

CC: Ms. Amanda Cannon, Staff Director, Committee on Criminal Justice
Ms. Sue Arnold, Committee Administrative Assistant, Committee on Criminal Justice

REPLY TO:
❒ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
❒ 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: SB 401 **Case:** **Type:**
Caption: BSenate Criminal Justice Committee **Judge:**

Started: 4/1/2013 12:42:09 PM
Ends: 4/1/2013 2:58:40 PM Length: 02:16:32

12:42:10 PM	Meeting to order
12:42:24 PM	Roll Call
12:43:12 PM	Tab 1 Crews, Michael D. (Tallahassee) - Secretary of Corrections
12:50:37 PM	Roll Call
12:51:46 PM	Tab 2 Jennings, John "Bill" W. Capital Collateral Regional Counsel - Middle Region
12:52:22 PM	Roll Call
12:52:54 PM	Tab 3 Dupree, Neal A. (Davie) Capital Collateral Regional Counsel - Southern Region
12:53:08 PM	Roll Call
12:53:48 PM	Tab 11 SB 1000 by Gibson-Regulation of Firearms
12:56:39 PM	Marion Hammer, NRA & Unified Sportsmen of Florida
12:58:13 PM	Roll Call
12:58:45 PM	Tab 8 CS/SB 874 by Regulated Industries/Galvano-Open Parties
1:00:23 PM	Roll Call
1:01:23 PM	Tab 16 SB1140 by Stargel-Drug Paraphernalia
1:03:12 PM	Roll Call
1:04:18 PM	Tab 22 SB 1404 by Stargel-Florida Communications Fraud Act
1:05:38 PM	Roll Call
1:06:29 PM	Tab 23 CS/SB 1420 by Health Policy/Sobel-Mental Health Treatment
1:07:22 PM	Bob Dillinger, Florida Public Defender Assoc.
1:08:22 PM	Roll Call
1:09:28 PM	Tab 6 CS/SB 496 by Judiciary/Dean-Marshal of the Supreme Court
1:10:40 PM	Brian Pitts, Justice-2-Jesus
1:11:53 PM	Roll Call
1:13:20 PM	Tab 15 SB1126 by Joyner-Unlawful Possession of the Personal Identification Information of Another Person
1:17:22 PM	Robert Ura, Hillsborough County Sheriff
1:18:39 PM	Brian Pitts, Justice-2-Jesus
1:19:46 PM	Roll Call
1:20:42 PM	Tab 10 CS/SB 964 by Children, Families, and Elder Affairs/Abruzzo-Termination of Parental Rights
1:21:34 PM	Roll Call
1:22:29 PM	Tab 19 SB1268 by Detert-Service of Process
1:25:08 PM	Keri Rayborn, Florida Sheriffs Association
1:26:58 PM	Roll Call
1:27:55 PM	Tab 5 CS/SB 454 by Education/Benacquisto-Florida College System Institution Police Officers
1:28:59 PM	Roll Call
1:29:46 PM	Roll Call
1:30:28 PM	Tab 25 SB 1734 by Flores-Public Records Victims of Human Trafficking
1:31:56 PM	Roll Call
1:32:44 PM	Tab 13 CS/SB 1110 by Transportation/Evers-Railroad Police Officers
1:34:39 PM	Roll Call
1:35:34 PM	Tab 4 SB 142 by Altman-Intellectual Disabilities
1:37:02 PM	Roll Call
1:38:15 PM	Tab 12 SB 1032 by Altman-Correctional Reentry Treatment Facilities
1:40:53 PM	Jeffery Roberts, Correctional Officer Sergeant
1:42:13 PM	Brian Pitts, Justice-2-Jesus
1:43:27 PM	Brian Pitts, Justice-2-Jesus
1:46:00 PM	Ron Silver, Teamsters
1:56:39 PM	Roll Call
1:57:28 PM	Tab 14 SB 1114 by Altman-Sex Offenses
2:00:14 PM	Robert Steinkraux, Police Officer, Port St. Lucie, FL
2:01:27 PM	Roll Call
2:02:13 PM	Tab 9 SB 890 by Braynon-False Personation

2:02:47 PM	Roll Call
2:04:25 PM	Tab 21 CS/SB 1372 by Judiciary/Bradley-Pretrial Detention
2:05:05 PM	Brian Pitts, Justice-2-Jesus
2:07:08 PM	Roll Call
2:07:42 PM	Tab 17 SB 1162 by Bradley-Mandatory Reports of Child Abuse
2:08:41 PM	Roll Call
2:09:35 PM	Tab 18 SB 1216 by Bradley-Wage Theft
2:14:10 PM	Tab 18 SB 1216 by Bradley-Wage Theft
2:14:10 PM	Roll Call on amendment 6682
2:28:32 PM	Samantha Padgett, General Counsel, Florida Retail Federation
2:31:06 PM	Marty Cassini, Broward County
2:35:37 PM	Brian Pitts, Justice-2-Jesus
2:39:24 PM	Mark Sexton, The Alachua County Commission
2:42:28 PM	Lisa Hurley, Florida Association of Counties
2:43:16 PM	Brenda Roman, 3 FSU Law Students
2:50:37 PM	Gail Marie Perry, Chair Communications Workers of America
2:52:10 PM	Dwight Mattingly, Hobe Sound, FL
2:54:33 PM	Larry Kidd, Electrician, Orlando, FL
2:57:42 PM	Roll Call
2:58:18 PM	Roll Call
2:58:20 PM	Meeting Adjourned

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHRISTOPHER L. SMITH
Democratic Leader
31st District

COMMITTEES:
Criminal Justice, *Vice Chair*
Rules, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

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

JOINT COMMITTEE:
Joint Legislative Budget Commission

April 1, 2013

The Honorable Senator Greg Evers, Chair
Senate Committee on Criminal Justice
308 Senate office Building
Tallahassee Florida ,32399-0001

Dear Senator Evers

Please excuse Senator Christopher L. Smith from Committee on Criminal Justice that will be held on April 1, 2013 at 12:15 PM. The Senator flight will not get him back in Tallahassee in time to attend the meeting.

Thank you in advance for your consideration

Sincerely

Diane Randolph
Legislative Assistant to
Leader Chris Smith
District 31

REPLY TO:
❒ 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
❒ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore