

**CS/SB 94** by **JU, Margolis**; (Identical to CS/H 0039) Jury Composition

**CS/SB 188** by **ED, Hukill (CO-INTRODUCERS) Negron, Bradley, Simpson, Flores, Brandes, Stargel, Montford**; (Identical to CS/H 0195) Education Data Privacy

**CS/SB 364** by **CU, Brandes**; (Similar to CS/H 0641) Computer Crimes

269740 A S RCS CJ, Bradley Delete L.176 - 185: 02/17 06:49 PM

**SB 366** by **Brandes**; (Similar to CS/H 0643) Public Records/Trade Secrets/Computers

**CS/SB 408** by **HP, Braynon (CO-INTRODUCERS) Sobel**; (Similar to H 0491) Infectious Disease Elimination Pilot Program

**SB 434** by **Ring**; (Identical to H 4015) Lewd and Lascivious Behavior

**SB 532** by **Simmons**; (Similar to H 0475) Disclosure of Sexually Explicit Images

459030 A S RCS CJ, Simmons Delete L.51 - 56: 02/17 06:49 PM

**CS/SB 590** by **BI, Richter**; (Similar to CS/H 0623) Money Services Businesses

594286 A S RCS CJ, Simmons Delete L.39 - 40: 02/17 06:49 PM

**SB 700** by **Bradley (CO-INTRODUCERS) Detert**; (Similar to H 7055) Department of Juvenile Justice

**SPB 7044** by **CJ**; Public Assistance Fraud

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

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

**MEETING DATE:** Monday, February 17, 2014  
**TIME:** 4:00 —6:00 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	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 94</b> Judiciary / Margolis (Identical CS/H 39)	Jury Composition; Requiring a 12-member jury for life felony cases, etc.  JU     02/04/2014 Fav/CS CJ     02/17/2014 Favorable AP RC	Favorable Yeas 5 Nays 1
2	<b>CS/SB 188</b> Education / Hukill (Identical CS/H 195, Compare S 232)	Education Data Privacy; Providing for annual notice to K-12 students and parents of rights relating to education records; providing limitations on the collection of information and the disclosure of confidential and exempt student records; revising provisions relating to the submission of student social security numbers and the assignment of student identification numbers; requiring the Department of Education to establish a process for assigning student identification numbers, etc.  ED     02/04/2014 Fav/CS CJ     02/17/2014 Favorable JU	Favorable Yeas 5 Nays 1
3	<b>CS/SB 364</b> Communications, Energy, and Public Utilities / Brandes (Similar CS/H 641, Compare CS/H 643, Link S 366)	Computer Crimes; Providing that a person who willfully, knowingly, and without authorization accesses a computer network or electronic device, disrupts the ability to transmit data to or from a computer network or electronic device, damages a computer network or electronic device, or engages in the audio or video surveillance of an individual without the individual's knowledge by accessing a computer network or electronic device commits an offense against the users of computer networks and electronic devices, etc.  CU     02/04/2014 Fav/CS CJ     02/17/2014 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, February 17, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 366</b> Brandes (Similar CS/H 643, Compare CS/H 641, Link CS/S 364)	Public Records/Trade Secrets/Computers; Amending an exemption from public records requirements for data, programs, and supporting documentation that are trade secrets residing or existing internal or external to a computer, computer system, or computer network; expanding the exemption to include such trade secret information residing or existing internal or external to an electronic device; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CU 02/04/2014 Favorable CJ 02/17/2014 Favorable GO RC	Favorable Yeas 6 Nays 0
5	<b>CS/SB 408</b> Health Policy / Braynon (Similar H 491)	Infectious Disease Elimination Pilot Program; Creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; requiring the Department of Health to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted; prohibiting the collection of participant identifying information, etc.  HP 02/04/2014 Fav/CS CJ 02/17/2014 Favorable RC	Favorable Yeas 6 Nays 0
6	<b>SB 434</b> Ring (Identical H 4015)	Lewd and Lascivious Behavior; Repealing a provision relating to a prohibition on lewd and lascivious behavior, including a prohibition on lewd and lascivious association and cohabitation together by a man and woman who are not married to each other, etc.  CJ 02/17/2014 Favorable JU RC	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, February 17, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 532</b> Simmons (Similar H 475)	Disclosure of Sexually Explicit Images; Prohibiting an individual from disclosing a sexually explicit image of an identifiable person with the intent to harass such person if the individual knows or should have known such person did not consent to the disclosure; requiring a court to order that a person convicted of such offense be prohibited from having contact with the victim; providing criminal penalties for a violation of such order; providing that criminal penalties for certain offenses run consecutively with a sentence imposed for a violation of specified provisions, etc.  CJ 02/17/2014 Fav/CS JU	Fav/CS Yeas 6 Nays 0
8	<b>CS/SB 590</b> Banking and Insurance / Richter (Similar CS/H 623)	Money Services Businesses; Providing that failing to provide certain information relating to a check cashing transaction is a felony; authorizing the Office of Financial Regulation to summarily suspend a license if criminal charges are filed against certain persons or such persons are arrested for certain offenses; providing that a deferred presentment transaction conducted by an unauthorized person is void, etc.  BI 02/04/2014 Fav/CS CJ 02/17/2014 Fav/CS	Fav/CS Yeas 6 Nays 0
9	<b>SB 700</b> Bradley (Similar H 7055)	Department of Juvenile Justice; Allowing a child who has been detained to be transferred to the detention center or facility in the circuit in which the child resides or will reside at the time of detention; requiring the court to hold a hearing if a child is charged with direct contempt of court and to afford the child due process at such hearing; providing goals for the department's prevention services; prohibiting an employee from willfully and maliciously neglecting a juvenile offender, etc.  CJ 02/17/2014 Favorable JU ACJ AP	Favorable Yeas 6 Nays 0

Consideration of proposed committee bill:

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, February 17, 2014, 4:00 —6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>SPB 7044</b>	Public Assistance Fraud; Providing enhanced criminal penalties if the value of public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value exceeding specified amounts; limiting to a specified period the use of temporary cash assistance benefits out of state; requiring that a parent or caretaker relative who has been disqualified due to fraud have a protective payee designated to receive temporary cash assistance benefits for eligible children, etc.	Submitted as Committee Bill Yeas 6 Nays 0

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 94

INTRODUCER: Judiciary Committee and Senator Margolis

SUBJECT: Jury Composition

DATE: February 11, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 94 increases from six to twelve persons the number of jurors required in life-felony cases. Currently, only capital cases require twelve-member juries. Juries for other cases will continue to be six-person juries.

**II. Present Situation:**

**Jury Pools**

Jurors are selected from driver's license rolls maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).<sup>1</sup> To serve as a juror, a person must be 18 years old or older, a United States citizen, and a Florida resident. People without driver's licenses are also eligible for juror service if they have an identification card from the DHSMV or execute an affidavit for service.<sup>2</sup>

**The Number of Jurors Required in Felony Cases**

Section 913.10, F.S., requires six-person juries to preside in most criminal cases, and 12-person juries in capital cases.

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<sup>1</sup> Section 40.01, F.S.

<sup>2</sup> Section 40.011(3) and (4), F.S.

Many states require 12-member juries in all felony cases.<sup>3</sup> Arizona requires a 12-member jury if the prosecution seeks a sentence of 30 years or longer.<sup>4</sup> Indiana requires 12-member juries for certain felonies or enhanced penalty charges.<sup>5</sup> Louisiana requires 12-member juries where punishment involves confinement at hard labor.<sup>6</sup> New Jersey requires 12-member juries in all criminal cases.<sup>7</sup>

### **Life Felonies**

Life felonies are generally treated as reclassifications of other offenses from first degree felonies to life felonies or as enhanced penalties for crimes with aggravating circumstances.<sup>8</sup> Life felonies are punishable by life imprisonment<sup>9</sup> and \$15,000 in fines.<sup>10</sup>

### **Jury Selection**

During jury selection in criminal cases, the state and the defense are each able to remove potential jurors from serving as jury members for a particular case. To remove a juror, counsel must notify the court that he or she is challenging the service of an individual juror.

Section 913.03, F.S., establishes grounds for challenges for cause of individual jurors, which are:

- The juror does not meet qualifications required by law;
- The juror is not of sound mind or suffers from a physical condition that renders him or her incapable of performing duties required of a juror;
- The juror has a state of mind or conscientious beliefs that preclude him or her of reaching a finding of guilt or innocence unless the court establishes that the person can render an impartial verdict based on the evidence;

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<sup>3</sup> These include Alabama, Alaska, Arkansas, California, Colorado, Delaware, the District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Bureau of Justice Statistics, U.S. Dept. of Justice, *State Court Organization 2004* (p. 233-236).

<sup>4</sup> *Id.* at 236, FN 1.

<sup>5</sup> *Id.* at 236, FN 13.

<sup>6</sup> *Id.* at 236, FN 19.

<sup>7</sup> *Id.* at 237, FN 27.

<sup>8</sup> Offenses reclassified from a first degree felony to a life felony include: an offense in which the use of a weapon or firearm is an essential element and during the commission of the felony the person carries, displays, uses, threatens to use, or attempts to use the weapon or firearm or commits an aggravated battery (s. 775.087(1)(a), F.S.); a person who without consent takes a firearm from a law enforcement officer lawfully engaged in his or her duties and commits any other crime involving the firearm (s. 775.0875(2)(a)1., F.S.); and a person who commits a gang-related offense punishable by a first degree felony (s. 874.04(2)(c), F.S.). Additionally, a person who kidnaps a child under the age of 13 and commits aggravated child abuse, sexual battery, lewd or lascivious conduct, prostitution, or child exploitation on the child commits a life felony (s. 787.01(3)(a), F.S.); and a person who commits human trafficking for commercial sexual activity of a child under the age of 15 commits a life felony (s. 787.06(3)(h), F.S.).

<sup>9</sup> Section 775.082(3)(a)3., F.S.

<sup>10</sup> Section 775.083(1)(a), F.S.

- The juror has certain ties to the case, such as serving on the grand jury that returned an indictment; serving on a former jury trying that defendant in the same case or another person for the same offense charged; or serving as a juror in a civil action related to the criminal charge;
- The juror is an adverse party in a civil action;
- The juror is related by blood or marriage within the third degree to parties in the case;
- The juror served as a state or defense witness at the preliminary hearing or before the grand jury or is going to be a witness for either party at trial; or
- The juror is a surety on the defendant's bail bond.

Either party may request an unlimited number of the removal of jurors based on challenges for cause. Peremptory challenges, or challenges for other than cause, however, are limited to:

- Ten challenges, if the offense is punishable by death or life imprisonment.
- Six challenges, if the offense is punishable by more than 12 months imprisonment but not death or life.
- Three challenges for all other offenses.<sup>11</sup>

The Equal Protection Clause of the United State Constitution prohibits peremptory challenges of a juror for the sole purpose of excluding a person from service based on the race of the juror. The court has long considered this practice of exclusion an impermissible denial of a citizen's honor and privilege of serving on a jury.<sup>12</sup> Either party may challenge a peremptory strike on the basis of the race of the juror. Through a process known as a *Batson* challenge, once counsel challenges opposing counsel's strike of a juror, opposing counsel must offer a race-neutral reason for the strike.<sup>13</sup>

The specific process for a *Batson* challenge first places the burden on the opponent of the peremptory challenge to make a prima facie showing of race discrimination. The burden of production then shifts to the proponent of the strike to offer a race-neutral explanation, after which the trial court must determine which side has met their burden.<sup>14</sup>

Although the *Batson* case involved a black defendant challenging the striking of four black persons which resulted in an all-white jury, subsequent courts have extended the *Batson* Court's holding to removal of potential jurors based on other ethnicities.<sup>15</sup> To establish a prima facie showing, the racial discrimination alleged must be of a cognizable class, in which the group is "objectively discernible from the rest of the community."<sup>16</sup>

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<sup>11</sup> Section 913.08(1), F.S.

<sup>12</sup> *Challenge to Prospective Jurors*, 47 AM. JUR. 2D Jury Section 213; In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Court, in citing an 1880 Supreme Court case, opined "More than a century ago, the court decided that the State denies a black defendant equal protection from which members of his race have been purposefully excluded." *Id.* at 85.

<sup>13</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986).

<sup>14</sup> *Id.* at 93-94.

<sup>15</sup> *State v. Alen*, 616 So. 2d 452, 454 (Fla. 1993).

<sup>16</sup> *Id.* at 454. In this case, the Court ruled that the state impermissibly struck a Hispanic juror as the state failed to show an absence of pretext when challenged. *Id.* at 456.

### III. Effect of Proposed Changes:

This bill increases from six to twelve persons the number of jurors required in life-felony cases. Currently, only capital cases require twelve-member juries. Juries for other cases will continue to be six-person juries. Increasing the number of jurors from six to twelve members in a life felony case may increase the number of hung juries, or juries returning less than a unanimous verdict in life-felony cases.<sup>17</sup> This bill does not change court rules requiring a unanimous verdict in criminal trials.

The bill takes effect July 1, 2014.

### 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 Association of Court Clerks and Comptrollers (Clerks) indicates a fiscal impact related to the increase in jury size for life felony cases. According to the Association, this bill will add \$0.7 million in annual recurring costs to the clerks of court. Thus, the bill will increase the clerks' annual recurring costs to \$11.8 million from \$11.1 million. The clerks based their assumption on 12-member juries costing double what six-person juries cost. The Supreme Court, in studying the issue of standards for jury panel sizes, recommends a large number of potential jurors to be summoned for a 12-person jury (40 jurors), in contrast to a county court trial (14 jurors). Based on the Supreme Court's

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<sup>17</sup> Unanimous verdicts are required in all criminal cases. The Florida Rules of Criminal Procedure provide: "No verdict may be rendered unless all of the trial jurors concur in it." Fla. R. Crim. P. 3.440.

recommendation that more jurors be summoned for 12-person juries than six-person juries, the Clerks consider their estimate to be conservative.<sup>18</sup>

Funding court facilities is a responsibility of counties under Section 14 (c), Art. V, of the State Constitution. To the extent that existing facilities are insufficient to meet the requirements imposed by this bill, counties will have additional facility expenses.

The Office of State Courts Administrator indicates that the bill will result in an unquantifiable fiscal impact on judicial workload, due to the unavailability of data needed to accurately establish an impact.<sup>19</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 913.10 of the Florida Statutes.

**IX. 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 February 4, 2014:**

The committee substitute removes language from the bill which required the composition of a jury to reflect the demographics of the county in which a case is heard.

**B. Amendments:**

None.

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

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<sup>18</sup> Clerks of the Court, *Fiscal Impact Statement for SB 94*.

<sup>19</sup> Office of the State Courts Administrator, *2014 Judicial Impact Statement* (January 31, 2014) (on file with the Senate Committee on Judiciary).

By the Committee on Judiciary; and Senator Margolis

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A bill to be entitled

An act relating to jury composition; amending s.  
913.10, F.S.; requiring a 12-member jury for life  
felony cases; providing an effective date.

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

Section 1. Section 913.10, Florida Statutes, is amended to  
read:

913.10 Number of jurors.—Twelve persons shall constitute a  
jury to try all capital and life felony cases, and six persons  
shall constitute a jury to try all other criminal cases.

Section 2. This act shall take effect July 1, 2014.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Criminal Justice Committee

**Subject:** Committee Agenda Request

**Date:** February 5, 2014

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I respectfully request that Committee Substitute for **Senate Bill #94**, relating to 12-member juries for life felony trials, be placed on the:

next committee agenda.



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Senator Gwen Margolis  
Florida Senate, District 35

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2014

*Meeting Date*

Topic Jury Size

Name Honorable Bob Dillinger

Job Title Public Defender, 6th Judicial Circuit

Address 14250 49th Street North

*Street*

Clearwater

*City*

Florida

*State*

33762

*Zip*

Bill Number 94

*(if applicable)*

Amendment Barcode \_\_\_\_\_

*(if applicable)*

Phone 727.464.6516

E-mail ddilling@co.pinellas.fl.us

Speaking:  For  Against  Information

Representing Florida Public Defender Association, 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.**

**APPEARANCE RECORD**

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

February 17, 2014*Meeting Date*Topic 12-Person JuryBill Number SB-94*(if applicable)*Name Alisa Smith

Amendment Barcode \_\_\_\_\_

*(if applicable)*Job Title Associate ProfessorAddress 401 West Kennedy Blvd.Phone 813-253-3333*Street*TampaFL33606E-mail alisa.smith@ut.edu*City**State**Zip*Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  NoLobbyist 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)

2/17/14

Meeting Date

Topic

Jura Composition

Bill Number

CS/SB 94

(if applicable)

Name

Buddy JACOBS

Amendment Barcode

(if applicable)

Job Title

General Counsel Fla. Prosecuting Attys Assoc.

Address

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E-mail

Speaking:

For

Against

Information

Representing

State Attorneys of Fla.

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.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 188

INTRODUCER: Education Committee and Senator Hukill and others

SUBJECT: Education Data Privacy

DATE: February 11, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hand</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 188 tightens state and local requirements to emphasize the rights of students and parents, and bolster the privacy of student education records. The bill specifically:

- Strengthens existing local requirements to emphasize the rights of students and parents;
- Limits the collection of certain student, parent, and sibling information by entities that are part of, or perform services for, Florida's public education system;
- Reaffirms the prohibition on disclosing confidential and exempt education records by entities that are part of, or perform services for, Florida's public education system, unless the disclosure is authorized by law, and
- Requires governing boards, in a public meeting, to identify which student education records the board intends to include as publicly available student directory information; and
- Requires school districts to transition from using student social security numbers to using a unique Florida student identification number.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Privacy of Student Education Records

The privacy of student education records is established by a comprehensive system of federal and state laws. This system ensures that student education records at the public school district, college, university, and state level are accessible by students and parents, while also safeguarding the privacy of student education records.

The Family Educational Rights and Privacy Act (FERPA) is a federal law that applies to educational agencies or institutions that receive United States Department of Education (U.S. DOE) program funds.<sup>1</sup> The purpose of FERPA is two-fold: to ensure that students and parents can access the student's education records,<sup>2</sup> and to protect the privacy rights of students and parents by limiting the transferability of the student's education records without student or parent consent.<sup>3</sup> Compliance with FERPA is a condition for receiving federal funds.<sup>4</sup>

FERPA ensures that public school districts, colleges, universities, and state educational agencies protect student or parent rights and do not disclose student education records without student or parent consent, unless authorized by FERPA.

Florida has codified FERPA in state law. Additionally, as explained herein, Florida has also generally utilized state law to build upon and strengthen FERPA's provisions.<sup>5</sup>

#### *Parent or Student Rights*

FERPA obligates school districts, colleges, universities, and state educational agencies to ensure that students or parents enjoy their rights to:

- Inspect, review, and contest the student's educational records;<sup>6</sup> and

<sup>1</sup> 20 U.S.C., s. 1232g and 34 C.F.R. 99.1.

<sup>2</sup> The phrase "student education records," as used herein, encompasses two intertwined categories of student information – "education records" and "personally identifiable information." FERPA prohibits funds from being made available under any applicable program to any educational agency or institution (i.e., any public or private agency or institution which is the recipient of funds under any applicable program) that has a policy or practice of: (1) "permitting the release of education records (or personally identifiable information contained therein...)," or (2) "releasing or providing access to, any personally identifiable information in education records..." unless otherwise permitted by FERPA. 20 U.S.C. 1232g(b)(1) & (2). The term "education records" means those records, files, documents, and other materials which contain information directly related to a student, and are maintained by an educational agency or institution. 20 U.S.C. 1232g(b)(4) and *Owasso Independent School Dist. v. Falvo*, 534 U.S. 426 (2002) (FERPA implies that education records are institutional records kept by a single central custodian). "Personally identifiable information" is essentially information that would allow a reasonable person in the school community to identify the student with reasonable certainty. *See* 34 C.F.R. 99.3

<sup>3</sup> 73 FR 74831 (December 9, 2008). "As such, FERPA is not an open records statute or part of an open records system." *Id.*

<sup>4</sup> 20 U.S.C. 1232g(a)(1) and 34 C.F.R. 99.67.

<sup>5</sup> Section 1002.22, F.S. Florida law states that a student's education records, as defined in FERPA and the federal regulations issued pursuant thereto, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, Fla. Const. *See* Sections 1002.221(1) and 1006.52(1), F.S. In light of FERPA and the federal regulations and preamble issued thereto (see footnote 2), Florida's public record exemption encompasses both "education records" (i.e., institutional records) and the subset of "personally identifiable information" (i.e., information that identifies a student, regardless of format). *See* 20 U.S.C. 1232g, 34 C.F.R. Part 99, and ss. 1002.221 and 1006.52, F.S.

<sup>6</sup> 34 C.F.R. 99.5, 34 C.F.R. 99.10, 34 C.F.R. 99.12, and 34 C.F.R. 99.20-99.22.

- Authorize the disclosure of student education records by written consent.<sup>7</sup>

Florida law codifies FERPA into state law, further ensuring the responsibility of school districts, colleges, universities, and state educational agencies to guard these student and parent rights.<sup>8</sup> However, there are differences between FERPA and state law. For example:

- FERPA requires school districts, colleges, and universities to annually notify students or parents of their rights pertaining to educational records.<sup>9</sup> Florida law does not specifically identify how frequently the notice is to be provided to students or parents.<sup>10</sup>
- FERPA allows a parent or student to file a written complaint with U.S. DOE, but does not explicitly authorize students or parents to file a lawsuit to protect their rights.<sup>11</sup> Florida law authorizes a student or parent to file a lawsuit seeking an injunction to protect their rights. Additionally, Florida law allows attorney's fees and court costs to be awarded if the rights "are vindicated."<sup>12</sup>

#### *Authorized Disclosure of Student Education Records*

FERPA authorizes school districts, colleges, and universities<sup>13</sup> to disclose student education records<sup>14</sup> without consent of the student or parent if the disclosure meets limited conditions.<sup>15</sup> Examples of conditions include, but are not limited to, disclosure of student education records to:

- Other school officials within the school or school district determined to have a legitimate educational interest;<sup>16</sup>
- Schools to which a student is transferring;<sup>17</sup>
- A contractor, consultant, or other party to whom an agency has outsourced institutional services or functions;<sup>18</sup> and
- Organizations conducting studies for, or on behalf of, school districts, colleges, or universities to: develop, validate or administer predicative tests; administer student aid programs; or improve instruction.<sup>19</sup>

<sup>7</sup> 34 C.F.R. 99.30.

<sup>8</sup> Section 1002.22(2), F.S.

<sup>9</sup> 20 U.S.C. 1232g(e) and 34 C.F.R. 99.7.

<sup>10</sup> Section 1002.22(2)(e), F.S.

<sup>11</sup> 34 C.F.R. 99.63 (*see* 34 C.F.R. 99.60-99.67 for the enforcement procedures in general). Enforcement action may include withholding payments or terminating program eligibility. 34 C.F.R. 99.67(a) and *Gonzaga University v. Doe*, 536 U.S. 273, 290 (2002).

<sup>12</sup> Section 1002.22(4), F.S.

<sup>13</sup> FERPA uses the term "educational agencies or institutions," which refers to local education agencies (i.e., school districts), elementary and secondary schools, postsecondary institutions (i.e., colleges and universities), and schools operated by the United States Department of Interior Bureau of Indian Education. 76 F.R. 75606 (Dec. 2, 2011). The term does not generally include a state education agency (i.e., the Florida Department of Education). *Id.*

<sup>14</sup> "Education records" means those records that are directly related to a student, and maintained by an educational agency or institution or by a party acting for the educational agency or institution. 34 C.F.R. 99.3.

<sup>15</sup> 20 U.S.C. s. 1232g(b)(1) and (2) and 34 C.F.R. 99.30(a).

<sup>16</sup> 20 U.S.C. s. 1232g(b)(1)(A) and 34 C.F.R. 99.31(a)(1)(i)(A).

<sup>17</sup> 20 U.S.C. s. 1232g(b)(1)(B) and 34 C.F.R. 99.31(a)(2).

<sup>18</sup> 20 U.S.C. s. 1232g(b)(1)(A) and 34 C.F.R. 99.30(a)(1)(i)(B).

<sup>19</sup> 20 U.S.C. s. 1232g(b)(1)(F) and 34 C.F.R. 99.31(a)(6).

Florida law provides that student education records are confidential and exempt from disclosure, and may not be released without student or parent consent, except as permitted by FERPA.<sup>20</sup>

For a student attending a public school in Florida, the student's education records are created by the school or school district.<sup>21</sup> Thus, the student's education records may initially be disclosed by the school district (as authorized by FERPA and state law) to a state educational agency — which in Florida is generally the Florida Department of Education (DOE). DOE, as authorized by FERPA and state law, may “rediscover” student education records in the same manner that an initial disclosure is authorized.<sup>22</sup>

### *Directory Information*

FERPA defines “directory information” as “information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.”<sup>23</sup> Examples of directory information are: the student's name, address, telephone listing, e-mail address, photograph, date and place of birth, grade level, dates of attendance, and participation in sports.<sup>24</sup> Directory information does not include a student's social security number.<sup>25</sup>

FERPA authorizes school districts, colleges, and universities to disclose directory information if they give public notice to students or parents of the types of student information that is being designated as directory information.<sup>26</sup> As directory information constitutes a permissible disclosure of student education records without student or parent consent,<sup>27</sup> Florida's codification of FERPA into statute also incorporates these requirements.<sup>28</sup>

### *Social Security Numbers*

FERPA does not prohibit the use of a student social security number (SSN) as a personal identifier or as a linking variable.<sup>29</sup> However, according to the U.S. DOE, best practices dictate that states should limit use of student SSNs to instances in which there is no feasible alternative.<sup>30</sup>

Florida law requires school districts to use SSNs as student identification numbers in the school district's management information system.<sup>31</sup>

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<sup>20</sup> Section 1002.221(1), F.S.; s. 1006.52(1), F.S. Florida law defines “education records” as defined in FERPA. *Id.*

<sup>21</sup> 76 F.R. 75606 (Dec. 2, 2011). The definition of “student” means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records. 34 C.F.R. 99.3.

<sup>22</sup> 34 C.F.R. 99.33.

<sup>23</sup> 34 C.F.R. 99.3.

<sup>24</sup> *Id.*

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

<sup>26</sup> 34 C.F.R. 99.37. This notice includes the ability to opt-out of being included in the student directory. *Id.*

<sup>27</sup> 20 U.S.C. 1232g(a)(5); 34 C.F.R. 99.31(11); 34 C.F.R. 99.37.

<sup>28</sup> Sections 1002.221, and 1006.52, F.S.

<sup>29</sup> 76 F.R. 75611 (Dec. 2, 2011). However, the U.S. Department of Education recognizes the importance of limiting SSN use, as FERPA prohibits schools from designating student SSNs as directory information. 34 C.F.R. 99.3 and 76 F.R. 75611 (Dec. 2, 2011) (referring to the definition of “directory information”).

<sup>30</sup> 76 F.R. 75611 (Dec. 2, 2011).

<sup>31</sup> Section 1008.386, F.S.

## Florida Department of Education Legislative Recommendations

On September 23, 2013, Governor Scott issued Executive Order Number 13-276. The executive order directed the Commissioner of Education to “immediately conduct a data security review” and to “make recommendations regarding any needed rule or legislative change to safeguard the privacy of our students’ data....”<sup>32</sup>

DOE subsequently issued a report covering security initiatives, school district activities, and information technology security reviews.<sup>33</sup> The report contained various recommendations, including legislative changes to:

- Require that school districts give annual notice to students and parents of their rights with respect to education records;
- Clarify that a student or parent who has received injunctive relief to enforce his or her rights may be awarded attorney’s fees and court costs;
- Establish limitations on the collection of student information by entities that are part of, or perform services for, Florida’s public education system, to prohibit collecting, obtaining, or retaining: biometric information; political affiliation; voting history; religious affiliation; health information; and correspondence from community agencies or private professionals;
- Establish limitations on the disclosure of confidential and exempt student education records, entities that are part of, or perform services for, Florida’s public education system, except when the disclosure is authorized by state or federal law, or in response to a lawfully issued subpoena or court order;
- Require directory information to be designated in accordance with FERPA at regularly scheduled governing board meetings, and the governing board must consider the extent to which the disclosure would put students at risk; and
- Establish a computer generated student identifier for state and local systems.<sup>34</sup>

In sum, the DOE report identifies areas where state law could be strengthened to further ensure that public school districts, colleges, universities, and state educational agencies protect student or parent rights and the privacy of student education records.

### III. Effect of Proposed Changes:

CS/SB 188 tightens state and local requirements to emphasize the rights of students and parents, and bolsters the privacy of student education records.

The bill implements the recommendations of the DOE Student Data Privacy report. The bill:

- Specifies that school districts, colleges, and universities must annually, rather than at their discretion, provide students and parents notice of their education record rights;

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<sup>32</sup> Executive Order No. 13-276, dated September 23, 2013.

<sup>33</sup> Florida Department of Education, Student Data Privacy Recommendations, *available at* <http://www.fldoe.org/pdf/DataSecurityReport.pdf> (last viewed on February 11, 2014).

<sup>34</sup> *Id.*

- Clarifies existing law to authorize attorney’s fees and court costs to be awarded upon receipt of injunctive relief, rather than when the parent or student’s rights are “vindicated”;
- Creates a new law prohibiting entities that are part of, or perform services for, Florida’s public education system from collecting, obtaining, or retaining the political affiliation, voting history, religious affiliation, or biometric information of a student, parent, or sibling of the student;
- Defines, identifies characteristics, and gives examples of biometric information;
- Reaffirms the prohibition of disclosure of confidential and exempt student education records by entities that are part of, or perform services for, Florida’s public education system without parent consent, unless authorized or required by law;
- Creates new obligations in law to require the governing board of a school district, college, or university, in a regularly scheduled public meeting, to identify which student information the governing board will designate as directory information, and to consider whether the disclosure of the identified directory information would put students at risk;
- Confirms the ability for the school district, college, or university, to charge fees for providing directory information in response to public records requests;
- Deletes the requirement in state law that school districts use student social security numbers as student identification numbers; and
- Once DOE completes a process for creating a non-SSN Florida student identification number, requires school districts to use the (non-SSN) Florida student identification number.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1002.22, 1008.386 and 1011.622. This bill creates section 1002.222 of the Florida Statutes.

**IX. 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 February 4, 2014**

CS/SB 188 differs from SB 188 in that:

- SB 188 provided that school districts that wanted to collect student biometric information must: (1) create policies governing the collection and use of the biometric information; and (2) not collect biometric information on a student unless the parent chose to opt-in. CS/SB 188 reframes and expands the concepts in SB 188 to prohibit entities that are part of, or perform services for, Florida's public education system, from collecting, obtaining, and retaining the biometric information, political affiliation, voting history, and religious affiliation of a student, parent, or sibling of the student; and
- CS/SB 188 implements recommendations from the DOE Student Data Privacy report.

**B. Amendments:**

None.

By the Committee on Education; and Senators Hukill, Negron,  
Bradley, Simpson, Flores, Brandes, and Stargel

581-01636-14

2014188c1

A bill to be entitled

An act relating to education data privacy; amending s. 1002.22, F.S.; providing for annual notice to K-12 students and parents of rights relating to education records; revising provisions relating to remedy in circuit court with respect to education records and reports of students and parents; creating s. 1002.222, F.S.; providing limitations on the collection of information and the disclosure of confidential and exempt student records; defining the term "biometric information"; authorizing fees; amending s. 1008.386, F.S.; revising provisions relating to the submission of student social security numbers and the assignment of student identification numbers; requiring the Department of Education to establish a process for assigning student identification numbers; amending s. 1011.622, F.S.; conforming provisions; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) and subsection (4) of section 1002.22, Florida Statutes, are amended to read:

1002.22 Education records and reports of K-12 students; rights of parents and students; notification; penalty.—

(2) RIGHTS OF STUDENTS AND PARENTS.—The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies shall be protected in accordance with the Family

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

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2014188c1

Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, the implementing regulations issued pursuant thereto, and this section. In order to maintain the eligibility of public educational institutions and agencies to receive federal funds and participate in federal programs, the State Board of Education shall comply with the FERPA after the board has evaluated and determined that the FERPA is consistent with the following principles:

(e) Students and their parents shall receive annual notice of their rights with respect to education records.

(4) PENALTY.—If any official or employee of an institution refuses to comply with this section, the aggrieved parent or student has an immediate right to bring an action in circuit court to enforce his or her rights by injunction. Any aggrieved parent or student who receives injunctive relief ~~brings such action and whose rights are vindicated~~ may be awarded attorney ~~attorney's~~ fees and court costs.

Section 2. Section 1002.222, Florida Statutes, is created to read:

1002.222 Limitations on collection of information and disclosure of confidential and exempt student records.—

(1) An agency or institution as defined in s. 1002.22(1) may not:

(a) Collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student or a parent or sibling of the student.

For purposes of this subsection, the term "biometric information" means information collected from the electronic measurement or evaluation of any physical or behavioral

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

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59 characteristics that are attributable to a single person,  
 60 including fingerprint characteristics, hand characteristics, eye  
 61 characteristics, vocal characteristics, and any other physical  
 62 characteristics used for the purpose of electronically  
 63 identifying that person with a high degree of certainty.  
 64 Examples of biometric information include, but are not limited  
 65 to, a fingerprint or hand scan, a retina or iris scan, a voice  
 66 print, or a facial geometry scan.

67 (b) Provide education records made confidential and exempt  
 68 by s. 1002.221 or federal law to:

69 1. A person as defined in s. 1.01(3) except when authorized  
 70 by s. 1002.221 or in response to a lawfully issued subpoena or  
 71 court order;

72 2. A public body, body politic, or political subdivision as  
 73 defined in s. 1.01(8) except when authorized by s. 1002.221 or  
 74 in response to a lawfully issued subpoena or court order; or

75 3. An agency of the Federal Government except when  
 76 authorized by s. 1002.221, required by federal law, or in  
 77 response to a lawfully issued subpoena or court order.

78 (2) The governing board of an agency or institution may  
 79 only designate information as directory information in  
 80 accordance with 20 U.S.C. s. 1232g and applicable federal  
 81 regulations. Such designation must occur at a regularly  
 82 scheduled meeting of the governing board. The governing board of  
 83 an agency or institution must consider whether designation of  
 84 such information would put students at risk of becoming targets  
 85 of marketing campaigns, the media, or criminal acts. An agency  
 86 or institution may charge fees for copies of designated  
 87 directory information as provided in s. 119.07(4).

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88 Section 3. Section 1008.386, Florida Statutes, is amended  
 89 to read:

90 ~~1008.386 Florida Social security numbers used as student~~  
 91 ~~identification numbers.-~~

92 (1) When a student enrolls in a public school in this  
 93 state, the ~~Each~~ district school board shall request that ~~the~~  
 94 ~~each~~ student enrolled in a public school in this state provide  
 95 his or her social security number and shall indicate whether the  
 96 student identification number assigned to the student is a  
 97 social security number. A student satisfies this requirement by  
 98 presenting his or her social security card or a copy of the card  
 99 to a school enrollment official. ~~Each school district shall use~~  
 100 ~~social security numbers as student identification numbers in the~~  
 101 ~~management information system maintained by the school district.~~  
 102 However, a student is not required to provide his or her social  
 103 security number as a condition for enrollment or graduation. A  
 104 student ~~satisfies this requirement by presenting to school~~  
 105 ~~enrollment officials his or her social security card or a copy~~  
 106 ~~of the card. The school district shall include the social~~  
 107 ~~security number in the student's permanent records and shall~~  
 108 ~~indicate if the student identification number is not a social~~  
 109 ~~security number. The Commissioner of Education shall assist~~  
 110 ~~provide assistance to school districts with to assure that the~~  
 111 assignment of student identification numbers ~~other than social~~  
 112 ~~security numbers is kept to a minimum and to avoid duplication~~  
 113 of any student identification number.

114 (2) The department shall establish a process for assigning  
 115 a Florida student identification number to each student in the  
 116 state, at which time a school district may not use social

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2014188c1

117 security numbers as student identification numbers in its  
118 management information systems.

119 (3) The State Board of Education may adopt rules to  
120 implement this section.

121 Section 4. Section 1011.622, Florida Statutes, is amended  
122 to read:

123 1011.622 Adjustments for students without a Florida common  
124 student identification number identifier.—The Florida Education  
125 Finance Program funding calculations, including the calculations  
126 authorized in ss. 1011.62, 1011.67, 1011.68, and 1011.685, shall  
127 include funding for a student only when all of the student's  
128 records are reported to the Department of Education under a  
129 Florida common student identification number identifier. The  
130 State Board of Education may adopt rules pursuant to ss.  
131 120.536(1) and 120.54 to implement this section.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Finance and Tax, *Chair*  
Appropriations Subcommittee on Education  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Community Affairs  
Governmental Oversight and Accountability

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR DOROTHY L. HUKILL**  
8th District

February 10, 2013

The Honorable Greg Evers  
510 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 188 – Education Data Privacy

Dear Chair Evers:

Senate Bill 188, relating to Education Data Privacy, has been referred to the Criminal Justice Committee. I am requesting your consideration to include SB 188 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Amanda Cannon, Staff Director of the Criminal Justice Committee  
Sue Arnold, Administrative Assistant of the Criminal Justice Committee

**REPLY TO:**

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818  
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: [www.flsenate.gov](http://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)

2/17/14  
Meeting Date

Topic Biometric in Schools

Bill Number SB 188  
*(if applicable)*

Name Barbara Dalesandro

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Food Service Technology Coordinator

Address 677 Patricia Ave

Phone 727-804-1743

*Street*

Dunedin FL

*State*

34698

*Zip*

E-mail dalesandro.b@pcsb.org

Speaking:  For  Against  Information

Representing Pinellas County School Board

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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/14

Meeting Date

Topic Biometrics in school food service Bill Number SB 188 (if applicable)

Name Lynn Geist Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Assistant Director, School Food Service, Pinellas County

Address 1111 S. Belcher Rd Phone 727-547-7157  
Street

Largo FL 34133773 E-mail geistl@psfb.org  
City State Zip

Speaking:  For  Against  Information

Representing Pinellas County School Food Service

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/17/14  
Meeting Date

Topic SB 188 - Data Privacy

Bill Number 188  
*(if applicable)*

Name Sara Clements

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Analyst

Address 215 S. Monroe St.  
Street

Phone 850-391-0329

TLH  
City

State

Zip

E-mail sara@floridapromise.org

Speaking:  For  Against  Information

Representing Foundation for Florida's Future

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-17-13

*Meeting Date*

Topic Waive in Support

Bill Number CS/SB 188

*(if applicable)*

Name Ashley Spicola

Amendment Barcode \_\_\_\_\_

*(if applicable)*

Job Title Education Policy Chief

Address The Capitol

*Street*

Phone 850-717-9501

Tallahassee

FL

32399

*City*

*State*

*Zip*

E-mail ashley.spicola@laspbs.state.fl.us

Speaking:  For  Against  Information

Representing Executive Office of the Governor

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)

2/17/14  
Meeting Date

Topic SB 188

Bill Number SB 188  
*(if applicable)*

Name Tanya Cooper

Amendment Barcode N/A  
*(if applicable)*

Job Title Director, Gov. Relations

Address 325 W. Gaines street

Phone 245-9633

Tallahassee FL 32399  
City State Zip

E-mail Tanya.Cooper@flda.org

Speaking:  For  Against  Information

Representing DOE

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

Topic Education Data Privacy Bill Number 1888  
(if applicable)

Name Linda Kearschner Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Florida PTA Legislative Committee

Address \_\_\_\_\_ Phone \_\_\_\_\_  
Street

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ E-mail resolutions@  
floridaPTA.org

Speaking:  For  Against  Information

Representing Florida Parent Teacher Association

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/14

Meeting Date

Topic CS/SB 188 EDUCATION DATA PRIVACY

Bill Number CS/SB 188  
*(if applicable)*

Name WALTER HAMILTON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title VICE CHAIRMAN

Address 3235 BLUFF BLVD.

Phone (727) 932-2903

Street

HOLIDAY, FL 34691

City

State

Zip

E-mail WHAMILTON@EDTP.COM

Speaking:  For  Against  Information

Representing INTERNATIONAL BIOMETRICS & IDENTIFICATION 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)

Tab 2

CS/SB 188 Handout

2/17/14

**Testimony of Walter Hamilton  
Vice Chairman  
International Biometrics & Identification Association  
before the Criminal Justice Committee  
of the Florida State Senate  
regarding CS/SB 188, an Act Related to Education Data Privacy  
February 17, 2014**

Good afternoon. My name is Walter Hamilton. I am Vice Chairman of the International Biometrics & Identification Association (IBIA), a Washington, DC-based non-profit trade association. I am also a government technology consultant with the firm of Identification Technology Partners in Gaithersburg, Maryland and have been a full time resident of the State of Florida for over twenty years. I want to thank Chairman Evers and the Senate Criminal Justice Committee for giving me an opportunity to testify and respond to your questions.

IBIA defines biometric technology as the automated process of confirming a person's identity based on the measurement and comparison of unique biological or behavioral characteristics. Examples include fingerprint, iris patterns, facial shape, vein patterns, and speech characteristics. CS/SB 188 prohibits the collection of biometric data from students or parents in Florida's schools. IBIA opposes this bill for reasons which are outlined in a letter that was sent to members of the Committee and sponsors of the bill last Friday and which I will summarize in my testimony here.

IBIA believes that this bill, and any legislation that seeks to prohibit the use of a potentially beneficial technology, does not serve the interests of the citizens of Florida and will not result in meaningful protection of the privacy of school

students or their parents. All technology is inherently privacy neutral. It is the specific application of technology that will identify its privacy risks or benefits. Biometric technology has many privacy enhancing applications in schools and can contribute to efficient school operations and security for our students. Following are a few examples:

- (i) Biometrics can help secure school facilities by limiting access to only those authorized students or staff that have registered their biometric data for identity verification purposes.
- (ii) Biometrics can be used to speed students through the payment process in school cafeterias while eliminating the need to present ID cards (which can be lost, stolen or borrowed) or enter lengthy ID numbers (which can be forgotten or shared). This application expedites the meal process and ensures that the last student in line has adequate time to complete their meal before returning to class. The Pinellas County School District is an instructive example of the operational efficiency benefits that can be achieved by using biometrics in this manner.
- (iii) Biometrics can enhance student convenience by eliminating the need for computer users to remember complex passwords which are easily forgotten. Biometric login also enhances the security of school information systems by protecting against unauthorized access to sensitive information.
- (iv) Fingerprint biometrics are used by Florida school districts to conduct background checks on parents that volunteer for such school activities as student mentor, physical education assistant, overnight chaperone or other sensitive positions. Fingerprint-based criminal history records checks are essential to protect our students from sexual predators or others with a criminal background that might place them at risk. Under

the proposed bill, schools are prohibited from collecting biometric information from parents as well as students.

IBIA believes that the concerns that originally led to this bill, while noble and sincere, result partially from a misunderstanding of biometric technology and how it works. IBIA's interest is to help inform the Committee on the benefits that biometric technology can bring to the citizens of Florida and to place into proper context the legitimate privacy concerns that have been raised.

We do not object to legislation that defines reasonable standards for the collection and protection of biometric data. In fact, the original version of this bill included language that would permit biometric data collection - but would require school administrations to develop and implement a policy governing such data collection including public and parental notice, written parental consent, limited disclosure, data protection, limited access to biometric data, eventual data destruction and notification to parents in the event of a data breach. These are all reasonable policies that IBIA can support. However, in its present form, this bill seeks to entirely prevent the use of an important enabling technology based on the perceived potential for harm. Simply put, this bill is an obstacle to the proven beneficial use that biometrics has already been providing to Florida's schools and its students.

There is less potential for harm from the collection of a person's biometric data than there is from the collection of other sensitive personal information such as political affiliation, voting history, religious affiliation, credit card numbers, social security numbers, medical information, financial information, etc.

It is important to explain that, in most biometric systems, the original biometric source image is subjected to a complex mathematical process that refines the original data into a “template” format that is extremely difficult, if not impossible, to reverse engineer back to its original form. As a result, this processed biometric data is inherently privacy enhancing since it does not reveal any personally sensitive information about a person such as sex, age, race, or health condition. Regardless, IBIA believes that biometric data should be subject to the same standards of care that society requires of their other personal information.

There is a useful paper prepared last year by the American Legislative Exchange Council entitled “The Abuse and Misuse of Personal Information”. This paper addresses the dilemma that policy makers face when crafting legislation that addresses the privacy and protection of personal information in the context of new technologies like biometrics. In this paper, the phenomenon of “Techno Panic” is described where people overreact to privacy concerns related to technology. The paper states that “there are real benefits to using biometric identification” and “We must use great care to craft privacy policies that guard against the drawbacks without jeopardizing the benefits of new technologies”.

In closing, I urge the Committee to permit schools to use biometric technology in accordance with the protective provisions contained in the original version of SB 188.

I would be pleased to respond to the Committee’s questions.

##



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February 14, 2014

The Honorable Craig Evers  
Chairman, Criminal Justice Committee  
Florida State Senate  
308 Senate Office Building  
404 S. Monroe St.  
Tallahassee, FL 32399

Dear Chairman Evers:

The International Biometrics & Identification Association (IBIA) appreciates this opportunity to comment on Senate Bill CS/SB 188, which would prohibit school districts in Florida from collecting the biometric information of students or parents. While we do not object to legislation that defines reasonable standards for the collection and protection of biometric data, we believe that this legislation will unreasonably deprive Florida schools of the operational efficiency and security benefits that biometric technology can provide. In its current form, IBIA believes that CS/SB 188 does not serve the interest of the citizens of Florida and its schools. IBIA opposes this legislation for a number of reasons as detailed below.

**Biometrics can enhance the efficiency of school operations.**

Typically, schools use a variety of cards, ID numbers or passwords to identify students. The problem is that the cards can be lost, destroyed, stolen, borrowed, or loaned; and ID numbers and passwords are slow to enter and are easily forgotten - especially with younger children. By implementing biometric technology, the cost and administration of issuing and replacing lost or stolen ID cards or forgotten passwords is eliminated.

As an example, the Pinellas County School District uses biometric technology to help speed 60,000 students through cafeteria lines twice a day. Each meal transaction takes about two seconds and this makes it possible for students at the end of the line to have time to enjoy their meal before returning to class. Similar systems are in operation in school districts across over 40 states in the U.S.

**Biometrics can enhance the security of our schools.**

Biometric technology can be used to enhance the physical security of school buildings by ensuring positive identification of students at points of entry. In another example, biometrics can be used to match parents or guardians with children in kindergarten to prevent kidnapping.



The Hon. Craig Evers

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**Biometrics currently protects Florida's students from those that might cause them harm.**

CS/SB 188 prohibits schools from collecting the biometric data from parents as well as students. This appears to conflict with school district policies that require parents to undergo a fingerprint background check when volunteering to be student mentors, overnight chaperones, physical education assistants or for other sensitive volunteer positions. This application of biometric technology is essential to help schools screen for sexual predators or persons with criminal histories that might pose a danger to students.

**Biometrics can ensure accurate records and compliance with federal requirements.**

Accurate identification of students is now critical in many aspects of the day-to-day management and administration of our schools. For example, biometrics can provide irrefutable proof of student attendance for record keeping purposes. Use of biometrics can also ensure accurate billing for student meals. Under federal law, schools must ensure that claims for reimbursement correctly identify the number of free, reduced price and paid lunches served to eligible children.

**Biometrics can protect the student and the school from medical errors.**

Biometrics can be used in the school medical office to make sure that students are receiving the correct medication by matching the child to their medical record. This application can address both a student safety and school liability risk.

**Biometric technology protects privacy and should not be seen as a threat to privacy.**

In fact, biometric technology is widely acknowledged as an important tool to prevent impersonations that can lead to fraud and identity theft. Legislation that seeks to prevent the use of an important enabling technology based on the perceived potential for harm presents an obstacle to its beneficial use.

There is less potential for harm from the collection of a person's biometric data than there is from the collection of other sensitive personal information such as political affiliation, voting history, religious affiliation, credit card numbers, social security numbers, medical information, financial information, etc.

It is important to explain that, in most biometric systems, the original biometric source image is subjected to a complex mathematical process that refines the original data into a "template" format that is extremely difficult, if not impossible, to reverse engineer back to its original form. As a result, this processed biometric data is inherently privacy enhancing since it does not reveal any personally sensitive information about a person such as sex, age, race, or health condition. Regardless, IBIA believes that biometric data should be subject to the same standards of care that society requires of their other personal information.

IBIA recognizes that the public has a right to protect their personal information - including biometric information. We support the use of best practices and established standards to ensure that biometric data is protected. We also believe that informed consent for the collection of



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biometric data is an appropriate policy. Accordingly, IBIA supports the privacy protection provisions that were included in SB 188 when it was originally introduced.

In summary, biometric technology is an important tool to protect personal privacy and identity and we urge the Committee not to proceed with the bill in its current form. IBIA would be pleased to answer your questions or provide examples and case studies describing how biometric technology is being used to enhance the security and efficiency of schools.

#### **About IBIA**

IBIA is a non-profit trade association that promotes using technology effectively and appropriately to determine identity in a way that will enhance security, privacy, productivity, and convenience for individuals, organizations, and governments. Its membership is open to all providers of technologies and solutions used for electronic person identification.

Please feel free to contact me at [whamilton@idtp.com](mailto:whamilton@idtp.com) or by phone at (727) 938-2704 if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Walter Hamilton".

Walter Hamilton  
Vice Chairman of the Board of Directors  
International Biometrics & Identification Association

cc: Members of the Committee and Sponsors of CS/SB 188

# Abuse and Misuse of Personal Information

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*A Report on Issues and Trends in Privacy*

*By John Stephenson*

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# Executive Summary

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*Advances in technology provide a number of useful products and services that can either enhance or threaten personal privacy, depending on how these products or services are used and for what purpose. These goods raise serious concerns about privacy, which leaves policymakers looking for solutions, especially in the context of on-line privacy and biometric identification. In an effort to craft solutions to privacy concerns, experts argue that policymakers must exercise caution. Rushed and unconsidered solutions run the risk of limiting consumers and becoming unworkable.*

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*\*This report has been researched and published in response to requests by public sector members of the American Legislative Exchange Council and direction by the Communications and Technology Task Force. The author intends for this report to be used as a resource concerning the topics discussed herein. The conclusions in this report reflect the research and views of the author and, therefore, should not be construed as an endorsement of any particular legislation or policy by the Task Force, the Exchange Council, its advisors, or its members.*

## INTRODUCTION

Recent stories about abuse and misuse of personal information are driving policymakers to explore the issue and possible responses. When policymakers hear stories about consumers being tracked online and companies and governments collecting biometric information for various purposes, they feel compelled to act. But in the desire to act, policymakers are asking a number of questions about the issues at stake, the technologies at work, the uses for the information collected, and the appropriate responses. Policymakers are quickly learning that addressing the potential for abuse and misuse of personal information is neither easy nor simple. Furthermore, policymakers are realizing that crafting the appropriate policy to respond will require care.

## THE CENTRAL QUESTION IS PRIVACY

The central question regarding the abuse and misuse of personal information is: How do we protect our privacy? It is a question easier asked than answered.

Privacy is a vague concept that means many different things to different people. Merriam-Webster's Dictionary defines privacy as "the quality or state of being apart from company or observation." But even this definition leaves out several attributes of privacy. Privacy involves personal information and exercising control over it. Privacy also involves an individual's relationships with others. In recognition of these attributes, Jim Harper of the Cato Institute defines privacy as "the subjective condition that people experience when they have power to control information about themselves and when they exercise that power consistent with their interests and values." [i] Examples of experiences in exercising privacy show that privacy is inherently subjective.

*"What we once considered private information, such as a birth date or a family photo, is now information we make available to the entire world via the Internet."*

Many consider privacy a fundamental right, similar to the right to free speech and an important value that must be protected at all costs. However, the United States Constitution does not explicitly mention a right to privacy. Scholars trace the concept of a right to privacy to "the right to be left alone" described in a law review article by Samuel Warren and Louis Brandeis. [ii]

Privacy is also a concept that is constantly evolving due to new technologies and changing social values. What we once considered private information, such as a birth date or a family photo, is now information we readily and freely share, or even make available to the entire world via the Internet. As of April 2012, 900 million people belonged to the social network Facebook. [iii]

Another complication to thinking about privacy is a number of concepts, such as harms, sensitive data, and consent, all of which are understood differently by different people and subject to fierce debate in the legal, political, and policy communities. Additionally, these concepts continue to evolve. Further complicating privacy are what some scholars call a "techno panic," a moral panic that "centers around

societal fears about a specific contemporary technology (or technological activity) instead of merely the content flowing over that technology or medium.”[iv] Nevertheless, there is no question that there are people who sincerely want the ability to carve out a zone of privacy for themselves where they aren’t assessed, monitored, and recorded by the government or a private entity even if there are negative consequences resulting from such a decision.

The economics of the Internet also presents a complication for privacy. Many of the products and services consumers use on the Internet are free of charge. In fact, these freely available goods are what have contributed to the Internet’s spectacular growth in use and prevalence since the advent of the World Wide Web in the 1990s. But these goods are not truly free in an economic sense. Rather, they are paid for by advertising to consumers.

Most websites use some form of this business model. Collection of personal information can be performed to enable better targeting for advertising, which makes the advertising more valuable.[v]

Moreover, the economics of the Internet encourages people to share personal information. People often must share information (i.e. name, age, date of birth, e-mail address, ZIP code, etc.) with companies and each other to use free services. Many Internet-based services such as social networks, photo-sharing websites, and local directory services like Yelp are also specifically designed to encourage the sharing of information with others.

Technology also contributes to the sharing of information phenomena. The advent of tools like faster microprocessors, networked storage, and wireless broadband have all created the capacity to rapidly share vast amounts of data from anywhere to everywhere in the world. The amount of information being created is staggering: every 60 seconds, it is estimated that over 6,600 photos will be uploaded to Flickr; Google serves more than 694,445 queries; over 1,200 new ads will be created on Craigslist; and 695,000 status updates, 79,364 wall posts and 510,040 comments are published on the social networking site Facebook.[vi]

Recently, consumers have expressed concerns about the use of targeted advertising and data collection by certain popular Internet companies. The Pew Internet & American Life Project reported that 68 percent of those it surveyed were not OK with targeted advertising because “they don’t want their activities tracked and analyzed.”[vii] Ironically, the speed with which the Internet has grown and become an integral part of society is precisely what sparked and fueled concerns about privacy. Given the nature of the Internet, there is an argument that information put on the Internet is not meant to be kept private. The counterargument is that the nature of the Internet means that some people cannot easily avoid sharing information about themselves and are in need of policies to protect their personal information from misuse and abuse.

*“Many of the products and services consumers use on the Internet are free of charge. But these goods are not truly free in an economic sense.”*

## APPROACHES TO PRIVACY: THE UNITED STATES VERSUS THE EUROPEAN UNION

Policymakers around the world have been debating responses to concerns about privacy since the beginning of the Internet. During that time, there have been several responses to address consumer concerns from both industry and government. It's possible to categorize the response approaches seen thus far by the geographic regions from which they come, namely the European Union approach and the United States approach.

*"In the United States, privacy is a right that has developed out of the constitutional rights to due process and no unreasonable searches and seizures."*

Europe views privacy as a fundamental right. European countries' laws and regulations are broad, top-down directives that aim to protect privacy against private entities. An example of this approach is the European Union's Data Protection Directive, which defines personal data, imposes obligations on entities that control data, and creates several rights for recourse by individuals who may be concerned about the use of their data.[viii]

In the United States, privacy is not viewed as a fundamental right. Rather, it is a right that has developed out of the constitutional rights to due process and no unreasonable searches and seizures. Traditionally, Americans' concerns about privacy arose from fears of government access to personal information. Only during more recent times has the focus of concerns been on companies' access to personal information of consumers and what the companies might do with it after collection, such as turning it over to the government.[ix]

When it comes to privacy law, the U.S. and state governments generally use laws and regulations based on tort and common law theories aimed at specific parts of the government or sectors of the economy. The modern day U.S. approach to privacy dates back to the 1970s when the federal government, in response to concerns about the sharing of health data, promulgated the Fair Information Practice Principles, which are a set of internationally-recognized practices for addressing the privacy of individuals.[x]

*"Whether law enforcement or self-regulation, the focus of these actions has been largely on ensuring consumers have sufficient notice and choice when it comes to making decisions about privacy."*

Most U.S. privacy laws are federal statutes reflecting the inherently interstate nature of information flows. However, states have not shied away from enacting privacy laws to address their own needs or the concerns of constituents. Other examples of the U.S. approach to privacy include the Privacy Act of 1974 (regulating government collection and dissemination of personal information), the Health Insurance Portability and Accountability Act (regulating the use of health records by covered providers), and the California Online Privacy Protection Act (requiring commercial websites collecting information from residents of California to conspicuously post online and comply with a privacy policy).

Agencies like the U.S. Federal Trade Commission and state attorneys general have engaged in targeted enforcement against companies and other entities believed to be in violation of privacy laws. Additionally, in the U.S. there is a clear preference for industry self-regulation through various bodies and mechanisms, such as codes of conduct. Whether law enforcement or self-regulation, the focus of these actions has been largely on ensuring consumers have sufficient notice and choice when it comes to making decisions about privacy.[xi]

## CONCERNS ABOUT BIOMETRICS

Concerns regarding privacy and what to do about it are not limited to the online consumer sphere. New fronts are opening with the advent of new technologies that use more or new kinds of personal information to offer new products and services. One recent example of this phenomenon is biometric identification.

Technically, biometrics is simply the measurement of living things. Biometric identification is the measurement of identifiers from living (and formerly living) things to distinguish them from one another.[xii] More commonly, biometric identification is the automated process of identification of a person based on that person's unique physical or behavioral characteristics. The basic process for biometric identification today is as follows: personal information (like fingerprints) is measured by a sensor machine and recorded. In a fingerprint analysis, for example, the sensor measures the distances and angles of the endings, ridges, and bifurcations that comprise the fingerprint. The sensor converts the measurements into a digital description, and a computer compares it against another description (or set of descriptions) to find a match.

*"Many applications that use biometric identification protect privacy by screening out those attempting to commit identity fraud by posing as another individual."*

With advances in technology, it is becoming possible to take new measurements with increasingly greater accuracy. A combination of faster microprocessors and better sensors can distinguish physical and behavioral characteristics that are imperceptible to the senses and previously only possible to identify through advanced science. Facial recognition technologies can employ methods such as geometric, photometric, and skin texture mapping to find matches with great speed and accuracy. For example, in 2010, the National Institute of Standards and Technology tested various facial recognition systems and found that the best algorithm correctly recognized 92% of unknown individuals from a database of 1.6 million criminal records.[xiii]

Verifying identity is an important part of social interactions whether in commerce or public safety settings. Humans need to know with whom they are interacting in order to establish the level of trust necessary for completing a deal or sharing a secret. Such is why applications for biometrics include criminal background checks, controlling access to secure facilities, protection of sensitive information, and verifying eligibility for taxpayer-financed benefits. It can be stated that many applications using biometric identification protect privacy by limiting access to only those individuals who are eligible for a privi-

lege or benefit and screening out those attempting to commit identity fraud by posing as another individual.

Although biometric identification is not new, the practice is becoming more widespread due to a number of factors. Advances in technology are making biometric identification faster and more accurate. Those same technological advances are also making the process cheaper to use. It is now possible for the average consumer to buy electronic devices using biometric identification processes in a number of ways, such as fingerprint sensors for accessing personal computers or information systems.

Widespread use has also contributed to the adoption of more standards for biometric identification. The standardization and reduction in costs has led consumers, businesses, and governments to adopt biometric identification methods for security and privacy applications. Industry groups predict that use of biometrics will continue to grow as a result of these factors, the ubiquity of advanced electronic devices, and ongoing consumer and business concerns about privacy and security.[xiv]

There are real benefits to using biometric identification. Biometrics can provide highly assured verification of identity. Physical characteristics like fingerprints and irises cannot easily be copied. Biometric information cannot be forgotten like a password or a PIN code. Additionally, machine-readable biometrics can quickly verify that an individual is the person he claims to be or identify who a person is by searching a repository of biometric identifiers. Machines are also not subject to the same pressures or shortcomings as humans. Therefore, biometrics provides a greater degree of security for data, which helps ensure privacy.

Biometric identification also creates opportunities for new commercial applications. For example, social networks like Facebook and photo-sharing services like Flickr offer users biometric identification to tag friends in photos they share online to improve and increase the amount of searching and social interactions. Some companies and advertisers are experimenting with digital signage, which are basically dynamic billboards that display advertising based on facial recognition of the consumer nearby. For example, a digital sign at the entrance of a retail clothing store scans the faces of customers who enter the store. The sign will display an advertisement for a new pair of women's shoes as a woman walks by the sign, then switch to an advertisement for a pair of men's shoes as a man walks by. The advertisement displayed could change based on the marketer's target audience.

*Biometrics is not a panacea to privacy and security. In fact, it presents its own privacy challenges.*

However, biometrics is not a panacea to privacy and security. In fact, it presents its own privacy challenges. One major problem is that humans' physical characteristics can change over time. For example, natural changes like aging, common ailments like dry skin, and injuries can make fingerprints and other physical characteristics difficult to read.[xv] Furthermore, there is a real risk of identity theft if the stored sample of biometric information, which like most data can be stored indefinitely and copied multiple times, is lost or stolen.[xvi] Advances in technology may also provide criminals with new methods to steal biometric information and use it to gain access to sensitive information. Additionally, biometric

information, such as DNA, could be used to reveal previously unknown details about a person's health such as susceptibility to disease. With more data available, there is a greater risk to privacy.

That said, the use of biometrics is in an early stage of development for non-government commercial applications and continues to evolve. Technological improvements increase the accuracy of measurements. At the same time, there is more information to exploit for good and bad purposes in ways we cannot anticipate. The potential benefits and shortcomings of biometrics are yet to be determined. The indeterminate consequences of technology make crafting policy concerning biometric identification a real challenge.

## SOLUTIONS FOR POLICYMAKERS\*

We must use great care to craft privacy policies that guard against the drawbacks without jeopardizing the benefits of new technologies. If history is any guide, rushed solutions typically turn out to be unworkable and costly complications. Narrow solutions also present workability and cost problems.

*"If history is any guide, rushed solutions typically turn out to be unworkable and costly complications."*

Consider the example of the Do Not Track (DNT) mechanism. Basically, DNT means a mechanism by which websites honor a header indicating the user requests not to be tracked for advertising or other purposes. However, no common standards for DNT currently exist and attempts to negotiate such standards have been moving slowly. Research has also found that restrictions on the ability to advertise have real costs. After the EU enacted the Privacy Directive, "advertising effectiveness decreased by around 65% in Europe." With the decline in ad effectiveness, "this may change the number and types of businesses sustained by the advertising-supporting Internet."<sup>[xvii]</sup>

The type of solution policymakers choose to employ can also add to policymakers' challenges. As suggested earlier, the inherently interstate nature of information flows make effective state laws a challenge. Additionally, the marketplace tends to prefer one set of rules to establish standards and keep compliance costs low. However, some state consumer protection statutes and state enforcement mechanisms (i.e. state attorneys general) have proven to be very effective at enforcing the law in a variety of circumstances. For example, 47 states have adopted data breach notification laws to guard against identity theft.<sup>[xviii]</sup>

Consumers must feel that they can trust a technology with their information or else they won't use it. Whether it is online activity or biometric identification, we do not have to sacrifice privacy to enjoy new products and services. Real privacy solutions are possible, but only if they reflect the reality of how information is collected and used.

Not all biometric identification applications are equal. The gathering of biometric information does not, in every context, result in individual identification and raise privacy or security concerns. In some cases, biometric information is gathered in the aggregate for research purposes but is not retained. For

\*These proposals have not been formally endorsed by the Exchange Council. They are discussed here to present a range of perspectives currently being discussed within the policy community. For a list of some privacy principles endorsed by the Exchange Council, see the ALEC Statement of Principles for Online Consumer Privacy (Adopted Oct. 2012).

*“Whether it is online activity or biometric identification, we do not have to sacrifice privacy to enjoy new products and services.”*

example, facial recognition can be used to indiscriminately count the number of adult males who enter a store during a sale. It is when biometric information is collected and used to identify an individual that privacy concerns are raised.

Current federal law only punishes the use of biometric information for fraud and identity theft.[xix] Additionally, the Privacy Act and guidelines issued by the U.S. Office of Management and Budget cover and restrict the use of biometric information held by federal agencies. There are also federal and some state laws that prohibit secret videotaping and photographing, but these are very narrowly tailored laws.

With two exceptions, state law says very little about regulating the collection and use of biometric information. Texas prohibits the capture of biometric identifiers for commercial purposes without notifying the individual and obtaining the individual’s consent to capture the biometric identifier.[xx] The Illinois Biometric Information Privacy Act regulates the collection, use, and storage of biometric information and requires protection of that information by private entities. There is, however, an exception if the disclosure is required by law or pursuant to a valid warrant or subpoena.[xxi]

To address these concerns, policymakers have proposed a variety of legislative and regulatory changes at the federal and state levels. In the 112th Congress, Senators John Kerry and John McCain introduced the Commercial Privacy Bill of Rights Act of 2011, a comprehensive baseline privacy bill that would have limited data collection and allowed users to opt out of data collection for behavioral advertising, among other things. Other bills introduced in the last Congress focused on specific issues such as an expansion of the federal Children’s Online Privacy Act, restrictions on geolocation tracking, and a requirement for a DNT mechanism. In California, Senate Bill 761 would have required a DNT mechanism for California residents. However, none of these bills received a vote in a full legislative chamber.

The reaction to abuse and misuse of personal information through biometric identification has been similar to that surrounding online privacy, for states have proposed specific legislation to target the issue. In Alaska, for example, a bill introduced in the 2012 legislative session (Senate Bill 98) would limit the collection and use of biometrics without express consent. Proponents argue that these restrictions are necessary to prevent the exploitation of biometric information for profit.[xxii] Opponents criticize these restrictions for being overly broad and unworkable.[xxiii]

The International Biometrics & Identification Association (IBIA), an industry trade group, acknowledges that the public may perceive biometric identification as both a threat to personal privacy and a way to safeguard privacy. But IBIA also believes that there is more of a concern over the use of biometric data than with the technology used to collect information. Therefore, IBIA recommends the development of policies to protect the privacy of biometric data rather than preemptively regulate the technology.[xxiv]

To that end, IBIA recommends biometric identifiers be treated as personally identifiable information (PII). Like PII, IBIA asserts that biometric information should be safeguarded to ensure it is not misused or compromised. Biometric information shouldn't be distributed or shared without informed consent or authority of law. Additionally, IBIA recommends private entities take any necessary steps to secure biometric data, limit the use of data beyond its intended purpose, and inform consumers how data is collected and used. IBIA also recommends that public entities, such as government agencies and legislatures, develop clear legal guidance on standards that define and limit the conditions under which public institutions or agencies may acquire, access, store, share and use biometric data and other PII.

However, with regard to legislation, IBIA cautions that any proposed laws to limit the use of biometrics should be narrow and not overly broad. Legislation, IBIA emphasizes, should not inhibit or unduly burden legitimate applications of biometric technology because doing so would present an obstacle to its beneficial use.

The Center for Democracy and Technology (CDT), an advocacy group that has considered policy for facial-recognition technologies, argues that a mix of government regulation, industry self-regulation, and privacy technologies are needed to give consumers greater control over their information without limiting the technologies and retarding innovation.[xxv] CDT notes that within the past two years industry groups such as the Digital Signage Federation have adopted privacy standards on facial recognition modeled on the widely-used Fair Information Practice Principles and include provisions governing notice, consent, and use of biometric information. CDT supports these efforts and calls on industry to continue work on this front, as well as develop new tools to enhance privacy when regulations or company policies are not enough.

But CDT also notes that it does not believe self-regulation without appropriate incentives and enforcement mechanisms is sufficient to protect consumer privacy.[xxvi] CDT policy experts have stated their view that it is important to frame privacy rules as allowing individuals to make informed market choices about what is best for their personal privacy. In particular, there is concern that current law actually disincentivizes disclosure about privacy practices. Therefore, CDT advocates for a strong, baseline privacy law by Congress. This baseline law, CDT argues, should cover biometrics and transparently provide consumers details about biometric information collection and use, and include for consumers a measure of control over whether they participate in biometric identification. CDT also believes that baseline consumer privacy legislation should establish a safe harbor program in which companies that adhere to enforceable industry self-regulatory privacy codes enjoy specified incentives such as exemption from liability.[xxvii] There should also be special considerations for vulnerable populations, such as children.

CDT recognizes that its approach also comes fraught with issues. What to do about publicly available information and the regulation of individual use of technology present two very difficult questions for policymakers to address. These questions also raise First Amendment concerns. To help allay some of these issues, CDT does not support laws that target discrete technologies or economic sectors, arguing

that these laws only add to the currently fragmented body of privacy law.[xxviii] Rules derived from these fragmented laws will only confuse businesses and consumers, serving no one in the long run.

Rather than a problematic regulatory approach to biometrics, Jim Harper of the Cato Institute argues for addressing concerns about biometrics through contract and tort laws.[xxix] If biometrics are collected based on promised limits for how they are used and stored, for example, states should ensure that their laws create causes of action for violations of those promises. States could also amend their jurisdictional statutes and statutes of limitations accordingly to protect citizens from out-of-state biometric collectors. To protect against government privacy invasion, Harper suggests that states could establish that the U.S. Supreme Court's Third Party doctrine (holding that information a person shares with another is not subject to protection under the Fourth Amendment) does not apply in state law.

It is also worth noting that some companies have adjusted their business practices to address concerns about privacy. For example, Google's Picasa (web-based photo album) lets the user tag photos of friends rather than doing it automatically.[xxx] Businesses such as Apple and IBM are also incorporating "privacy by design" (privacy and data protection through the life cycle of technologies) in their products and services. Privacy by design is a concept that has been endorsed by the U.S. Federal Trade Commission as the best way to address privacy concerns before they arise.[xxxi]

Adam Thierer of the Mercatus Center argues in favor of a resiliency (coping) rather than an anticipatory (prevention) approach to privacy, given the changing nature of technology and how we value privacy. To that end, he proposes a "3-E Solution" to privacy problems: education, empowerment, and enforcement.[xxxii] First, Thierer favors education about privacy issues and solutions at all levels through awareness campaigns undertaken by government, industry, and advocates. Additionally, he supports a push for better transparency for notice and privacy promises.

*"Only through careful consideration will policymakers be able to protect their constituents and innovation."*

Second, Thierer wants to see help for users who want to help themselves. This means encouraging the development of tools like web browser plug-ins that block certain undesirable program scripts or advertising.[xxxiii] Further, he believes industry should be encouraged to collaborate on privacy programs to share best practices. Together, these efforts encourage corporate and personal responsibility.

Finally, Thierer believes that it is necessary to hold accountable entities that break their promises. However, he does not believe new law or regulation is necessary to do this. Thierer argues that under existing federal and state law (e.g. Section 5 of the Federal Trade Commission Act and state consumer protection law), the government has sufficient authority to take action against entities that break promises to users.[xxxiv] But if there must be additional law, he reasons it should focus on targeted regulation of sensitive data (i.e. health records), data breaches, and transparency.

## CONCLUSION

Policymakers will continue to hear from constituents and activists concerned about the abuse and misuse of information. Concerns about online privacy and biometric identification may even increase in scale and scope as uses for biometric data multiply and the technology improves. But the lesson for policymakers from their experiences thus far appear to be that the issues and technologies evolve, and so policymakers must exercise great care in crafting their responses. Only through careful consideration will policymakers be able to protect their constituents and innovation.

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[xxiii] Harper. "Testimony on Alaska Senate Bill 98."

[xxiv] Hamilton. "Biometric Identification: Technologies and Policy Considerations."

[xxv] Brookman. "Protecting Privacy and Preserving Innovation in the States."

[xxvi] Griger. "Seeing is ID'ing: Facial Recognition and Privacy."

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[xxviii] Id.

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[xxxii] Thierer. "Online Consumer Privacy: Current Trends."

[xxxiii] Id.

[xxxiv] Id.

The mission of the American Legislative Exchange Council is to advance principles of free markets, limited government, and federalism through developing and promoting sound public policies in a nonpartisan partnership of nearly one-third of America's state legislators and 300 members of the private sector.

The Communications and Technology Task Force is the premier forum for state communications and technology policy. To guide policymakers through the uncharted waters of the 21st Century economy, the Task Force brings together reformist state legislators, leading industry representatives, and public policy experts. Working together, the Task Force seeks to develop model state public policy that will promote economic growth, freedom of technology, and innovation for all.

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Office: 202-742-8524

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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**BILL:** CS/CS/SB 364

**INTRODUCER:** Criminal Justice Committee; Communications, Energy, and Public Utilities Committee; and Senator Brandes

**SUBJECT:** Computer Crimes

**DATE:** February 17, 2014      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Telotte/Wiehle	Caldwell	CU	<b>Fav/CS</b>
2.	Cellon	Cannon	CJ	<b>Fav/CS</b>
3.			ACJ	
4.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/CS/SB 364 recognizes that advancements in technology have led to an increase in computer related crimes while greatly extending their reach. The bill addresses this increase in computer crimes by updating and expanding terminology used to define these crimes and creating additional offenses.

Three crimes are added to “offenses against users of computer networks and electronic devices”<sup>1</sup> including:

- Audio and video surveillance of an individual without that individual’s knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device<sup>2</sup>;
- Intentionally interrupting the transmittal of data to or from, or gaining unauthorized access to a computer, computer system, computer network, or electronic device belonging to a mode of public or private transit;<sup>3</sup> and

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<sup>1</sup> s. 815.06, F.S.

<sup>2</sup> Punishable as a third degree felony which could result in 5 years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, F.S.

<sup>3</sup> A second degree felony punishable by up to 15 years imprisonment and a \$15,000 fine. ss. 775.082, 775.083, F.S.

- Disrupting a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.<sup>4</sup>

“Offenses against public utilities” are created in the bill and two additional crimes are created, including:

- Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, a third degree felony; and
- Physically tampering with, inserting software into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility, a second degree felony.

## II. Present Situation:

### Offenses against intellectual property

A person commits an offense against intellectual property, punishable as a third degree felony, if he does one of the following:

- willfully, knowingly, and without authorization modifies or destroys data, programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network; or
- willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081, F.S., or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network.

If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, the offense is elevated to a second degree felony.

### Offenses against computer users

It is an offense against computer users, punishable as a third degree felony, to willfully, knowingly, and without authorization:

- Access or cause to be accessed any computer, computer system, or computer network; or
- Disrupt or deny or cause denial of computer system services to an authorized user of such computer system services, which in whole or part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another; or
- Destroy, take, injure, or damage equipment or supplies used or intended to be used in a computer, computer system, or computer network; or
- Destroy, injure, or damage any computer, computer system, or computer network; or

---

<sup>4</sup> A first degree felony punishable by up to 30 years imprisonment and a fine of \$10,000. ss. 775.082, 775.083, F.S.

- Introduce any computer contaminant into any computer, computer system, or computer network.

It is a second degree felony to commit an offense against computer users and additionally do any of the following:

- Damage a computer, computer equipment, a computer system, or a computer network and the monetary damage or loss incurred as a result of the violation is \$5,000 or greater;
- Commit an offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property; or
- Interrupt or impair a governmental operation or public communication, transportation, or supply of water, gas, or other public service.

Committing an offense against computer users in any manner which endangers a human life is punishable as a first degree felony.

### III. Effect of Proposed Changes:

**Section 1** amends s. 815.02, F.S., to add a statement of legislative intent to recognize “The proliferation of new technology has led to the integration of computer systems in most sectors of the marketplace through the creation of computer networks, greatly extending the reach of computer crime.”

**Section 2** expands s. 815.03, F.S., to define the term “electronic devices” and include the devices in the definition of a “computer network.” A computer network is a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer system or electronic devices by physical or wireless telecommunication facilities.

An “electronic device” is defined by the bill as a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data. These changes allow for devices other than the standard computer to be considered capable of being used to commit an offense.

**Section 3** amends s. 815.04, F.S., to include the term “electronic devices” in the existing definition of offenses against intellectual property.

SB 366, a linked bill, amends the existing public records exemption regarding trade secrets in s. 815.04, F.S., and takes effect the same day as SB 364 if the bill is passed during the same legislative session and it becomes law.

**Section 4** amends s. 815.06, F.S., and renames these offenses “offenses against users of computer networks and electronic devices.”

The definition of the term “person” is expanded for use in this section, to include:

- An individual;
- A partnership, corporation, association, or other entity doing business in this state, or an officer, agent, or employee of such entity; or
- An officer, employee, or agent of the state or a county, municipality, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof.

The bill creates a new third degree felony where a person willfully, knowingly, and without authorization engages in audio or video surveillance of an individual without the individual's authorization by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

Additionally, if a person commits an offense against users of computer networks and electronic devices and intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit, as defined in s. 341.031, F.S., it is punishable as a second degree felony.

The bill also provides that if a person commits an offense against users of a computer network and electronic devices and disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person it is punishable as a first degree felony.

This section (s. 815.06, F.S., as amended by the bill) does not apply to a person who has acted pursuant to a search warrant or to an exception to a search warrant authorized by law or when acting within the scope of his or her employment.

Under s. 815.06, F.S., as amended by the bill, providers of the following services are exempt from liability:

- interactive computer service;<sup>5</sup>
- information service;<sup>6</sup>
- communications services where the provider provides transmission, storage, or caching of electronic communications or messages of others;<sup>7</sup>

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<sup>5</sup> As defined in 47 U.S.C. 230(f)(2): The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

<sup>6</sup> The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. 153(24).

<sup>7</sup> "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which

- other related telecommunications or commercial mobile radio service; or
- content provided by another person.

**Section 5** creates s. 815.061, F.S., to define offenses against public utilities.

The term “public utility” in this section means:

- each public utility and electric utility as those terms are defined in s. 366.02, F.S.;
- each water and wastewater utility as defined in s. 367.021, F.S.;
- each natural gas transmission company as defined in s. 368.103, F.S.;
- each person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling gas transmission or distribution facilities or any other facility supplying or storing natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substances by pipeline to or for the public within this state; and
- any separate legal entity created under s. 163.01, F.S., and composed of any of the entities described in this subsection for the purpose of providing utility services in this state, including wholesale power and electric transmission services.

A person may not willfully, knowingly, and without authorization:

- Gain access to a computer network or other defined device owned, operated, or used by a public utility while knowing that such access is unauthorized, which is punishable as a third degree felony; or
- Physically tamper with, insert software into, or otherwise transmit commands or electronic communications to a computer, computer system, computer network, or electronic device which causes a disruption in any service delivered by a public utility, which is punishable as a second degree felony.

Technical and conforming changes are made throughout the bill.

**Section 6** states that the bill takes effect October 1, 2014.

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

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

None.

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computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include: information services; installation or maintenance of wiring or equipment on a customer's premises; the sale or rental of tangible personal property; the sale of advertising, including, but not limited to, directory advertising; bad check charges; late payment charges; billing and collection services; or internet access service, electronic mail service, electronic bulletin board service, or similar online computer services. s. 202.11, 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:**

The bill may provide better protection against economic loss to owners and users of computers, computer systems, and electronic devices as well as the providers of services related to these devices.

**C. Government Sector Impact:**

The bill may result in additional arrests, prosecutions, and jail or prison sentences. The Criminal Justice Impact Conference has not yet considered the bill to determine the potential for a prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill could be construed to prevent private property owners from conducting surveillance on and around their property without first obtaining the authorization of any individual who is on the property. Although it is possible that authorization may be inferred from a person's mere presence in a location, that may not always be the case.

For example, in many retail establishments a person is made aware by posted signs that they are under surveillance while inside the store or even in the parking lot. It is difficult to say with certainty that every place a person is under surveillance has posted signs. Without some method of making a person aware of surveillance, their authorization would likely be more difficult to infer from their presence.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 815.02, 815.03, 815.04, and 815.06. This bill creates section 815.061 of the Florida Statutes.

**IX. 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 February 17, 2014:**

CS/CS/SB 364 amends s. 815.06, F.S., to exempt the providers of listed services from liability under any construction of the bill. It also requires a person's authorization, rather than knowledge, for audio or video surveillance of the person using the systems and devices listed in the bill.

**CS by Communications, Energy, and Public Utilities on February 04, 2014:**

The CS/SB 364 provides that the term "public utility" is not limited to the definition found in s. 366.02, F.S., but also includes additional types of utilities such as water and wastewater utilities, natural gas pipelines, natural gas storage, and supply facilities, or utilities under the direction of a governmental owned authority (Facilities that serve a public purpose and are necessary for the security and wellbeing of the public).

- B. **Amendments:**

None.



269740

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2014	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 176 - 185  
and insert:  
without that individual's authorization by accessing any  
inherent feature or component of a computer, computer system,  
computer network, or electronic device, including accessing the  
data or information of a computer, computer system, computer  
network, or electronic device that is stored by a third party.

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269740

11 This section does not apply to a person who has acted pursuant  
12 to a search warrant or to an exception to a search warrant  
13 authorized by law or when acting within the scope of his or her  
14 lawful employment, and nothing in this act may be construed to  
15 impose liability on a provider of an interactive computer  
16 service as defined in 47 U.S.C. 230(f)(2), an information  
17 service as defined in 47 U.S.C. 153(24), or communications  
18 services as defined in s. 202.11 if the provider provides the  
19 transmission, storage, or caching of electronic communications  
20 or messages of others; other related telecommunications or  
21 commercial mobile radio service; or content provided by another  
22 person ~~commits an offense against computer users.~~

23  
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete lines 19 - 22

27 and insert:

28 authorization by accessing a computer network or  
29 electronic device commits an offense against the users  
30 of computer networks and electronic devices; providing  
31 exceptions; providing applicability; providing  
32 criminal penalties; creating s.

By the Committee on Communications, Energy, and Public  
Utilities; and Senator Brandes

579-01618-14

2014364c1

1 A bill to be entitled  
2 An act relating to computer crimes; amending s.  
3 815.02, F.S.; revising legislative findings; amending  
4 s. 815.03, F.S.; defining terms; amending s. 815.04,  
5 F.S.; providing that a person who willfully,  
6 knowingly, and without authorization modifies or  
7 destroys data, programs, or supporting documentation  
8 residing or existing internal or external to a  
9 computer network or electronic device commits an  
10 offense against intellectual property; providing  
11 criminal penalties; amending s. 815.06, F.S.; defining  
12 terms; providing that a person who willfully,  
13 knowingly, and without authorization accesses a  
14 computer network or electronic device, disrupts the  
15 ability to transmit data to or from a computer network  
16 or electronic device, damages a computer network or  
17 electronic device, or engages in the audio or video  
18 surveillance of an individual without the individual's  
19 knowledge by accessing a computer network or  
20 electronic device commits an offense against the users  
21 of computer networks and electronic devices; providing  
22 exceptions; providing criminal penalties; creating s.  
23 815.061, F.S.; defining the term "public utility";  
24 prohibiting a person from willfully, knowingly, and  
25 without authorization engaging in specified activities  
26 against a computer, computer system, computer network,  
27 or electronic device owned, operated, or used by a  
28 public utility; providing criminal penalties;  
29 providing an effective date.

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

579-01618-14

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30  
31 Be It Enacted by the Legislature of the State of Florida:  
32  
33 Section 1. Present subsection (4) of section 815.02,  
34 Florida Statutes, is redesignated as subsection (5), and a new  
35 subsection (4) is added to that section, to read:  
36 815.02 Legislative intent.—The Legislature finds and  
37 declares that:  
38 (4) The proliferation of new technology has led to the  
39 integration of computer systems in most sectors of the  
40 marketplace through the creation of computer networks, greatly  
41 extending the reach of computer crime.  
42 Section 2. Section 815.03, Florida Statutes, is amended to  
43 read:  
44 815.03 Definitions.—As used in this chapter, unless the  
45 context clearly indicates otherwise:  
46 (1) "Access" means to approach, instruct, communicate with,  
47 store data in, retrieve data from, or otherwise make use of any  
48 resources of a computer, computer system, or computer network.  
49 (2) "Computer" means an internally programmed, automatic  
50 device that performs data processing.  
51 (3) "Computer contaminant" means any set of computer  
52 instructions designed to modify, damage, destroy, record, or  
53 transmit information within a computer, computer system, or  
54 computer network without the intent or permission of the owner  
55 of the information. The term includes, but is not limited to, a  
56 group of computer instructions, commonly called viruses or  
57 worms, which are self-replicating or self-propagating and which  
58 are designed to contaminate other computer programs or computer

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59 data; consume computer resources; modify, destroy, record, or  
60 transmit data; or in some other fashion usurp the normal  
61 operation of the computer, computer system, or computer network.

62 (4) "Computer network" means a system that provides a  
63 medium for communication between one or more computer systems or  
64 electronic devices, including communication with an input or  
65 output device such as a display terminal, printer, or other  
66 electronic equipment that is connected to the computer systems  
67 or electronic devices by physical or wireless telecommunication  
68 facilities any system that provides communications between one  
69 or more computer systems and its input or output devices,  
70 including, but not limited to, display terminals and printers  
71 that are connected by telecommunication facilities.

72 (5) "Computer program or computer software" means a set of  
73 instructions or statements and related data which, when executed  
74 in actual or modified form, cause a computer, computer system,  
75 or computer network to perform specified functions.

76 (6) "Computer services" include, but are not limited to,  
77 computer time; data processing or storage functions; or other  
78 uses of a computer, computer system, or computer network.

79 (7) "Computer system" means a device or collection of  
80 devices, including support devices, one or more of which contain  
81 computer programs, electronic instructions, or input data and  
82 output data, and which perform functions, including, but not  
83 limited to, logic, arithmetic, data storage, retrieval,  
84 communication, or control. The term does not include calculators  
85 that are not programmable and that are not capable of being used  
86 in conjunction with external files.

87 (8) "Data" means a representation of information,

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88 knowledge, facts, concepts, computer software, computer  
89 programs, or instructions. Data may be in any form, in storage  
90 media or stored in the memory of the computer, or in transit or  
91 presented on a display device.

92 (9) "Electronic device" means a device that is capable of  
93 communicating across a computer network with other computers or  
94 devices for the purpose of transmitting, receiving, or storing  
95 data.

96 (10)(9) "Financial instrument" means any check, draft,  
97 money order, certificate of deposit, letter of credit, bill of  
98 exchange, credit card, or marketable security.

99 (11)(10) "Intellectual property" means data, including  
100 programs.

101 (12)(11) "Property" means anything of value as defined in  
102 s. 812.012 and includes, but is not limited to, financial  
103 instruments, information, including electronically produced data  
104 and computer software and programs in ~~either~~ machine-readable or  
105 human-readable form, and any other tangible or intangible item  
106 of value.

107 Section 3. Section 815.04, Florida Statutes, is amended to  
108 read:

109 815.04 Offenses against intellectual property; public  
110 records exemption.-

111 (1) A person who ~~Whoever~~ willfully, knowingly, and without  
112 authorization modifies data, programs, or supporting  
113 documentation residing or existing internal or external to a  
114 computer, computer system, ~~or~~ computer network, or electronic  
115 device commits an offense against intellectual property.

116 (2) A person who ~~Whoever~~ willfully, knowingly, and without

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117 authorization destroys data, programs, or supporting  
 118 documentation residing or existing internal or external to a  
 119 computer, computer system, ~~or~~ computer network, or electronic  
 120 device commits an offense against intellectual property.

121 (3) (a) Data, programs, or supporting documentation which is  
 122 a trade secret as defined in s. 812.081 which resides or exists  
 123 internal or external to a computer, computer system, or computer  
 124 network which is held by an agency as defined in chapter 119 is  
 125 confidential and exempt from the provisions of s. 119.07(1) and  
 126 s. 24(a), Art. I of the State Constitution.

127 (b) A person who ~~Whoever~~ willfully, knowingly, and without  
 128 authorization discloses or takes data, programs, or supporting  
 129 documentation which is a trade secret as defined in s. 812.081  
 130 or is confidential as provided by law residing or existing  
 131 internal or external to a computer, computer system, or computer  
 132 network commits an offense against intellectual property.

133 (4) (a) Except as otherwise provided in this subsection, an  
 134 offense against intellectual property is a felony of the third  
 135 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 136 775.084.

137 (b) If the offense is committed for the purpose of devising  
 138 or executing any scheme or artifice to defraud or to obtain any  
 139 property, ~~then the person commits~~ offender is guilty of a felony  
 140 of the second degree, punishable as provided in s. 775.082, s.  
 141 775.083, or s. 775.084.

142 Section 4. Section 815.06, Florida Statutes, is amended to  
 143 read:

144 815.06 Offenses against ~~computer~~ users of computer networks  
 145 and electronic devices.-

579-01618-14

2014364c1

146 (1) As used in this section, the term "person" means:

147 (a) An individual;

148 (b) A partnership, corporation, association, or other  
 149 entity doing business in this state, or an officer, agent, or  
 150 employee of such an entity; or

151 (c) An officer, employee, or agent of the state or a  
 152 county, municipality, special district, or other political  
 153 subdivision whether executive, judicial, or legislative,  
 154 including, but not limited to, a department, division, bureau,  
 155 commission, authority, district, or agency thereof.

156 (2) A person commits an offense against users of computer  
 157 networks or electronic devices if he ~~Whoever~~ willfully,  
 158 knowingly, and without authorization:

159 (a) Accesses or causes to be accessed any computer,  
 160 computer system, ~~or~~ computer network, or electronic device with  
 161 knowledge that such access is unauthorized;

162 (b) Disrupts or denies or causes the denial of the ability  
 163 to transmit data ~~computer system services~~ to or from an  
 164 authorized user of such computer system or computer network  
 165 services, which, in whole or in part, is owned by, under  
 166 contract to, or operated for, on behalf of, or in conjunction  
 167 with another;

168 (c) Destroys, takes, injures, or damages equipment or  
 169 supplies used or intended to be used in a computer, computer  
 170 system, ~~or~~ computer network, or electronic device;

171 (d) Destroys, injures, or damages any computer, computer  
 172 system, ~~or~~ computer network, or electronic device; ~~or~~

173 (e) Introduces any computer contaminant into any computer,  
 174 computer system, ~~or~~ computer network, or electronic device; or

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175 (f) Engages in audio or video surveillance of an individual  
 176 without that individual's knowledge by accessing any inherent  
 177 feature or component of a computer, computer system, computer  
 178 network, or electronic device, including accessing the data or  
 179 information of a computer, computer system, computer network, or  
 180 electronic device that is stored by a third party.

181 This section does not apply to a person who has acted pursuant  
 182 to a search warrant or to an exception to a search warrant  
 183 authorized by law or when acting within the scope of his or her  
 184 lawful employment commits an offense against computer users.

185 (3)(2)(a) Except as provided in paragraphs (b) and (c), a  
 186 person who ~~whoever~~ violates subsection (2) (1) commits a felony  
 187 of the third degree, punishable as provided in s. 775.082, s.  
 188 775.083, or s. 775.084.

189 (b) A person commits a felony of the second degree,  
 190 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 191 if he or she ~~whoever~~ violates subsection (2) (1) and:

192 1. Damages a computer, computer equipment or supplies,  
 193 ~~computer supplies,~~ a computer system, or a computer network, and  
 194 the monetary damage or loss incurred as a result of the  
 195 violation is at least \$5,000 or greater;

196 2. Commits the offense for the purpose of devising or  
 197 executing any scheme or artifice to defraud or obtain property;  
 198 ~~or~~

199 3. Interrupts or impairs a governmental operation or public  
 200 communication, transportation, or supply of water, gas, or other  
 201 public service; or

202 4. Intentionally interrupts the transmittal of data to or  
 203

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204 from, or gains unauthorized access to, a computer, computer  
 205 system, computer network, or electronic device belonging to any  
 206 mode of public or private transit, as defined in s. 341.031,  
 207

208 ~~commits a felony of the second degree, punishable as provided in~~  
 209 ~~s. 775.082, s. 775.083, or s. 775.084.~~

210 (c) A person who ~~Whoever~~ violates subsection (2) (1) and  
 211 the violation endangers human life commits a felony of the first  
 212 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 213 775.084, if the violation:

214 1. Endangers human life; or

215 2. Disrupts a computer, computer system, computer network,  
 216 or electronic device that affects medical equipment used in the  
 217 direct administration of medical care or treatment to a person.

218 (4)(3) A person who ~~Whoever~~ willfully, knowingly, and  
 219 without authorization modifies equipment or supplies used or  
 220 intended to be used in a computer, computer system, ~~or~~ computer  
 221 network, or electronic device commits a misdemeanor of the first  
 222 degree, punishable as provided in s. 775.082 or s. 775.083.

223 (5)(4)(a) In addition to any other civil remedy available,  
 224 the owner or lessee of the computer, computer system, computer  
 225 network, computer program, computer equipment or supplies,  
 226 electronic device, ~~computer supplies,~~ or computer data may bring  
 227 a civil action against a ~~any~~ person convicted under this section  
 228 for compensatory damages.

229 (b) In an ~~any~~ action brought under this subsection, the  
 230 court may award reasonable attorney ~~attorney's~~ fees to the  
 231 prevailing party.

232 (6)(5) A ~~Any~~ computer, computer system, computer network,

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233 computer software, ~~or~~ computer data, or electronic device owned  
 234 by a defendant which is used during the commission of a any  
 235 violation of this section or a any computer or electronic device  
 236 owned by the defendant which is used as a repository for the  
 237 storage of software or data obtained in violation of this  
 238 section is subject to forfeiture as provided under ss. 932.701-  
 239 932.704.

240 ~~(7)(6)~~ This section does not apply to a any person who  
 241 accesses his or her employer's computer system, computer  
 242 network, computer program, ~~or~~ computer data, or electronic  
 243 device when acting within the scope of his or her lawful  
 244 employment.

245 ~~(8)(7)~~ For purposes of bringing a civil or criminal action  
 246 under this section, a person who causes, by any means, the  
 247 access to a computer, computer system, ~~or~~ computer network, or  
 248 electronic device in one jurisdiction from another jurisdiction  
 249 is deemed to have personally accessed the computer, computer  
 250 system, ~~or~~ computer network, or electronic device in both  
 251 jurisdictions.

252 Section 5. Section 815.061, Florida Statutes, is created to  
 253 read:

254 815.061 Offenses against public utilities.-

255 (1) As used in this section, the term "public utility"  
 256 includes each public utility and electric utility as those terms  
 257 are defined in s. 366.02; each utility as defined in s. 367.021;  
 258 each natural gas transmission company as defined in s. 368.103;  
 259 each person, corporation, partnership, association, public  
 260 agency, municipality, cooperative, gas district, or other legal  
 261 entity and their lessees, trustees, or receivers, now or

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262 hereafter owning, operating, managing, or controlling gas  
 263 transmission or distribution facilities or any other facility  
 264 supplying or storing natural or manufactured gas or liquefied  
 265 gas with air admixture or any similar gaseous substances by  
 266 pipeline to or for the public within this state; and any  
 267 separate legal entity created under s. 163.01 and composed of  
 268 any of the entities described in this subsection for the purpose  
 269 of providing utility services in this state, including wholesale  
 270 power and electric transmission services.

271 (2) A person may not willfully, knowingly, and without  
 272 authorization:

273 (a) Gain access to a computer, computer system, computer  
 274 network, or electronic device owned, operated, or used by a  
 275 public utility while knowing that such access is unauthorized.

276 (b) Physically tamper with, insert software into, or  
 277 otherwise transmit commands or electronic communications to a  
 278 computer, computer system, computer network, or electronic  
 279 device which cause a disruption in any service delivered by a  
 280 public utility.

281 (3) (a) A person who violates paragraph (2) (a) commits a  
 282 felony of the third degree, punishable as provided in s.  
 283 775.082, s. 775.083, or s. 775.084.

284 (b) A person who violates paragraph (2) (b) commits a felony  
 285 of the second degree, punishable as provided in s. 775.082, s.  
 286 775.083, or s. 775.084.

287 Section 6. This act shall take effect October 1, 2014.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** February 7, 2014

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I respectfully request that **Senate Bill #364**, relating to Computer Crimes, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



---

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE  
**APPEARANCE RECORD**

SB 364

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

2-17-2014  
Meeting Date

Topic Internet Service Provider / Computer Crimes

Name Bucki Edmonston

Job Title MGR. - GOV. AFFAIRS

Address 106 E. College Ave. Ste. 710  
Street  
Tallahassee, FL. 32301  
City State Zip

Bill Number Amendment to CS/SB 364  
(if applicable)  
Amendment Barcode #269740  
(if applicable)

Phone 681-3756

E-mail rebecca.edmonston@verizon.com

Speaking:  For  Against  Information  
Amendment

Representing Verizon

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-14

Meeting Date

Topic \_\_\_\_\_

Name Dale Calhoun

Bill Number 364  
*(if applicable)*

Job Title \_\_\_\_\_

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Address 214 S Monroe St

Phone 850 681 0496

Street

Tallahassee FL 32302

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Natural Gas 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic COMPUTER CRIMES

Bill Number 364  
*(if applicable)*

Name MIKE BJORKLUND

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title DIR. OF LEG. AFFAIRS

Address 2916 APALACHEE PKWY

Phone 877-6666

TALLAHASSEE  
City

.State

32301  
Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FECA

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.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 366

INTRODUCER: Senator Brandes

SUBJECT: Public Records/Trade Secrets/Computers

DATE: February 11, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Favorable</b>
2.	Cellon	Cannon	CJ	<b>Favorable</b>
3.			GO	
4.			RC	

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**I. Summary:**

SB 366 expands an existing public records exemption for data, programs, or supporting documentation that contain trade secrets as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency. The exemption is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2019, unless reviewed and reenacted by the Legislature.

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

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

**II. Present Situation:**

**Florida's Public Records Law**

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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

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

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

copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>11</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

### **Offenses against intellectual property; public records exemption**

Section 815.04(3), F.S., makes data, programs, or supporting documentation that are a trade secret as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency as defined in chapter 119, confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State

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<sup>4</sup> 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 as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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 (*see 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

Constitution. A person who willfully, knowingly, and without authorization discloses or takes such information commits an offense against intellectual property.

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

The bill amends s. 815.04(3), F.S., to include protections for information held on electronic devices.<sup>13</sup> The bill makes this subsection subject to the Open Government Sunset Review Act and provides that it is automatically repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature prior to that date.

The bill contains a finding of public necessity for this exemption. It states that it is a public necessity that trade secrets and intellectual property be protected from disclosure by persons gaining unauthorized access into computer networks and electronic devices. Trade secrets and intellectual property are already afforded public records exemptions because of the immense importance of this type of proprietary information to the economic competition between this state and other states and nations. As technology continues to evolve, it is important that the existing public records exemption for trade secrets and intellectual property expand accordingly to encompass new technology used in association with sensitive trade secrets and intellectual property. Thus the Legislature declares that it is a public necessity that data, programs, and supporting documentation that are trade secrets, are held by an agency and reside or exist internal or external to a computer, computer system, computer network, or electronic device be confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill takes effect on the same date that SB 364 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

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

None.

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

The Florida Constitution provides that every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.<sup>14</sup> However, the Legislature may provide for the exemption of records from these requirements by general law passed by a two-thirds vote of each house, provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the

---

<sup>13</sup> The term “electronic devices” is defined in a related bill, SB 364, to mean a device that is capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data.

<sup>14</sup> Art. I, s. 24(c) of the State Constitution.

law.<sup>15</sup> Such laws may contain only exemptions from these requirements and must relate to one subject.<sup>16</sup>

The bill appears to meet the constitutional requirements as it appears to: contain the required statement of public necessity, be no broader than necessary, contain only the exemption from public records laws, and relate to one subject. It requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Those persons who have trade secrets contained in documents held by agencies on computers and electronic devices will be better protected.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 815.04 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

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<sup>15</sup> *Id.*

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

B. Amendments:

None.

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

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By Senator Brandes

22-00259A-14

2014366\_\_

A bill to be entitled

An act relating to public records; amending s. 815.04, F.S.; amending an exemption from public records requirements for data, programs, and supporting documentation that are trade secrets residing or existing internal or external to a computer, computer system, or computer network; expanding the exemption to include such trade secret information residing or existing internal or external to an electronic device; providing for legislative review and repeal of the exemption; 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 (3) of section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.-

(3) (a) Data, programs, or supporting documentation that which is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that which resides or exists internal or external to a computer, computer system, ~~or~~ computer network, or electronic device which is held by an agency as defined in chapter 119 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A person who ~~Whoever~~ willfully, knowingly, and without authorization discloses or takes data, programs, or supporting

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documentation ~~that which~~ is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, ~~or~~ computer network, or electronic device commits an offense against intellectual property.

(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, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that trade secrets and intellectual property be protected from disclosure by persons gaining unauthorized access into computer networks and electronic devices. Trade secrets and intellectual property are already afforded public records exemptions because of the immense importance of this type of proprietary information to the economic competition between this state and other states and nations. As technology continues to evolve, it is important that the existing public records exemption for trade secrets and intellectual property expand accordingly to encompass new technology used in association with sensitive trade secrets and intellectual property. Thus the Legislature declares that it is a public necessity that data, programs, and supporting documentation that are trade secrets which are held by an agency and which reside or exist internal or external to a computer, computer system, computer network, or electronic device be confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that

Page 2 of 3

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59 SB \_\_\_\_\_ or similar legislation takes effect, if such  
60 legislation is adopted in the same legislative session or an  
61 extension thereof and becomes a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** February 7, 2014

---

I respectfully request that **Senate Bill #366**, relating to Public Records/ Trade Secrets/ Computers, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



A handwritten signature in cursive script, appearing to read "Jeff Brandes".

---

Senator Jeff Brandes  
Florida Senate, District 22

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 408

INTRODUCER: Health Policy Committee and Senators Braynon and Sobel

SUBJECT: Needle and Syringe Exchange Pilot Program

DATE: February 11, 2014      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 408 creates the “Miami-Dade Infectious Disease Elimination Act (IDEA).” The IDEA requires the Department of Health (DOH) to establish a needle and syringe exchange pilot program in Miami-Dade County to prevent the transmission of HIV/AIDS, viral hepatitis, and other blood-borne diseases. The bill specifies the duties of the pilot program. The pilot program must be funded through private grants and donations.

The bill specifies that possession, distribution, or exchange of needles or syringes through the pilot program is not a violation of criminal law; however, possession or redistribution of syringes or needles outside of the program by staff, volunteers, or participants remains a violation subject to criminal prosecution.

The pilot program expires on July 1, 2019, or, if operated by a designee, 5 years after the entity is designated, and requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

## II. Present Situation:

### Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), particularly among injection drug users (IDUs), their sexual partners, and offspring. The studies found that comprehensive strategies—in the absence of a vaccine or cure for AIDS—are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse treatment, and sterile syringe access programs, including syringe exchange programs (SEPs).<sup>1,2</sup> In general, these strategies are referred to as harm reduction.

Syringe exchange programs provide free sterile syringes and collect used syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, hepatitis B virus, and hepatitis C virus (HCV). In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and<sup>3</sup>
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.<sup>4</sup>

<sup>1</sup> This analysis uses the terminology SEP, interchangeably with the term “needle exchange program” (NEP).

<sup>2</sup> National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), available at [http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20\(17\).pdf](http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf) (last visited Feb. 11, 2014). See also World Health Organization, *Treatment of injecting drug users with HIV/AIDS: promoting access and optimizing service delivery* (2006), available at [http://www.who.int/substance\\_abuse/publications/treatment\\_idus\\_hiv\\_aids.pdf](http://www.who.int/substance_abuse/publications/treatment_idus_hiv_aids.pdf) (last visited Feb. 11, 2014); Centers for Disease Control, *Integrated Prevention Services for HIV Infection, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis for Persons Who Use Drugs Illicitly: Summary Guidance from CDC and the U.S. Department of Health and Human Services* (Nov. 12, 2012), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6105a1.htm> (last visited Feb. 11, 2014); World Health Organization, United Nations Office on Drugs and Crime, and UNAIDS, *WHO, UNODC, UNAIDS Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users*, 10 – 26 (2012 Revision), available at [http://apps.who.int/iris/bitstream/10665/77969/1/9789241504379\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/77969/1/9789241504379_eng.pdf) (last visited Feb. 11, 2014); Institute of Medicine of the National Academies, *Preventing HIV Infection Among Injecting Drug Users in High Risk Countries* (September 2006), available at <http://iom.edu/Reports/2006/Preventing-HIV-Infection-among-Injecting-Drug-Users-in-High-Risk-Countries-An-Assessment-of-the-Evidence.aspx> (last visited Feb. 11, 2014).

<sup>3</sup> Researchers from the University of Miami recently found that IDUs in Miami—a city without an SEP—were 34 times more likely to dispose of a used syringe in a public location than were IDUs in San Francisco—a city with multiple SEPs. Tookes, HE, Kral, AH, Wenger, LD, Cardenas, GA, Martinez, AN, Sherman, RL, Pereyra, M, Forrest, DW, LalLota, M, Metsch, LR. “A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs.” *Drug and Alcohol Dependence*, June 2012, Vol. 123, Issue 1, pp 255-259, available at <http://www.ncbi.nlm.nih.gov/pubmed/22209091> (last visited Feb. 11, 2014).

<sup>4</sup> National Institute of Drug Abuse, *supra* note 2, at 18. See also U.S. Department of Health and Human Services, David Satcher, MD, Assistant Secretary for Health and Surgeon General, *Evidence-based findings on the efficacy of syringe exchange programs: an analysis of the scientific research completed since April 1998* (March 17, 2000), available at

The first sanctioned SEP began in Amsterdam, the Netherlands, in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington in 1988. Programs have since developed throughout the United States.<sup>5</sup> As of July 2013, thirty states, plus the District of Columbia and Puerto Rico, have a combined total of 214 SEPs.<sup>6</sup>

In 1988, Congress enacted a ban on the use of federal funds for SEPs. The ban remained in place until 2009, but was reinstated again at the end of 2011 as part of the omnibus spending bill that continued operations of the federal government through 2012.

### Intravenous Drug Use in Florida

The majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA) with an IDU-associated risk through 2012 are primarily in the southeast or central part of the state.<sup>7</sup> Researchers from the University of Miami recently estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive and one in three are HCV positive.<sup>8</sup> The DOH estimates that 50 - 90 percent of HIV-infected IUDs are also co-infected with HCV.<sup>9</sup>

The chart below contains data from 2012 of 11 counties with the highest incidence of PLWHA with an IDU-associated risk.<sup>10</sup>

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	25,544	3,274	13%
Broward	16,593	2,103	13%
Palm Beach	7,769	1,484	19%

<http://home.mchsi.com/~apclc/8fedstudies2.pdf> (last visited Feb. 11, 2014). In his report the Surgeon General noted, “The data indicate that the presence of a syringe exchange program does not increase the use of illegal drugs among participants in syringe exchange programs, and in many cases, a decrease in injection frequency has been observed among those attending these programs.” World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users* (2004) 28 – 29, available at <http://www.who.int/hiv/pub/idu/pubidu/en/> (last visited Feb. 11, 2014) (Concluding specifically that injecting paraphernalia legislation is a barrier to effective HIV control among IDUs).

<sup>5</sup> Sandra D. Lane, R.N., Ph.D., M.P.H., *Needle Exchange: A Brief History, a Publication from The Kaiser Forums*, available at <http://hpcpsdi.rutgers.edu/facilitator/SAP/downloads/articles%20and%20data/History+of+Needle+Exchange.pdf> (last visited Feb. 11, 2014).

<sup>6</sup> North American Syringe Exchange Network, *Syringe Exchange Program Coverage in the United States* (July 2013), available at [http://www.amfar.org/uploadedFiles/amfarorg/Articles/In The Community/2013/July%202013%20SEP%20Map%20.pdf](http://www.amfar.org/uploadedFiles/amfarorg/Articles/In%20The%20Community/2013/July%202013%20SEP%20Map%20.pdf) (last visited Feb. 11, 2014).

<sup>7</sup> Florida Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2012* (PowerPoint slide) (Revised Sept. 17, 2013), available at [http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/HIV-AIDS-slide%20sets/IDU\\_2012.pdf](http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/HIV-AIDS-slide%20sets/IDU_2012.pdf) (last visited Feb. 11, 2014). The PowerPoint reflects data as of June 30, 2013.

<sup>8</sup> Tookes et al., *supra* note 3.

<sup>9</sup> Florida Department of Health, *HIV Disease and Hepatitis C Virus (HCV) Co-Infection – Florida, 2011* (Revised Dec. 11, 2012) (on file with the Senate Health Policy Committee).

<sup>10</sup> *Supra* note 7.

County	Total PLWHA Cases	Total IDU	Percent IDU
Orange	7,149	1,291	18%
Hillsborough	5,898	1,144	19%
Duval	5,372	1,009	19%
Pinellas	3,564	723	20%
Lee	1,677	305	18%
St. Lucie	1,508	302	20%
Volusia	1,358	324	24%
Brevard	1,256	268	21%
STATE TOTAL	98,291	17,289	18%

Among those with HIV, drug users have been found to experience significant barriers to accessing care. Specifically, they receive HIV care at lower rates than other populations; have greater difficulty accessing treatment and being prescribed medications, and even when treatment is available, may fail to connect with the health care system due to mistrust, fear of prosecution, stigmatization, and a chaotic lifestyle; and may be discriminated against in the system due to the perception that they will not adhere to a medication regimen or that HIV has been self-inflicted, and thus treatment is not deserved.<sup>11</sup>

### **Florida Comprehensive Drug Abuse Prevention and Control Act**

The term drug paraphernalia is defined 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 ch. 893, F.S., or s. 877.111, F.S.<sup>12</sup>

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this provision commits a first degree misdemeanor.<sup>13</sup>

<sup>11</sup> World Health Organization, *Treatment of injecting drug users with HIV/AIDS: promoting access and optimizing service delivery*, p. 1 (2006), available at [http://www.who.int/substance\\_abuse/publications/treatment\\_idus\\_hiv\\_aids.pdf](http://www.who.int/substance_abuse/publications/treatment_idus_hiv_aids.pdf) (last visited Feb 11, 2014).

<sup>12</sup> Section 893.145, F.S.

<sup>13</sup> A first degree misdemeanor is punishable by up to one-year imprisonment in a county jail, a fine of up to \$1,000, or both. See ss. 775.082 and 775.083, F.S.

This section of law also provides that it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision commits a third degree felony.<sup>14</sup>

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.<sup>15</sup>

### III. Effect of Proposed Changes:

**Section 1** names the act the “Miami-Dade Infectious Disease Elimination Act (IDEA).”

**Section 2** adds a new subsection to s. 381.0038, F.S., which requires the DOH to establish a sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program is created to prevent the transmission of the HIV/AIDS and other blood-borne diseases by offering free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes in a one-for-one exchange. The pilot program must be administered by the DOH or its designee. The bill identifies the entities that the DOH is authorized to designate to operate the program at a fixed location or through a mobile health unit:

- A licensed hospital;
- A licensed health care clinic;
- A substance abuse treatment program;
- An HIV or AIDS service organization; or
- Another nonprofit entity designated by the DOH.

The program must do all of the following:

- Provide for maximum security of exchange sites and equipment, including: an accounting of the number of needles and syringes in use and in storage; safe disposal of returned needles;

<sup>14</sup> A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed \$5,000, or both. *See* ss. 775.082 and 775.083, F.S.

<sup>15</sup> Section 893.146, F.S.

and any other measure that may be required to control the use and dispersal of sterile needles and syringes.

- Strive for one-to-one exchange (one sterile needle and syringe unit for each used one).
- Make available the following: educational materials; HIV counseling and testing; referral services to provide education regarding HIV/AIDS and viral hepatitis transmission; and drug use prevention and treatment.

The program must be funded through grants and donations from private resources and funds, without the use of state funds.

The possession, distribution, or exchange of needles or syringes as part of a pilot SEP established by the DOH or its designee is not a violation of ch. 893, F.S., or any other law. However, a SEP staff member, volunteer, or participant is not immune from criminal prosecution for possessing needles or syringes that are not part of the exchange pilot program or for redistributing needles or syringes if acting outside the program.

The pilot program must collect data regarding the following: number of participants served; the number of needles and syringes exchanged and distributed; the number of participants entering drug counseling and treatment; the number of participants receiving HIV/AIDS or viral hepatitis testing; and demographic profiles of participants served. However, no personal identifying information may be collected from a participant for any purpose.

The pilot program expires on July 1, 2019, or, if operated by a designee, 5 years after the entity is designated. Six months before the pilot program expires, the OPPAGA must submit a report to the Legislature that includes the collected data and a recommendation on whether the pilot program should continue.

**Section 3** adds a severability clause, which provides that if any provision of this act or its application to a person is invalid, the invalidity would not affect other provisions or applications of the act which can be given effect without the invalid provision, and the provisions of this act are severable.

**Section 4** provides an effective date of July 1, 2014.

#### **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 private sector would benefit from any cost savings resulting from avoided treatment costs, consistent with the discussion below, in proportion to its share of covered costs.

**C. Government Sector Impact:**

The DOH indicates that an exchange program site will be required to obtain a permit as a sharps collection program under Chapter 64E-16, F.A.C. The DOH anticipates that permitting costs can be absorbed by current resources.

Currently, no data exist to estimate the potential fiscal impact of the pilot program. However, the CDC indicates that HIV prevention interventions, such as syringe exchange programs, are intended to prevent infection in people who are HIV-negative. Such programs can be evaluated to determine the number of infections prevented that would have otherwise occurred had the intervention not been provided.

The lifetime treatment cost of an HIV infection can be used as a conservative threshold value for the cost of averting one infection. Currently, the lifetime treatment cost of an HIV infection is estimated at \$379,668 (in 2010 dollars), therefore a prevention intervention is deemed cost-saving if its cost-effectiveness ratio (cost of the intervention/number of infections averted) is less than \$379,668 per infection averted.<sup>16</sup>

The State of Florida pays for HIV/AIDS treatment through Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program, among others. If 10 percent of the reported PLWHA with an IDU-associated risk living in Miami-Dade County had avoided infection, this would represent a savings in treatment costs of approximately \$124 million.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 381.0038 of the Florida Statutes.

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<sup>16</sup> Centers for Disease Control, *HIV Cost-effectiveness* <http://www.cdc.gov/hiv/prevention/ongoing/costeffectiveness/> (last visited Feb. 11, 2014).

**IX. 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 February 4, 2014:**

The CS adds a short title and modifies the program repeal date to be either July 1, 2019, or, if operated by a designee, 5 years from the date the entity is designated.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Braynon

588-01648-14

2014408c1

1 A bill to be entitled  
 2 An act relating to an infectious disease elimination  
 3 pilot program; creating the "Miami-Dade Infectious  
 4 Disease Elimination Act (IDEA)"; amending s. 381.0038,  
 5 F.S.; requiring the Department of Health to establish  
 6 a sterile needle and syringe exchange pilot program in  
 7 Miami-Dade County; providing for administration of the  
 8 pilot program by the department or a designee;  
 9 establishing pilot program criteria; providing that  
 10 the distribution of needles and syringes under the  
 11 pilot program is not a violation of the Florida  
 12 Comprehensive Drug Abuse Prevention and Control Act or  
 13 any other law; providing conditions under which a  
 14 pilot program staff member or participant may be  
 15 prosecuted; prohibiting the collection of participant  
 16 identifying information; providing for the pilot  
 17 program to be funded through private grants and  
 18 donations; providing for expiration of the pilot  
 19 program; requiring the Office of Program Policy  
 20 Analysis and Government Accountability to submit a  
 21 report and recommendations regarding the pilot program  
 22 to the Legislature; providing rulemaking authority;  
 23 providing for severability; providing an effective  
 24 date.

25  
 26 Be It Enacted by the Legislature of the State of Florida:

27  
 28 Section 1. This act may be cited as the "Miami-Dade  
 29 Infectious Disease Elimination Act (IDEA)."

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588-01648-14

2014408c1

30 Section 2. Section 381.0038, Florida Statutes, is amended  
 31 to read:

32 381.0038 Education; sterile needle and syringe exchange  
 33 pilot program.—The Department of Health shall establish a  
 34 program to educate the public about the threat of acquired  
 35 immune deficiency syndrome and a sterile needle and syringe  
 36 exchange pilot program.

37 (1) The acquired immune deficiency syndrome education  
 38 program shall:

39 (a) Be designed to reach all segments of Florida's  
 40 population;

41 (b) Contain special components designed to reach non-  
 42 English-speaking and other minority groups within the state;

43 (c) Impart knowledge to the public about methods of  
 44 transmission of acquired immune deficiency syndrome and methods  
 45 of prevention;

46 (d) Educate the public about transmission risks in social,  
 47 employment, and educational situations;

48 (e) Educate health care workers and health facility  
 49 employees about methods of transmission and prevention in their  
 50 unique workplace environments;

51 (f) Contain special components designed to reach persons  
 52 who may frequently engage in behaviors placing them at a high  
 53 risk for acquiring acquired immune deficiency syndrome;

54 (g) Provide information and consultation to state agencies  
 55 to educate all state employees; ~~and~~

56 (h) Provide information and consultation to state and local  
 57 agencies to educate law enforcement and correctional personnel  
 58 and inmates;—

Page 2 of 6

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2014408c1

59 (i) Provide information and consultation to local  
60 governments to educate local government employees;~~-~~

61 (j) Make information available to private employers and  
62 encourage them to distribute this information to their  
63 employees;~~-~~

64 (k) Contain special components which emphasize appropriate  
65 behavior and attitude change; ~~and-~~

66 (l) Contain components that include information about  
67 domestic violence and the risk factors associated with domestic  
68 violence and AIDS.

69 (2) The education program designed by the Department of  
70 Health shall use ~~utilize~~ all forms of the media and shall place  
71 emphasis on the design of educational materials that can be used  
72 by businesses, schools, and health care providers in the regular  
73 course of their business.

74 (3) The department may contract with other persons in the  
75 design, development, and distribution of the components of the  
76 education program.

77 (4) The department shall establish a sterile needle and  
78 syringe exchange pilot program in Miami-Dade County. The pilot  
79 program shall be administered by the department or the  
80 department's designee. The department may designate one of the  
81 following entities to operate the pilot program at a fixed  
82 location or through a mobile health unit: a hospital licensed  
83 under chapter 395, a health care clinic licensed under part X of  
84 chapter 400, a substance abuse treatment program, an HIV or AIDS  
85 service organization, or another nonprofit entity designated by  
86 the department. The pilot program shall offer the free exchange  
87 of clean, unused needles and hypodermic syringes for used

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588-01648-14

2014408c1

88 needles and hypodermic syringes as a means to prevent the  
89 transmission of HIV, AIDS, viral hepatitis, or other blood-borne  
90 diseases among intravenous drug users and their sexual partners  
91 and offspring.

92 (a) The pilot program shall:

93 1. Provide for maximum security of exchange sites and  
94 equipment, including an accounting of the number of needles and  
95 syringes in use, the number of needles and syringes in storage,  
96 safe disposal of returned needles, and any other measure that  
97 may be required to control the use and dispersal of sterile  
98 needles and syringes.

99 2. Strive for a one-to-one exchange, whereby the  
100 participant shall receive one sterile needle and syringe unit in  
101 exchange for each used one.

102 3. Make available educational materials; HIV counseling and  
103 testing; referral services to provide education regarding HIV,  
104 AIDS, and viral hepatitis transmission; and drug-abuse  
105 prevention and treatment.

106 (b) Notwithstanding any other provision of law, the  
107 possession, distribution, or exchange of needles or syringes as  
108 part of the pilot program established by the department or the  
109 department's designee is not a violation of any part of chapter  
110 893 or any other law.

111 (c) A pilot program staff member, volunteer, or participant  
112 is not immune from criminal prosecution for:

113 1. The possession of needles or syringes that are not a  
114 part of the pilot program; or

115 2. Redistribution of needles or syringes in any form, if  
116 acting outside the pilot program.

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117 (d) The pilot program shall collect data for annual and  
 118 final reporting purposes, which shall include information on the  
 119 number of participants served, the number of needles and  
 120 syringes exchanged and distributed, the demographic profiles of  
 121 the participants served, the number of participants entering  
 122 drug counseling and treatment, the number of participants  
 123 receiving HIV, AIDS, or viral hepatitis testing, and other data  
 124 deemed necessary for the pilot program. However, personal  
 125 identifying information may not be collected from a participant  
 126 for any purpose.

127 (e) State funds may not be used to operate the pilot  
 128 program. The pilot program shall be funded through grants and  
 129 donations from private resources and funds.

130 (f) The pilot program shall expire July 1, 2019, or, if  
 131 operated by a designee, five years after the entity is  
 132 designated. Six months before the pilot program expires, the  
 133 Office of Program Policy Analysis and Government Accountability  
 134 shall submit a report to the President of the Senate and the  
 135 Speaker of the House of Representatives that includes the data  
 136 collection requirements established in this subsection; the  
 137 rates of HIV, AIDS, viral hepatitis, or other blood-borne  
 138 diseases before the pilot program began and every subsequent  
 139 year thereafter; and a recommendation on whether to continue the  
 140 pilot program.

141 (g) The department may adopt and develop rules to  
 142 administer this subsection.

143 Section 3. If any provision of this act or its application  
 144 to any person or circumstance is held invalid, the invalidity  
 145 does not affect other provisions or applications of the act that

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146 can be given effect without the invalid provision or  
 147 application, and to this end the provisions of this act are  
 148 severable.

149 Section 4. This act shall take effect July 1, 2014.

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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)

2/17/14

Meeting Date

Topic Infectious Disease Elimination Program

Bill Number SB 0408

Name J.C. del Valle

Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Assistant Vice President, Government and Community Relations

\_\_\_\_\_ (if applicable)

Address 6200 San Amaro Drive

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Phone (305) 284-4085

City

Coral Gables, FL

State

Zip

E-mail jcdelvalle@miami.edu

Speaking:  For  Against  Information

Representing University of Miami

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

WAIVE TIME IN  
SUPPORT

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

2-17-2014

Meeting Date

Topic INFECTIOUS DISEASE ELIMINATION PILOT PROGRAM

Bill Number SB 408

Name STEPHEN R. WIDON

(if applicable)

Job Title EXECUTIVE DIRECTOR

Amendment Barcode \_\_\_\_\_

(if applicable)

Address 2007 APALACHEE PARKWAY

Phone 878-7463

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City

TALLAHASSEE

FL

State

32301

Zip

E-mail \_\_\_\_\_

Speaking:

For

Against

Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2/16/14

Meeting Date

Topic Infectious Disease Elimination Act

Bill Number 408  
*(if applicable)*

Name Chanelle Diaz

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title University of Miami Medical Student

Address 5050 NW 7th St  
Street

Phone 786-290-1833

Miami, FL 33126  
City State Zip

E-mail CMDiaz1@med.miami.edu

Speaking:  For  Against  Information

Waive in Support

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2-16-14

Meeting Date

Topic Infectious Disease Elimination Act

Bill Number 408

(if applicable)

Name John Dudley

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title Medical Student, FSU College of Medicine

Address 2055 Thomsville Rd Apt B104

Phone \_\_\_\_\_

Street

Tallahassee

FL

32308

E-mail \_\_\_\_\_

City

State

Zip

Speaking:

For

Against

Information

waive in support

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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2.17.14

Meeting Date

Topic Infectious Disease Elimination Act P187

Bill Number 408  
*(if applicable)*

Name Michelle Jacquis

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Dir. of legislative operations / policy mgmt.

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Phone 850.251.2288

Tallahassee, FL 32302  
*City State Zip*

E-mail mjacquis@flmedical.org

Speaking:  For  Against  Information

Representing FL Medical Association (FMA)

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/14

Meeting Date

Topic Infectious Disease Elimination Act Pilot

Bill Number 408  
*(if applicable)*

Name Hansel Tookes

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title University of Miami Medical student

Address 475 Brickell Ave

Phone \_\_\_\_\_

Street

Miami

FL

33131

City

State

Zip

E-mail hetookes@med.miami.edu

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.*

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-14

Meeting Date

Topic IDEA

Bill Number 408  
*(if applicable)*

Name Chris Fisher

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Policy & Advocacy Coordinator

Address 5 Sinclair Circle

Phone 850-510-7518

Street

Indialantic FL 32903

City

State

Zip

E-mail christinep.fisher@resl.com

Speaking:  For  Against  Information

Representing The MDS Institute

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)

2/17/14

Meeting Date

Topic Infectious Disease Program

Bill Number 408  
*(if applicable)*

Name FELY CURVA

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Partner, Cura & Assoc.

Address 1212 Piedmont Dr.  
Street

Phone 850-508-2256

Tallahassee FL 32312  
City State Zip

E-mail curva@mindspring.com

Speaking:  For  Against  Information

Representing Budd Bell Clearinghouse on Human 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**  
**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 434

INTRODUCER: Senator Ring

SUBJECT: Lewd and Lascivious Behavior

DATE: February 12, 2014      REVISED: 02/17/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			RC	

**I. Summary:**

SB 434 repeals s. 798.02, F.S., which makes it a second degree misdemeanor for an unmarried man and a woman to lewdly and lasciviously cohabit together, or any man or woman, married or unmarried to engage in open and gross lewdness and lascivious behavior.

**II. Present Situation:**

Section 798.02, F.S., makes it a second degree misdemeanor for any unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if married or unmarried engage in open and gross lewdness and lascivious behavior. This law was originally enacted in 1868 and made the crime of cohabitation punishable by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by a fine not exceeding three hundred dollars.<sup>1</sup>

According to the National Conference of State Legislatures there are only three states, Florida, Michigan, and Mississippi that make cohabitation illegal. Eight states that once made cohabitation illegal have repealed those statutes, one as recently as 2013.<sup>2</sup>

**States with Cohabitation Laws**

Florida	798.02	If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
---------	--------	--

<sup>1</sup> Laws 1971, c. 71-136 s. 773

<sup>2</sup> E-mail from NCSL February 16, 2014.

		NOTE: FSA 798.03, 04 & 05 dealing with cohabitation and adultery were repealed.
Michigan		<p>MCLA § 750.335 Any man or woman, not being married to each other, who shall lewdly and lasciviously associate and cohabit together, and any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by fine of not more than \$500.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.</p> <p>Amendment to § 750.335 effective March 31, 2003: Any man or woman, not being married to each other, who lewdly and lasciviously associates and cohabits together, and any man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.</p>
Mississippi	97-29-1	If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

**States that have Repealed Laws Making Cohabitation Illegal**

Arizona		NOTE: ARS 13-1409 Open and notorious cohabitation or adultery. Repealed.
Idaho		NOTE: IC 18-6604 Sex Crimes. Lewd Cohabitation. Repealed.
Maine		NOTE: MRS 17-75 § 2151 Lascivious cohabitation and lewdness. Repealed.
New Mexico		NOTE: NMRS § 30-10-2 Unlawful Cohabitation. Repealed.
North Carolina	14-184	<p>If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a Class 2 misdemeanor: Provided, that the admissions or confessions of one shall not be received in evidence against the other.</p> <p>NOTE: held Unconstitutional by Hobbs v. Smith, Superior Court of North Carolina, Pender County.</p>
North Dakota	12.1-20-10	<p>A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.</p> <p>NOTE: Repealed by S.L. 2007, ch. 131, § 4, eff. Aug. 1, 2007</p>
Virginia	18.2-345	<p>If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, each of them shall be guilty of a Class 3 misdemeanor; and upon a repetition of the offense, and conviction thereof, each of them shall be guilty of a Class 1 misdemeanor.</p> <p>NOTE: Repealed by Acts 2013, c. 621</p>
West Virginia	61-8-4	If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of

		<p>open or gross lewdness and lasciviousness, they shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars, and may, in the discretion of the court, be imprisoned not exceeding six months, and, upon a repetition of the offense, they shall, upon conviction, be confined in jail not less than six nor more than twelve months. In prosecutions for adultery and fornication, and for lewdly and lasciviously cohabiting together, the persons named in the indictment shall be presumed to be unmarried persons in the absence of proof to the contrary.</p> <p>NOTE: Repealed by Acts 2010, c. 34, eff. June 11, 2010</p>
--	--	--

**III. Effect of Proposed Changes:**

The bill repeals the statutory section making it a second degree misdemeanor for an unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior.

The bill makes conforming changes and has an effective date of July 1, 2014.

**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:

According to the Office of the State Courts Administrator (OSCA), the fiscal impact on expenditures cannot be accurately determined due to the fact that cohabitation is not prosecuted and most lewd and lascivious behaviors are prosecuted under ch. 800, F.S. However, OSCA reports that the impact is expected to be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.0139, 39.509 and 435.04. This bill repeals section 798.02 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

By Senator Ring

29-00538-14

2014434\_\_

1 A bill to be entitled  
 2 An act relating to lewd and lascivious behavior;  
 3 repealing s. 798.02, F.S., relating to a prohibition  
 4 on lewd and lascivious behavior, including a  
 5 prohibition on lewd and lascivious association and  
 6 cohabitation together by a man and woman who are not  
 7 married to each other; amending ss. 39.0139, 39.509,  
 8 and 435.04, F.S.; conforming provisions to changes  
 9 made by the act; providing an effective date.

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

11 Section 1. Section 798.02, Florida Statutes, is repealed.  
 12 Section 2. Paragraph (a) of subsection (3) of section  
 13 39.0139, Florida Statutes, is amended to read:  
 14 39.0139 Visitation or other contact; restrictions.—  
 15 (3) PRESUMPTION OF DETRIMENT.—  
 16 (a) A rebuttable presumption of detriment to a child is  
 17 created when:  
 18 1. A court of competent jurisdiction has found probable  
 19 cause exists that a parent or caregiver has sexually abused a  
 20 child as defined in s. 39.01;  
 21 2. A parent or caregiver has been found guilty of,  
 22 regardless of adjudication, or has entered a plea of guilty or  
 23 nolo contendere to charges under the following statutes or  
 24 substantially similar statutes of other jurisdictions:  
 25 a. Section 787.04, relating to removing minors from the  
 26 state or concealing minors contrary to court order;  
 27 b. Section 794.011, relating to sexual battery;

Page 1 of 3

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

29-00538-14

2014434\_\_

30 ~~e. Section 798.02, relating to lewd and lascivious~~  
 31 ~~behavior;~~  
 32 ~~c.d.~~ Chapter 800, relating to lewdness and indecent  
 33 exposure;  
 34 ~~d.e.~~ Section 826.04, relating to incest; or  
 35 ~~e.f.~~ Chapter 827, relating to the abuse of children; or  
 36 3. A court of competent jurisdiction has determined a  
 37 parent or caregiver to be a sexual predator as defined in s.  
 38 775.21 or a parent or caregiver has received a substantially  
 39 similar designation under laws of another jurisdiction.  
 40 Section 3. Paragraph (a) of subsection (6) of section  
 41 39.509, Florida Statutes, is amended to read:  
 42 39.509 Grandparents rights.—Notwithstanding any other  
 43 provision of law, a maternal or paternal grandparent as well as  
 44 a stepgrandparent is entitled to reasonable visitation with his  
 45 or her grandchild who has been adjudicated a dependent child and  
 46 taken from the physical custody of the parent unless the court  
 47 finds that such visitation is not in the best interest of the  
 48 child or that such visitation would interfere with the goals of  
 49 the case plan. Reasonable visitation may be unsupervised and,  
 50 where appropriate and feasible, may be frequent and continuing.  
 51 Any order for visitation or other contact must conform to the  
 52 provisions of s. 39.0139.  
 53 (6) In determining whether grandparental visitation is not  
 54 in the child's best interest, consideration may be given to the  
 55 following:  
 56 (a) The finding of guilt, regardless of adjudication, or  
 57 entry or plea of guilty or nolo contendere to charges under the  
 58 following statutes, or similar statutes of other jurisdictions:

Page 2 of 3

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

29-00538-14

2014434\_\_

59 s. 787.04, relating to removing minors from the state or  
60 concealing minors contrary to court order; s. 794.011, relating  
61 to sexual battery; ~~s. 798.02, relating to lewd and lascivious~~  
62 ~~behavior~~; chapter 800, relating to lewdness and indecent  
63 exposure; s. 826.04, relating to incest; or chapter 827,  
64 relating to the abuse of children.

65 Section 4. Paragraph (v) of subsection (2) of section  
66 435.04, Florida Statutes, is amended to read:

67 435.04 Level 2 screening standards.—

68 (2) The security background investigations under this  
69 section must ensure that no persons subject to the provisions of  
70 this section have been arrested for and are awaiting final  
71 disposition of, have been found guilty of, regardless of  
72 adjudication, or entered a plea of nolo contendere or guilty to,  
73 or have been adjudicated delinquent and the record has not been  
74 sealed or expunged for, any offense prohibited under any of the  
75 following provisions of state law or similar law of another  
76 jurisdiction:

77 ~~(v) Section 798.02, relating to lewd and lascivious~~  
78 ~~behavior.~~

79 Section 5. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Governmental Oversight and Accountability, *Chair*  
Appropriations Subcommittee on Finance and  
Tax, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules

SENATOR JEREMY RING  
29th District

### JOINT COMMITTEES:

Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

December 12, 2013

Honorable Senator Greg Evers  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Evers,

I am writing to respectfully request your cooperation in placing Senate Bill 434, relating to lewd and lascivious behavior, on the Committee on Criminal Justice agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Amanda Cannon

### REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Appropriations Subcommittee on Finance and  
Tax, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules

**JOINT COMMITTEES:**  
Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

**SENATOR JEREMY RING**  
29th District

February 17, 2014

Chairman Greg Evers  
510 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Evers,

I appreciate you including my legislation, SB 434, relating to Lewd and Lascivious Behavior, on the Committee on Criminal Justice agenda. During the committee meeting on February 17, my legislative assistant J.J. Piskadlo will be presenting the bill on my behalf.

Please do not hesitate to contact me if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Amanda Cannon, Staff Director  
Sue Arnold, Committee Administrative Assistant

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

The Florida Senate  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

BILL: SB 434

INTRODUCER: Senator Ring

SUBJECT: Lewd and Lascivious Behavior

DATE: February 12, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner <i>TS</i>	Cannon <i>AC</i>	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

**I. Summary:**

SB 434 repeals s. 798.02, F.S., which makes it a second degree misdemeanor for an unmarried man and a woman to lewdly and lasciviously cohabit together, or any man or woman, married or unmarried to engage in open and gross lewdness and lascivious behavior.

**II. Present Situation:**

Section 798.02, F.S., makes it a second degree misdemeanor for any unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if married or unmarried engage in open and gross lewdness and lascivious behavior. This law was originally enacted in 1868 and made the crime of cohabitation punishable by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by a fine not exceeding three hundred dollars.<sup>1</sup>

**III. Effect of Proposed Changes:**

The bill repeals the statutory section making it a second degree misdemeanor for an unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior.

The bill makes conforming changes and has an effective date of July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

<sup>1</sup> Laws 1971, c. 71-136 s. 773

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.0139, 39.509 and 435.04. This bill repeals section 798.02 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 532

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Disclosure of Sexually Explicit Images

DATE: February 17, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Fav/CS
2.			JU	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 532 creates a second degree misdemeanor offense for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person if the person depicted in the sexually explicit image did not consent to the disclosure.

The bill enhances the conduct to a first degree misdemeanor if the offender was 18 years of age or older and the victim was younger than 16 years of age. The bill also adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, F.S.

**II. Present Situation:**

Publishing a nude or semi-nude photograph or video on the Internet that was originally intended to be kept private between two people has become known as “revenge porn.” In many cases, the embarrassing photos or videos are posted on a website that is specifically designed to provide a forum for this activity. These websites generally do not create their own content, but allow persons to post content to the site after the person agrees to certain terms and conditions.<sup>1</sup>

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<sup>1</sup> The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.

Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of material posted by third parties if the material is not illegal, such as child pornography.<sup>2</sup>

Florida law does not specifically prohibit posting pictures of a nude adult person on the Internet for viewing by other adults if the picture was taken with the knowledge and consent of the person. Therefore, most victims in the state have no recourse. However, in some circumstances posting such pictures could be an element of the offenses of stalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Posting a picture that depicts nudity of a child may be punished as a second-degree felony or a third-degree felony under chs. 827 or 847, F.S.

Regardless of whether information is accompanied by other material, s. 817.568(4), F.S., makes it a first degree misdemeanor for a person without consent to use another person's personal identification information to harass that person.

New Jersey was the first state to respond to "revenge porn" with legislation in 2008 by making it a felony for any person to knowingly disseminate or cause the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person.<sup>3</sup> California also passed legislation in 2013 making acts of revenge porn a misdemeanor.<sup>4</sup> The National Conference of State Legislatures reports that as of January 20, 2014, there were 11 states with "revenge porn" bills pending for the 2014 Legislative Session.<sup>5</sup> At least eight of those states have made it a misdemeanor crime.<sup>6</sup>

### III. Effect of Proposed Changes:

The bill creates s. 847.0136, F.S., to specifically address the non-consensual transmission or posting of sexually explicit images to social networking services or a website, or by means of any other electronic medium. Currently, it may be possible to prosecute such behavior under s. 817.568(4), F.S., as a first degree misdemeanor for harassment by use of personal identification information. If supported by additional facts, such actions might also be prosecuted as a felony if it includes the elements of crimes such as stalking (s. 784.048, F.S.), extortion (s. 836.05, F.S.), or an offense against a child under chs. 827 or 847, F.S.

Specifically, the bill makes it a third degree felony for a person to intentionally and knowingly disclose to a social networking service or a website, or by means of any other electronic medium:

- A sexually explicit image<sup>7</sup> of an identifiable person;<sup>8</sup>

---

<sup>2</sup> The relevant portion of the Act states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. 230(c)(1).

<sup>3</sup> N.J. Stat. s. 2C:14-9(2008).

<sup>4</sup> Cal Pen. Code s. 647.

<sup>5</sup> Colorado, Florida, Hawaii, Kentucky, Maryland, Missouri, New York, Pennsylvania, Virginia, Washington, and Wisconsin.

<sup>6</sup> January 24, 2014, e-mail from NCSL

<sup>7</sup> "Sexually explicit image" is defined in the bill as a private photograph, film videotape, recording or other reproduction of nudity or sexual intercourse, including but not limited to, oral or anal sexual intercourse.

<sup>8</sup> "Identifiable person" is defined in the bill as an individual in a sexually explicit image (image) who can be identified through visual recognition of any part of his or her body depicted in the image or identifying information as defined in

- With the intent to harass the identifiable person;
- If the person knows or should have known that identifiable person did not consent to the disclosure.

The bill enhances the conduct to a second degree felony if the offender was 18 years or older and the victim was younger than 16 years of age. The bill also provides that a violation is considered to take place in this state if any conduct that is an element of the offense or any harm to the identifiable person resulting from the offense occurs within this state.

The bill also adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, F.S.

The bill has an effective date of October 1, 2014.

#### **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) provides the final, official estimate of the prison bed impact, if any, of legislation. The CJIC has not yet reviewed this bill but it has reviewed the similar HB 475. CJIC found that HB 475 would have an insignificant prison bed impact.

---

s. 397.311, F.S. (name, address, social security number, fingerprints, photograph, and other similar information) which accompanies or is associated with the image.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 921.0042 of the Florida Statutes. This bill creates section 847.0136 of the Florida Statutes.

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

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

**CS by Criminal Justice on February 17, 2014:**

- The CS changes the penalty from a third degree felony to second degree misdemeanor for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person.
- The CS changes the penalty from a second degree felony to a first degree misdemeanor if the offender was 18 years of age or older and the victim was younger than 16 years of age.

**B. Amendments:**

None.



459030

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2014	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 51 - 56  
and insert:  
who violates this section commits a 2nd degree misdemeanor,  
punishable as provided in s. 775.082 or s. 775.083.

(b) An individual who is 18 years of age or older at the  
time he or she violates this section commits a 1st degree  
misdemeanor, punishable as provided in s. 775.082 or s. 775.083,  
if the violation involves a sexually explicit

By Senator Simmons

10-00051B-14

2014532\_\_

A bill to be entitled

An act relating to the disclosure of sexually explicit images; creating s. 847.0136, F.S.; providing definitions; prohibiting an individual from disclosing a sexually explicit image of an identifiable person with the intent to harass such person if the individual knows or should have known such person did not consent to the disclosure; providing criminal penalties; providing for jurisdiction; providing exceptions; amending s. 921.244, F.S.; requiring a court to order that a person convicted of such offense be prohibited from having contact with the victim; providing criminal penalties for a violation of such order; providing that criminal penalties for certain offenses run consecutively with a sentence imposed for a violation of s. 847.0136, F.S.; providing an effective date.

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

Section 1. Section 847.0136, Florida Statutes, is created to read:

847.0136 Prohibited electronic disclosure of sexually explicit images; penalties; jurisdiction.-

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

(a) "Disclose" means to publish, post, distribute, exhibit, advertise, offer, or transfer, or cause to be published, posted, distributed, exhibited, advertised, offered, or transferred.

(b) "Harass" means to engage in conduct directed at a

Page 1 of 4

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specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(c) "Identifiable person" means an individual in a sexually explicit image who can be identified through:

1. Visual recognition of any part of his or her body depicted in the sexually explicit image; or

2. Identifying information as defined in s. 397.311 which accompanies or is associated with the sexually explicit image.

(d) "Sexually explicit image" means a private photograph, film, videotape, recording, or other reproduction of:

1. Nudity; or

2. Sexual intercourse, including, but not limited to, oral sexual intercourse or anal sexual intercourse.

(2) An individual may not intentionally and knowingly disclose a sexually explicit image of an identifiable person to a social networking service or a website, or by means of any other electronic medium, with the intent to harass such person, if the individual knows or should have known that the person depicted in the sexually explicit image did not consent to such disclosure.

(3) (a) Except as provided in paragraph (b), an individual who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) An individual who is 18 years of age or older at the time he or she violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the violation involves a sexually explicit image of an individual who was younger than 16 years of age at the time the sexually explicit image was created.

Page 2 of 4

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59 (4) A violation of this section is committed within this  
 60 state if any conduct that is an element of the offense described  
 61 in subsection (2), or any harm to the identifiable person  
 62 resulting from the offense described in subsection (2), occurs  
 63 within this state.

64 (5) This section does not apply to the disclosure of a  
 65 sexually explicit image for:

66 (a) The reporting, investigation, and prosecution of an  
 67 alleged crime for law enforcement purposes.

68 (b) Voluntary and consensual purposes in public or  
 69 commercial settings.

70 Section 2. Section 921.244, Florida Statutes, is amended to  
 71 read:

72 921.244 Order of no contact; penalties.-

73 (1) At the time of sentencing an offender convicted of a  
 74 violation of s. 794.011, s. 800.04, s. 847.0135(5), s. 847.0136,  
 75 or any offense in s. 775.084(1)(b)1.a.-o., the court shall order  
 76 that the offender be prohibited from having any contact with the  
 77 victim, directly or indirectly, including through a third  
 78 person, for the duration of the sentence imposed. The court may  
 79 reconsider the order upon the request of the victim if the  
 80 request is made at any time after the victim has attained 18  
 81 years of age. In considering the request, the court shall  
 82 conduct an evidentiary hearing to determine whether a change of  
 83 circumstances has occurred which warrants a change in the court  
 84 order prohibiting contact and whether it is in the best interest  
 85 of the victim that the court order be modified or rescinded.

86 (2) An ~~Any~~ offender who violates a court order issued under  
 87 this section commits a felony of the third degree, punishable as

Page 3 of 4

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88 provided in s. 775.082, s. 775.083, or s. 775.084.

89 (3) The punishment imposed under this section shall run  
 90 consecutive to any former sentence imposed for a conviction for  
 91 any offense under s. 794.011, s. 800.04, s. 847.0135(5), s.  
 92 847.0136, or any offense in s. 775.084(1)(b)1.a.-o.

93 Section 3. This act shall take effect October 1, 2014.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** December 19, 2013

---

I respectfully request that **532**, relating to Disclosure of Sexually Explicit Images, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons".

---

Senator David Simmons  
Florida Senate, District 10

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/14  
Meeting Date

Topic Disclosure of Sexually Explicit Images

Bill Number 532  
*(if applicable)*

Name Keri Rayborn Silver

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address PO Box 1565  
Street

Phone 850-524-2394

Tallahassee FL 32302  
City State Zip

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.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/CS/SB 590

INTRODUCER: Criminal Justice Committee; Banking and Insurance Committee; and Senator Richter

SUBJECT: Check Cashing Services

DATE: February 17, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 590 revises provisions relating to the regulation of money services businesses by the Office of Financial Regulation (OFR). Money services businesses (MSBs) offer financial services such as check cashing, money transmittals (wire transfers), sales of monetary instruments and currency exchange, and deferred presentment transactions (“payday loans”) outside the traditional banking environment. The bill provides the following changes:

- Allows the OFR to suspend the license of a MSB immediately pursuant to s. 120.60(6), F.S., if specified criminal charges are filed against a natural person listed on the application or if such person is arrested for specified crimes.
- Expands prohibited acts to include a violation under s. 560.310(2)(d), F.S., relating to the OFR database reporting requirements applicable to check cashers. A person who knowingly and willfully violates this provision commits a third-degree felony.
- Provides that a deferred presentment transaction is void if the person conducting the transaction is not authorized pursuant to ch. 560, F.S., and such person has no right to collect funds relating to such a transaction.
- Updates outdated cross references to federal regulations.

## II. Present Situation:

### Regulation of Money Services Businesses

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository institutions and other entities, such as money service businesses, which are subject to the provisions of ch. 560, F.S. Money service businesses (MSB) are regulated under two license categories.<sup>1</sup> Money transmitters and payment instrument issuers are regulated under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are regulated under part III. To qualify for licensure as a MSB under ch. 560, F.S., an applicant must meet the following requirements:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider will operate lawfully.
- Be legally authorized to do business in Florida.
- Be registered as a money services business with the federal Financial Crimes Enforcement Network (FinCEN) as required by 31 C.F.R. s. 103.41, if applicable.
- Have an anti-money laundering program in place that meets the requirements of 31 C.F.R. s. 103.125.
- Provide the OFR with information required under ch. 560, F.S., and related rules.<sup>2</sup>

The Federal Bank Secrecy Act of 1970 (BSA) established the regulatory framework to prevent and detect money laundering. The BSA<sup>3</sup> requires certain MSBs to register with FinCEN, if they conduct more than \$1,000 in business (with one person in one or more transactions on the same day) in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange. However, if a business provides money transfer services in any amount, registration is required. A business that meets the definition of a MSB must comply with both the general obligations that apply to all financial institutions and the specific obligations that apply to MSBs.

The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103. These regulations require MSBs to maintain certain records and report certain currency transactions and suspicious activities. The MSBs are required to establish an anti-money laundering program (AML), to obtain and verify customer identity, and to document certain information concerning the transactions.

Section 560.111, F.S., specifies prohibited acts under ch. 560, F.S., and provides penalties for noncompliance. Section 560.114, F.S., authorizes the OFR to take disciplinary actions if a MSB violates provisions of ch. 560, F.S., and 31 C.F.R. Pursuant to s. 560.114, F.S., the OFR may immediately suspend the license of a MSB that fails to provide the office specified records or

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<sup>1</sup> Section 560.104, F.S., provides that banks, credit unions, trust companies, offices of an international banking corporation, or other financial depository institutions organized under the laws of any state of the United States are exempt from the provisions of ch. 560, F.S.

<sup>2</sup> Section 560.1401, F.S.

<sup>3</sup> The Bank Secrecy Act (BSA) is the name commonly given to a federal statute codified at Title 31, U.S. Code, sections 5311-5330.

fails to maintain a federally insured depository account. For purposes of s. 120.60(6), F.S., the failure to provide such records or maintain the account constitutes immediate and serious danger to the public health, safety, and welfare. Section 120.60(6), F.S., provides:

- (6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
  - (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
  - (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
  - (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., shall also be promptly instituted and acted upon.

### ***Licensure of Check Cashers***

Generally, a person may not engage in the business of cashing payment instruments without obtaining a license from the OFR.<sup>4</sup> However, current law provides that the requirement for licensure as a check casher does not apply to a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.<sup>5</sup>

Licensed check cashers are required to comply with federal MSB requirements, if applicable, and state requirements, such as maintaining specified records and reporting information to the OFR. Section 560.310, F.S., requires licensed check cashers to maintain copies of cashed checks, and for checks exceeding \$1,000, the check casher must submit certain transactional data to an electronic log or check-cashing database.<sup>6</sup>

### ***Deferred Presentment Providers***

A deferred presentment provider (DPP) must be licensed under part II or part III, ch. 560, F.S., file a declaration of intent with the OFR, and meet other requirements. Part IV of ch. 560, F.S., regulates DPPs and deferred presentment transactions. A deferred presentment transaction means

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<sup>4</sup> Section 560.303, F.S.

<sup>5</sup> Section 560.304, F.S.

<sup>6</sup> Last year, legislation was enacted (Chapter 2013-139, L.O.F.) that provides for the establishment of a check-cashing database within the OFR. Regulators and law enforcement agencies will use the database to target and identify persons involved in workers' compensation insurance premium fraud and other criminal activities. The act authorized the OFR to issue a competitive solicitation for a statewide, real time, online check cashing database. After completion of the competitive solicitation for the database, the OFR may include a request for funding in their FY 2014-2015 Legislative Budget Request. After the implementation of the new database, licensed check cashers will be required to enter specified transactional information into the database. Currently, for checks exceeding \$1,000, licensed check cashers are required to record certain data in an electronic log.

providing currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period prior to presentment, deposit, or redemption.<sup>7</sup> The face amount of a check taken for a deferred presentment may not exceed \$500.<sup>8</sup> A DPP may charge a maximum fee of 10 percent of the currency or payment instrument provided (exclusive of the verification fee). Section 560.404(19), F.S., prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer has an outstanding deferred presentment agreement with any DPP, or terminated an agreement within the previous 24 hours.

### III. Effect of Proposed Changes:

#### Authority to Suspend License of a Money Services Business

The bill revises the Office of Financial Regulation's (OFR's) authority to suspend the license of a money services business (MSB) if the OFR has reason to believe that a licensee poses an immediate, serious danger to the public health, safety, and welfare pursuant to s. 120.60(6), F.S. The bill authorizes the OFR to suspend the license of a MSB immediately if a natural person required to be listed on the application pursuant to s. 560.141(1)(a)3., F.S.,<sup>9</sup> is criminally charged with, or arrested for a crime described in s. 560.114(1)(o),<sup>10</sup> s. 560.114(1)(p),<sup>11</sup> or s. 560.114(1)(q).<sup>12</sup> Under current law and for purposes of s. 120.60(6), F.S., the OFR is authorized to suspend the license of a MSB immediately if the MSB fails to provide to the OFR specified records required under s. 560.123, s. 560.1235, s. 560.211, or s. 560.310, F.S., or fails to maintain a federally insured depository account as required by s. 560.309, F.S. The bill requires the commissioner of the OFR, or his or her designee, to conduct such a proceeding and issue the final order. Currently, s. 20.121(3)(c), F.S., designates the director (commissioner) as the agency head for purposes of final agency action under ch. 120, F.S.

#### Prohibited Acts/Check Cashers

The bill creates an additional prohibited act and a new criminal violation. Any licensed check casher who knowingly and willfully violates the check casher database or electronic log reporting requirements of s. 560.310(2)(d), F.S., commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S. Current law authorizes the OFR to take certain disciplinary actions, such as denying, suspending, or revoking a license, if a check casher fails to maintain and provide specified records.<sup>13</sup> The OFR is also authorized to impose a fine of at least \$1,000 but not more than \$10,000 for each violation of ch. 560, F.S.<sup>14</sup> Section 560.1105, F.S., relating to retention of records, provides that any person who willfully

<sup>7</sup> Section 560.402(3), F.S.

<sup>8</sup> Section 560.404(5), F.S.

<sup>9</sup> These persons include each officer, director, responsible person, compliance officer, controlling shareholder, and any other person who has a controlling interest in the MSB as provided in section 560.127, F.S.

<sup>10</sup> Having been convicted of, or entered a plea of guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or the United States, which involves fraud, moral turpitude, or dishonest dealing, regardless of adjudication.

<sup>11</sup> Having been convicted of, or entered a plea of guilty or nolo contendere to, a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s. 5324, regardless of adjudication.

<sup>12</sup> Having been convicted of, or entered a plea of guilty or nolo contendere to, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication.

<sup>13</sup> Section 560.114(2)(a), F.S.

<sup>14</sup> Section 560.114(7), F.S.

fails to comply with s. 560.1105, F.S., or ss. 560.211, F.S.,<sup>15</sup> and 560.310, F.S., commits a felony of the third degree.

### **Deferred Presentment Providers**

The bill provides that a deferred presentment transaction conducted by a person not authorized under ch. 560, F.S., to conduct such transaction as a DPP is void, and the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transactions.

### **Code of Federal Regulations Updates**

The bill updates cross references to the Code of Federal Regulations to incorporate updates by FinCEN.<sup>16</sup> On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X.

### **Effective Date**

The bill takes effect July 1, 2014.

## **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:**

Any deferred presentment transaction conducted by a person who is not authorized by the Office of Financial Regulation pursuant to ch. 560, F.S., to engage in such transactions is

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<sup>15</sup> Section 560.211, F.S., specifies recordkeeping and document retention requirements applicable to money transmitters and payment instrument issuers.

<sup>16</sup> FinCEN is the Financial Crimes Enforcement Network.

void and such person has no right to collect, receive, or retain any funds relating to such transaction. Consumers who have entered into such agreements would benefit.

**C. Government Sector Impact:**

The bill provides that any licensed check casher who knowingly and willfully violates the check casher database or electronic log reporting requirements of s. 560.310(2)(d), F.S., commits a third degree felony.

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of legislation. The CJIC has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have an insignificant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 560.111, 560.114, 560.1235, 560.125, 560.1401, 560.141, and 560.309.

**IX. 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 February 17, 2014:**

The CS corrects references to the Code of Federal Regulations throughout the bill.

**CS by Banking and Insurance on February 4, 2014:**

The CS provides the following changes:

- Expands prohibited acts to include violations under s. 560.310(2)(d), F.S., relating to the database/electronic log reporting requirements applicable to check cashers. A person who knowingly and willfully violates this provision commits a third-degree felony.
- Reinstates current law that provides if a MSB willfully violates s. 560. 114(5), F.S., relating to certain ch. 560, F.S., requirements,<sup>17</sup> the MSB commits a third-degree felony.

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<sup>17</sup> Section 560.403, F.S., requires that persons engaging in deferred presentment transactions must be licensed under part II or III, ch. 560.403, F.S., and file a declaration of intent with the OFR and meet other requirements. Section 560.404, F.S., specifies disclosures for DPP written agreements, terms and conditions of such transactions, and prohibitions relating to such

- Reinstates current law relating to exemptions from licensure for check cashers, which provides that licensure as a check casher does not apply to a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.
- Provides technical changes to correct cross references.

**B. Amendments:**

None.

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

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transactions. Section 560.405, F.S., specifies requirements and prohibitions relating to the deposit and redemption of a deferred presentment transaction.



594286

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2014	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 39 - 40  
and insert:  
by 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340,  
1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410

Delete lines 45 - 46  
and insert:  
(y) Violations of 31 C.F.R. ss. 1010.306, 1010.311, 1010.312,  
1010.340, 1010.410, 1010.415, 1022.210, 1022.320,



594286

11           Delete lines 84 - 85  
12   and insert:  
13   1010.313, 1010.340, 1010.410, 1010.415, 1022.320, 1022.380, and  
14   1022.410 ~~103.20,~~

By the Committee on Banking and Insurance; and Senator Richter

597-01641-14

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1 A bill to be entitled  
 2 An act relating to money services businesses; amending  
 3 s. 560.111, F.S.; providing that failing to provide  
 4 certain information relating to a check cashing  
 5 transaction is a felony; reenacting and amending s.  
 6 560.114, F.S.; updating cross-references; authorizing  
 7 the Office of Financial Regulation to summarily  
 8 suspend a license if criminal charges are filed  
 9 against certain persons or such persons are arrested  
 10 for certain offenses; amending s. 560.1235, F.S.;  
 11 updating cross-references; amending s. 560.125, F.S.;  
 12 providing that a deferred presentment transaction  
 13 conducted by an unauthorized person is void; amending  
 14 ss. 560.1401, 560.141, and 560.309 F.S.; updating  
 15 cross-references; providing an effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19 Section 1. Subsection (6) is added to section 560.111,  
 20 Florida Statutes, to read:

21 560.111 Prohibited acts.—

22 (6) A person who knowingly and willfully violates s.  
 23 560.310(2)(d) commits a felony of the third degree, punishable  
 24 as provided in s. 775.082, s. 775.083, or s.775.084.

25 Section 2. Paragraphs (e) and (y) of subsection (1) and  
 26 subsection (2) of section 560.114, Florida Statutes, are  
 27 amended, and paragraph (h) of subsection (1) of that section is  
 28 reenacted, to read:

29 560.114 Disciplinary actions; penalties.—

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30 (1) The following actions by a money services business,  
 31 authorized vendor, or affiliated party constitute grounds for  
 32 the issuance of a cease and desist order; the issuance of a  
 33 removal order; the denial, suspension, or revocation of a  
 34 license; or taking any other action within the authority of the  
 35 office pursuant to this chapter:

36 (e) Failure to maintain, preserve, keep available for  
 37 examination, and produce all books, accounts, files, or other  
 38 documents required by this chapter or related rules or orders,  
 39 by 31 C.F.R. ss. 1010.306, 1010.312, 1010.340, 1010.410,  
 40 1010.415, 1021.311, 1022.210, 1022.320, 1022.380, and 1022.410  
 41 ~~103.20, 103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37,~~  
 42 ~~103.41, and 103.125~~, or by an any agreement entered into with  
 43 the office.

44 (h) Engaging in an act prohibited under s. 560.111.

45 (y) Violations of 31 C.F.R. ss. 1010.306, 1010.312,  
 46 1010.340, 1010.410, 1010.415, 1021.311, 1022.210, 1022.320,  
 47 1022.380, and 1022.410 ~~103.20, 103.22, 103.23, 103.27, 103.28,~~  
 48 ~~103.29, 103.33, 103.37, 103.41, and 103.125~~, and United States  
 49 Treasury Interpretive Release 2004-1.

50 (2) Pursuant to s. 120.60(6), the office may summarily  
 51 suspend the license of a money services business if the office  
 52 finds that a licensee poses an immediate, serious danger to the  
 53 public health, safety, and welfare. A proceeding in which the  
 54 office seeks the issuance of a final order for the summary  
 55 suspension of a licensee shall be conducted by the commissioner  
 56 of the office, or his or her designee, who shall issue such  
 57 order. The following acts are deemed to constitute an immediate  
 58 and serious danger to the public health, safety, and welfare,

Page 2 of 5

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59 and the office may immediately suspend the license of a any  
60 money services business if ~~the money services business fails to:~~

61 (a) The money services business fails to provide to the  
62 office, upon written request, any of the records required by s.  
63 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule  
64 adopted under those sections. The suspension may be rescinded if  
65 the licensee submits the requested records to the office.

66 (b) The money services business fails to maintain a  
67 federally insured depository account as required by s. 560.309.

68 (c) A natural person required to be listed on the license  
69 application for a money service business pursuant to s.  
70 560.141(1)(a)3. is criminally charged with, or arrested for, a  
71 crime described in paragraph (1)(o), paragraph (1)(p), or  
72 paragraph(1)(q).

73  
74 ~~For purposes of s. 120.60(6), failure to perform any of the acts~~  
75 ~~specified in this subsection constitutes immediate and serious~~  
76 ~~danger to the public health, safety, and welfare.~~

77 Section 3. Section 560.1235, Florida Statutes, is amended  
78 to read:

79 560.1235 Anti-money laundering requirements.—

80 (1) A licensee and authorized vendor must comply with all  
81 state and federal laws and rules relating to the detection and  
82 prevention of money laundering, including, as applicable, s.  
83 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312,  
84 1010.313, 1010.340, 1010.410, 1010.415, 1020.315, 1020.410,  
85 1021.311, 1021.313, 1022.320, 1022.380, and 1022.410 ~~103.20,~~  
86 ~~103.22, 103.23, 103.27, 103.28, 103.29, 103.33, 103.37, and~~  
87 ~~103.41.~~

Page 3 of 5

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

597-01641-14

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88 (2) A licensee and authorized vendor must maintain an anti-  
89 money laundering program in accordance with 31 C.F.R. s.  
90 1022.210 ~~103.125~~. The program must be reviewed and updated as  
91 necessary to ensure that the program continues to be effective  
92 in detecting and deterring money laundering activities.

93 (3) A licensee must comply with United States Treasury  
94 Interpretive Release 2004-1.

95 Section 4. Subsection (1) of section 560.125, Florida  
96 Statutes, is amended to read:

97 560.125 Unlicensed activity; penalties.—

98 (1) A person may not engage in the business of a money  
99 services business or deferred presentment provider in this state  
100 unless the person is licensed or exempted from licensure under  
101 this chapter. A deferred presentment transaction conducted by a  
102 person not authorized to conduct such transaction under this  
103 chapter is void, and the unauthorized person has no right to  
104 collect, receive, or retain any principal, interest, or charges  
105 relating to such transaction.

106 Section 5. Subsections (3) and (4) of section 560.1401,  
107 Florida Statutes, are amended to read:

108 560.1401 Licensing standards.—To qualify for licensure as a  
109 money services business under this chapter, an applicant must:

110 (3) Be registered as a money services business with the  
111 Financial Crimes Enforcement Network as required by 31 C.F.R. s.  
112 1022.380 ~~103.41~~, if applicable.

113 (4) Have an anti-money laundering program in place which  
114 meets the requirements of 31 C.F.R. s. 1022.210 ~~103.125~~.

115 Section 6. Paragraph (d) of subsection (1) of section  
116 560.141, Florida Statutes, is amended to read:

Page 4 of 5

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

597-01641-14

2014590c1

117 560.141 License application.-

118 (1) To apply for a license as a money services business  
119 under this chapter, the applicant must submit:

120 (d) A copy of the applicant's written anti-money laundering  
121 program required under 31 C.F.R. s. 1022.210 ~~103.125~~.

122 Section 7. Subsection (5) of section 560.309, Florida  
123 Statutes, is amended to read:

124 560.309 Conduct of business.-

125 (5) A licensee must report all suspicious activity to the  
126 office in accordance with the criteria ~~set forth~~ in 31 C.F.R. s.  
127 1022.320 ~~103.20~~. In lieu of filing such reports, the commission  
128 may prescribe by rule that the licensee may file such reports  
129 with an appropriate regulator.

130 Section 8. This act shall take effect July 1, 2014.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Gaming, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health  
and Human Services  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules  
Transportation

JOINT COMMITTEE:  
Joint Legislative Budget Commission

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

February 5, 2014

The Honorable Greg Evers, Chair  
Committee on Criminal Justice  
510 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Evers:

Senate Bill 590, Check Cashing Services, has passed the committee on Banking and Insurance and has now been referred to the Committee on Criminal Justice. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Amanda Cannon, Staff Director  
Sue Arnold

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

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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)

Feb-17  
Meeting Date

Topic Money Services Business

Bill Number 590  
*(if applicable)*

Name J.C. Canabal

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Associate

Address 108 E Jefferson St.  
*Street*

Phone (850) 681-0295

Tallahassee FL 32301  
*City State Zip*

E-mail Jcarbo11@gmail.com

Speaking:  For  Against  Information

Representing Florida Community financial services 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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17  
Meeting Date

Topic MSB legislation

Bill Number 590  
*(if applicable)*

Name JIM DAUGHTON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title ATTY

Address 215 S. MANIC ST

Phone 205-9000

Tallahassee FL 32308  
City State Zip

E-mail jim.daughton@mcclain.com

Speaking:  For  Against  Information

Representing AMSCOT FINANCIAL

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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2014

Meeting Date

Topic MSB'S

Bill Number SB590  
*(if applicable)*

Name Jo Morris

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address 200 E. Gaines St.

Phone 410-9544

Street

Tallahassee

FL

32399

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Office of Financial 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 700

INTRODUCER: Senators Bradley and Detert

SUBJECT: Department of Juvenile Justice

DATE: February 10, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			ACJ	
4.			AP	

**I. Summary:**

SB 700 amends a variety of statutes in ch. 985, F.S., which provides a framework for the juvenile justice system in Florida and authorizes the Department of Juvenile Justice (DJJ) to administer services and provide care to the state’s delinquent children. Specifically, the bill amends statutes relating to DJJ, its duties, and its programs as follows:

- Updates legislative intent language and definitions applicable to ch. 985, F.S.;
- Modifies procedures relating to jurisdiction, contempt of court, fingerprinting and photographing, and intake assessments;
- Revises and expands the detention care system;
- Provides authority to the department to develop evening reporting centers and community re-entry teams;
- Expands the department’s notification requirements to a school or victim when the custody status of a youth has changed;
- Allows technical violations of probation to be resolved through alternative consequence programs;
- Broadens the application of transition-to-adulthood services to youth of all ages;
- Expands when a misdemeanor youth may be committed to a residential program;
- Creates a new offense relating to “willful and malicious neglect” of juvenile offenders;
- Enhances the performance accountability system for service providers; and
- Limits the amount paid to hospitals and health care providers who are not under contract with the department for health care services provided to juveniles.

The bill also amends a variety of statutes in ch. 985, F.S., to make conforming changes, correct statutory cross-references, update terminology, and to delete obsolete provisions.

## II. Present Situation:

### DJJ / HRS

In years past, all “proceedings relating to children” were under the auspices of the Department of Health and Rehabilitative Services (HRS). These proceedings included dependency and delinquency cases.<sup>1</sup> In 1994, the Legislature created the Department of Juvenile Justice (DJJ), which was assigned responsibility for juvenile delinquency cases and children and families in need of services (CINS/FINS) cases. The HRS retained jurisdiction of dependency cases. Despite this bifurcation, the statutes relating to delinquency and dependency remained together in ch. 39, F.S.<sup>2</sup>

In 1997, the Legislature transferred the juvenile justice provisions of ch. 39, F.S., into ch. 984, F.S., (relating to CINS/FINS) and ch. 985, F.S., (relating to juvenile delinquency cases).<sup>3</sup> However, a handful of provisions relating to dependency were inadvertently included in the transfer.

### Legislative Intent (Sections 1 and 2)

Sections 985.01 and 985.02, F.S., contain legislative intent for ch. 985, F.S. Section 985.01, F.S., addresses the purposes of ch. 985, F.S., as a whole, while s. 985.02, F.S., provides more detailed legislative intent language specific to certain juvenile justice topics.

### Definitions (Section 3)

Section 985.03, F.S., provides numerous definitions that apply to the chapter.

### Jurisdiction (Section 4)

Section 985.0301, F.S., specifies that Florida’s circuit courts have exclusive original jurisdiction of proceedings in which a child is alleged to have committed a violation of law. Jurisdiction attaches to the child by service of the summons upon the child and a parent or when the child is taken into custody, whichever first occurs.<sup>4</sup>

Currently, the circuit court where the violation occurred may transfer a case to the circuit court in which the child resides or will reside at the time of detention or placement.<sup>5</sup> A child who has been detained must be transferred to the appropriate detention center or facility or other placement directed by the court receiving the case.<sup>6</sup>

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<sup>1</sup> *History of the Juvenile Justice System in Florida*, <http://www.djj.state.fl.us/about-us/history> (last visited on February 12, 2014).

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

<sup>3</sup> *Id.*

<sup>4</sup> Section 985.0301(2), F.S.

<sup>5</sup> Section 985.0301(4)(a), F.S.

<sup>6</sup> *Id.*

The court retains jurisdiction over a child until the child:

- Reaches 19 years of age, if the child's case has not been resolved;
- Reaches 19 years of age, if the child is ordered to participate in a probation program, which includes participation in transition-to-adulthood services;
- Reaches 21 years of age, if the child is committed to DJJ;
- Reaches 22 years of age, if the child is committed to DJJ for placement in a juvenile prison or in a high-risk or maximum-risk residential commitment program;<sup>7</sup>
- Reaches 21 years of age, if the child is committed to DJJ for placement in an intensive residential treatment program for 10-13 year-old offenders, in the residential commitment program in a juvenile prison or in a residential sex offender program;
- Reaches 21 years of age, if the child is committed to a juvenile correctional facility or a juvenile prison, specifically for the purpose of allowing the child to complete such program;
- Reaches 21 years of age, if the child is a juvenile sexual offender who has been placed in a program or facility for juvenile sexual offenders, specifically to complete the program; or
- Satisfies any restitution ordered in the case.<sup>8</sup>

### **Contempt of Court (Section 5)**

Section 985.037, F.S., authorizes the court to punish a child for contempt for interfering with the court or court administration, or for violating any provision of ch. 985, F.S., or order of the court. There are two types of contempt of court - direct and indirect. Direct contempt results from conduct committed in the presence of the judge, while indirect contempt concerns conduct outside the judge's presence.<sup>9</sup>

A child charged with direct contempt may be sanctioned immediately.<sup>10</sup> If a child is charged with indirect contempt, the court must hold a hearing within 24 hours to determine if the child committed indirect contempt.<sup>11</sup> In indirect contempt proceedings, the child is given specified due process rights.<sup>12</sup>

If a court finds that a child committed contempt of court, the court may either take the child into custody for the child to serve an alternative sanction<sup>13</sup> or order the child be placed into a secure facility<sup>14</sup> for a specified time.<sup>15</sup> If a child is placed into a secure facility for contempt, the

<sup>7</sup> This is solely for the child to complete a conditional release program. Section 985.0301(5)(d), F.S.

<sup>8</sup> Section 985.0301(5), F.S.

<sup>9</sup> *Kelley v. Rice*, 800 So.2d 247 (Fla. 2nd DCA 2001); *E.T. v. State*, 587 So.2d 615 (Fla. 1st DCA 1991).

<sup>10</sup> Section 985.037(4)(a), F.S.

<sup>11</sup> Section 985.037(4)(b), F.S.

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

<sup>13</sup> Section 985.037(3), F.S. Each judicial circuit is required to have an alternative sanctions coordinator who shall coordinate and maintain a spectrum of contempt sanction alternatives. The alternative sanctions coordinator serves under the chief judge of the circuit. The court may immediately request that the alternative sanctions coordinator recommend the most appropriate sanctions placement.

<sup>14</sup> A child may only be placed into a secure facility if alternative sanctions are unavailable or inappropriate. Section 985.037(1), F.S.

<sup>15</sup> Five days for a first offense and 15 days for a second or subsequent offense of contempt. Section 985.037(2), F.S.

placement must be reviewed by the court every 72 hours to determine whether it is appropriate for the child to remain there.<sup>16</sup>

### **Fingerprinting and Photographing (Section 7)**

Section 985.11, F.S., requires a child who is charged with or found to have committed specified offenses to be fingerprinted, and requires the fingerprints to be submitted to the Florida Department of Law Enforcement (FDLE).

### **Intake Process (Sections 8 and 9)**

Every child under the age of 18 charged with a crime in Florida is referred to DJJ.<sup>17</sup> Intake and screening services for youth referred to DJJ are performed at a Juvenile Assessment Center (JAC),<sup>18</sup> but must be performed by a DJJ employee.<sup>19</sup> Once brought into intake, DJJ assigns the child a juvenile probation officer (JPO), conducts an assessment, and recommends to the state attorney and the court the most appropriate sanctions and services.<sup>20</sup> The JPO serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.<sup>21</sup>

### **Prevention (Section 10)**

Currently, ch. 985, F.S., does not include statutes specifically relating to prevention services.

### **Detention Care System (Sections 11 through 17)**

Detention is the temporary custody status of children who are held pursuant to a court order or following arrest.<sup>22</sup> Currently, children may be detained in one of three types of detention care: secure,<sup>23</sup> nonsecure,<sup>24</sup> and home detention,<sup>25</sup> but only when specific statutory criteria are met.

Section 985.24, F.S., provides broad findings upon which all determinations and court orders regarding detention care shall be based, including that the child:

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<sup>16</sup> Section 985.037(4), F.S.

<sup>17</sup> A referral is similar to an arrest in the adult criminal justice system.

<sup>18</sup> Section 985.135(4), F.S.

<sup>19</sup> Section 985.14(2), F.S.

<sup>20</sup> Section 985.14(1) and (2), F.S.

<sup>21</sup> Section 985.145(1), F.S.

<sup>22</sup> Section 985.03(18), F.S.

<sup>23</sup> Section 985.03(18)(a), F.S., defines “secure detention” as temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

<sup>24</sup> Section 985.03(18)(b), F.S., defines “nonsecure detention” as temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement. However, DJJ reports that its current practice for detention is to only utilize secure or home detention; nonsecure detention has not been used for several years. Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Criminal Justice Committee.)

<sup>25</sup> Section 985.03(18)(c), F.S., defines “home detention” as temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court; or
- Requests protection from imminent bodily harm.

Upon a child being taken into custody by a law enforcement agency, the JPO must accept custody of the child and review the facts in the arrest report to determine what, if any, detention care is necessary.<sup>26</sup> The JPO makes an initial decision regarding detention care placement using the “Detention Risk Assessment Instrument” (DRAI).<sup>27</sup> In certain instances, the JPO does not have discretion and must place a child in secure detention (e.g., when a child is charged with possessing or discharging a firearm on school property).<sup>28</sup>

A child may not be held in secure, nonsecure, or home detention for more than 24 hours without a detention hearing.<sup>29</sup> A detention hearing is conducted by a circuit judge who reviews the DRAI to determine whether there is probable cause to believe the child committed the offense and whether there is a need for continued detention.<sup>30</sup> If so, the court’s detention order must include specific instructions that direct the release of the child from detention no later than 5 p.m. on the last day of the detention period (generally, there is a 21-day limit to secure, nonsecure, or home detention<sup>31</sup>).<sup>32</sup>

On occasion, a juvenile may be released from secure detention or transferred to nonsecure detention. In such instances, detention staff must notify the appropriate law enforcement agency and school personnel, but only if the child is a juvenile sexual offender.<sup>33</sup>

### **Disposition (Sections 18 through 26)**

A child who is alleged to have committed a violation of law is formally charged by the filing of a petition for delinquency by the state attorney.<sup>34</sup> Because a child may be subject to deprivation of liberty if adjudicated delinquent, federal constitutional law requires that such child be afforded

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<sup>26</sup> Section 985.25, F.S.

<sup>27</sup> Sections 985.25(1) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument (DRAI) shall be developed, when and how it shall be updated, and what factors the DRAI should be identifying when evaluating a child to determine whether detention placement is appropriate.

<sup>28</sup> Section 985.25(1)(b), F.S.

<sup>29</sup> Section 985.26(1), F.S. The child has the right to be represented at this hearing or can waive such right. Section 985.033, F.S.

<sup>30</sup> Section 985.255(3), F.S.

<sup>31</sup> Section 985.26(2), F.S. A child may be held up to 30 days if the child is charged with what would be, if committed by an adult, a capital felony, a life felony, a first degree felony, or a second degree felony offense.

<sup>32</sup> Section 985.255(3)(c), F.S.

<sup>33</sup> Similarly, once a juvenile sex offender is released from a commitment program, the DJJ must notify the FDLE under ss. 985.481 and 985.4815, F.S. The DJJ has been required to provide this notification electronically since November 1, 2007.

<sup>34</sup> Section 985.318, F.S.

many of the same due process safeguards afforded to adult criminal defendants.<sup>35</sup> The case then proceeds to an adjudicatory hearing (trial)<sup>36</sup> as quickly as practicable. If the court finds that the child committed the violation of law, it may either withhold adjudication of delinquency or adjudicate the child delinquent.<sup>37</sup>

If a child is found to have committed an offense, either through an adjudicatory hearing or by entering into a plea, the court must hold a disposition hearing to determine the most appropriate punishment for that child. Before making a final disposition, the court must review a pre-disposition report (PDR),<sup>38</sup> which is prepared by DJJ.<sup>39</sup> The court must then determine whether it is appropriate for the child to be adjudicated and whether commitment to DJJ or probation and community-based sanctions are more appropriate.<sup>40</sup> Specific procedures are provided that must be adhered to during the disposition of the case to ensure the court makes the most appropriate disposition choice.<sup>41</sup>

### ***Predisposition Reports***

As noted above, the first determination to be made by the court at disposition is a determination of the suitability or unsuitability for adjudication and commitment of the child. This determination must include consideration of DJJ's recommendations, which may include a PDR. Currently, the PDR must identify appropriate educational and vocational goals, which include successful completion of vocational courses, and successful attendance and completion of the child's current grade.

### ***Probation or Postcommitment Probation (Probation)***

The court that has jurisdiction over an adjudicated delinquent child may place the child in a probation program or a postcommitment probation program.<sup>42</sup> A child's probation program must include both a penalty component and a rehabilitative component.<sup>43</sup> Each child is assigned a JPO who monitors the child's compliance and helps the child connect with service providers.

If the child does not comply with the terms of probation, the child may be brought before the court on a violation of probation. There are two types of violations of probation - substantive

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<sup>35</sup> Section 985.35, F.S., provides that the child is entitled to present evidence, cross examine witnesses, protect himself or herself from self-incrimination, and to not have evidence illegally seized or obtained presented to the court in the case against them. Additionally, the facts must be established beyond a reasonable doubt and the rules of evidence apply to the proceedings. Additionally, s. 985.033, F.S., provides that a child is entitled to legal counsel at all stages of any delinquency court proceeding.

<sup>36</sup> Section 985.03(2), F.S., states an "adjudicatory hearing" is equivalent to a trial in adult criminal court and is a hearing for the court to determine whether or not the facts support the allegations stated in the petition, as provided for under s. 985.35, F.S. One difference with adjudicatory hearings is that a judge decides both the questions of fact and law. Section 985.35(2), F.S.

<sup>37</sup> Section 985.35, F.S. An adjudication of delinquency by a court is not considered a conviction.

<sup>38</sup> Section 985.433(6), F.S., provides that the pre-disposition report includes a summary of the juvenile's present offense, a statement by the youth, background information regarding the familial and community environment, a narrative explaining the juvenile's employment or school history, psychological data, restitution information, criminal history, risk assessment, and the recommendations of DJJ concerning the disposition of the case.

<sup>39</sup> Section 985.43, F.S.

<sup>40</sup> Section 985.433(6), F.S.

<sup>41</sup> Section 985.433, F.S.

<sup>42</sup> Section 985.435(1), F.S.

<sup>43</sup> Section 985.435(2) and (3), F.S., give examples of what these components include.

violations (a new criminal offense) and technical violations (failure to comply with the conditions of probation).<sup>44</sup> If a child admits to the violation or is found by the court to have violated his or her probation, the court must enter an order revoking, modifying, or continuing probation.<sup>45</sup> Specifically, the court may:

- Place the child into a consequence unit<sup>46</sup> for up to 15 days;
- Place the child on home detention with electronic monitoring;
- Modify or continue the child’s probation; or
- Revoke probation and commit the child to DJJ.<sup>47</sup>

### ***Commitment***

The court that has jurisdiction over an adjudicated delinquent child may commit the child to a nonresidential or residential facility.<sup>48</sup> Commitment programs vary by “restrictiveness level,” which is defined in s. 985.03(46), F.S., to mean “the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children.” There are currently five restrictiveness levels of commitment, including:

- Minimum-risk nonresidential, also known as a level 2 commitment program, where children remain in the community and participate at least 5 days per week in a day treatment program;
- Low-risk residential, also known as a level 4 program, where children are in a residential program and are allowed to have unsupervised access to the community;
- Moderate-risk residential, also known as a level 6 program, where children are in a residential program and are allowed to have supervised access to the community;
- High-risk residential, also known as a level 8 program, where children are not allowed access to the community; and
- Maximum-risk residential, also known as a level 10 program, which are long-term residential programs, including juvenile correctional facilities or juvenile prisons that do not allow the children to have any access to the community.<sup>49</sup>

Residential facilities are prohibited from having more than 165 beds.<sup>50</sup>

If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department, such determination shall be in writing or on the record of the hearing.<sup>51</sup> The DJJ must then recommend the restrictiveness level most appropriate for the child. The court must commit the child at the restrictiveness level identified, but may commit at a different restrictiveness level by stating for the record the reasons that establish by a

<sup>44</sup> See *Meeks v. State*, 754 So.2d 101, 103 (Fla.1st DCA 2000); *Johnson v. State*, 678 So.2d 934, 934 (Fla.3d DCA 1996).

<sup>45</sup> Section 985.439(4), F.S.

<sup>46</sup> Section 985.439(2), F.S., defines “consequence unit” as a secure facility specifically designated by the department for children who are taken into custody under s. 985.101, F.S., for violating probation or postcommitment probation, or who have been found by the court to have violated the conditions of probation or postcommitment probation.

<sup>47</sup> Section 985.439(4), F.S.

<sup>48</sup> Section 985.441, F.S.

<sup>49</sup> Section 985.03(46), F.S.

<sup>50</sup> Section 985.03(46), F.S.

<sup>51</sup> Section 985.441(7), F.S.

preponderance of the evidence why the court is disregarding the restrictiveness level recommended by DJJ.<sup>52</sup>

Once a commitment order is entered, DJJ is responsible for determining placement in a specific residential program based on the child's identified risks and needs.<sup>53</sup> Currently, the court must order a child to be placed in a specific restrictiveness level from level 2 through level 10 and DJJ does not have the flexibility to move a child into a different restrictiveness level.

A child is committed to a residential program for an indeterminate length of time and must complete an individualized treatment plan.<sup>54</sup> The goals of the plan are based on the child's rehabilitative needs and must include educational and vocational service goals.<sup>55</sup> In addition, all residential programs provide medical, mental health, substance abuse, and developmental disability services.<sup>56</sup>

Once a juvenile sex offender is released from a commitment program, ss. 985.481 and 985.4815, F.S., require the DJJ to electronically notify FDLE no later than November 1, 2007.

#### ***Conditional Release and Transition-to-Adulthood Services***

Conditional release is defined as the care, treatment, help, and supervision provided to a juvenile released from a residential commitment program. Its purpose is to protect the public, reduce recidivism, increase responsible productive behavior, and provide for a successful transition of the youth from the department to the family.<sup>57</sup>

The DJJ must assess each child placed into a residential commitment facility to determine the need for conditional release services upon release from the facility.<sup>58</sup> Children participating in conditional release services must participate in an educational program<sup>59</sup> if they are of compulsory school attendance age or noncompulsory school age and have not obtained a high school diploma or its equivalent.<sup>60</sup> A child who has received a diploma or equivalent, but is not employed, must attend college classes, other career education, or participate in workforce development.<sup>61</sup>

The DJJ must also provide to older<sup>62</sup> children opportunities to participate in "transition-to-adulthood" services that assist with building life skills and increase the ability to live

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<sup>52</sup> *Id.*

<sup>53</sup> *Residential Services*, Comprehensive Accountability Report, Fiscal Year 2011-2012, <http://www.djj.state.fl.us/research/reports/car> (last visited February 12, 2014).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Section 985.03(12), F.S.

<sup>58</sup> Section 985.46(3), F.S.

<sup>59</sup> Pursuant to s. 1003.21(1) and (2)(a), F.S.

<sup>60</sup> Section 985.46(5), F.S.

<sup>61</sup> *Id.*

<sup>62</sup> "Older" in s. 985.461, F.S., refers to children 17 years of age or older.

independently and be self-sufficient.<sup>63</sup> The DJJ is authorized to engage in a variety of activities designed to support participation in transition-to-adulthood services.<sup>64</sup>

### **Internal Agency Procedures (Sections 27, 31, 32, 34, 35, 36, 37, and 38)**

#### ***Administering the Juvenile Justice Continuum***

Section 985.601, F.S., requires DJJ to develop or contract for diversified and innovative programs to provide rehabilitative treatment, and provides examples of such treatment.

#### ***Quality Assurance and Cost-Effectiveness***

Section 985.632, F.S., requires DJJ to provide transparency to policy makers and the public about the costs and effectiveness of the programs that it operates. The DJJ is also required to develop an accountability system which assists in ensuring that the children it serves are receiving the best services for their needs.

The DJJ is required to annually collect cost data for every program that it operates or contracts for and submit this data to the Legislature and the Governor.<sup>65</sup> The DJJ is also required to develop a cost-effectiveness model and apply the model to each commitment program. The cost-effectiveness model must compare program costs to client outcomes and program outputs, and include recidivism rates.<sup>66</sup> The DJJ must rank each commitment program based on the cost-effectiveness model and may terminate a program if the program has failed to achieve a minimum threshold of program effectiveness.

Section 985.632, F.S., defines “client”<sup>67</sup> and “program effectiveness.”<sup>68</sup>

#### ***Departmental Contracting Powers; Personnel Standards and Screening***

Section 985.644, F.S., requires DJJ employees and all personnel<sup>69</sup> of contract providers to complete a:

- Level 2 employment screening prior to employment (which requires fingerprinting);<sup>70</sup> and
- National criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person’s employment.

The DJJ must electronically submit the fingerprint information of DJJ employees and contract personnel (other than law enforcement, correctional, and correctional probation officers) to FDLE.

<sup>63</sup> Section 985.461(1), F.S.

<sup>64</sup> Section 985.461(4)(a)-(h), F.S.

<sup>65</sup> Section 985.632(3), F.S.

<sup>66</sup> *Id.*

<sup>67</sup> “Client” is defined to mean any person who is being provided treatment or services by DJJ or by a provider under contract with DJJ. Section 985.632(2)(a), F.S.

<sup>68</sup> “Program effectiveness” means the ability of the program to achieve desired client outcomes, goals, and objectives.

<sup>69</sup> Section 985.644(3)(a), F.S., states that personnel includes all owners, operators, employees, persons who have access to confidential juvenile records, and volunteers of contract providers for any program for children.

<sup>70</sup> Section 435.04, F.S. Level 2 employment screenings require fingerprints to be processed through statewide criminal history records checks through FDLE, and national criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

### ***Juvenile Justice Training Academies***

The DJJ is required to establish and oversee juvenile justice training academies to ensure that all parties involved with children in the juvenile justice system are able to meet the needs of such children while meeting specified accreditation requirements.<sup>71</sup> The DJJ must develop, implement, and maintain the curriculum for the training academies, develop uniform minimum job-related training, and establish a certifiable program for juvenile justice training.<sup>72</sup>

Section 985.66(3), F.S., requires DJJ to provide specified components to the training programs for the juvenile justice program staff based upon a job-task analysis.<sup>73</sup> All department program staff and providers who deliver direct care services pursuant to contract with DJJ are required to participate in and successfully complete the approved training program relevant to their areas of employment.<sup>74</sup> Judges, state attorneys, public defenders, law enforcement officers, and school district personnel *may* participate in such a training program.

### ***Juvenile Justice Circuit Advisory Boards***

Section 985.664, F.S., authorizes juvenile justice circuit advisory boards (advisory boards) to be established in each of the 20 judicial circuits. The purpose of the advisory boards is to advise DJJ in the development and implementation of juvenile justice programs and policies related to at-risk youth.<sup>75</sup> The duties of the advisory boards are enumerated in s. 985.664(2), F.S.

Section 985.664, F.S., requires the advisory board's initial chair to be selected by October 1, 2013, and establishes a timeframe in which the initial chair must appoint other board members. This language is now obsolete.

### ***Direct-Support Organizations***

Section 985.672, F.S., defines a direct support organization (DSO) as a not-for-profit organization whose sole purpose is to support the juvenile justice system and which is:

- Organized and operated to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with DJJ's adopted goals and mission.

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<sup>71</sup> Section 985.66(1), F.S.

<sup>72</sup> Section 985.66(1), (2), and (3), F.S.

<sup>73</sup> These components include to design, implement, maintain, evaluate and revise a basic training program for: a. the purpose of providing specified minimum employment training qualifications for all juvenile justice personnel, including a competency-based examination; b. an advanced training program that is intended to enhance knowledge, skills, and abilities related to job performance with competency-based examinations for each training course; c. a career development training program intended to prepare personnel for promotion with competency-based examinations for each training course; and d. juvenile justice training courses, or to enter into contracts for such training courses, that are intended to provide for the safety and well-being of both citizens and juvenile offenders. Section 985.66(3), F.S.

<sup>74</sup> Section 985.66(3), F.S.

<sup>75</sup> Section 985.664(1), F.S.

The DJJ may permit, without charge, appropriate use of fixed property and facilities of the juvenile justice system by a DSO.<sup>76</sup> Unlike other agencies with DSOs, DJJ is not permitted to allow DSOs to use personnel services.<sup>77</sup>

### ***Siting of Facilities***

Section 985.682, F.S., establishes procedures that must be followed when proposing a site for a juvenile justice facility. Currently, DJJ is required to conduct a detailed statewide comprehensive study (Study) to determine current and future needs for all facility types for children committed to DJJ.<sup>78</sup> The Study must assess, rank, and designate appropriate sites based upon these needs.<sup>79</sup>

### ***One-Time Startup Funding for Juvenile Justice Purposes***

Section 985.69, F.S., authorizes funds from juvenile justice appropriations to be utilized as one-time startup funding for juvenile justice purposes that include, but are not limited to, remodeling or renovation of existing facilities, construction and leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs. The DJJ is currently funded for repair and maintenance of facilities through the General Appropriations Act.

## **Payment of Medical Expenses for Detained Youth (Section 33)**

### ***Medicare Rates***

Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant).<sup>80</sup>

Medicare reimburses providers based on the type of service they provide. The Centers for Medicare and Medicaid Services (CMS) develops annual fee schedules for physicians, ambulance services, clinical laboratory services, and durable medical equipment, prosthetics, orthotics, and supplies.<sup>81</sup> Other Medicare providers are paid via a prospective payment system (PPS). The PPS is a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services). CMS uses separate PPS's for reimbursement to acute inpatient hospitals, home health agencies, hospices, hospital outpatient departments, inpatient psychiatric facilities, inpatient rehabilitation facilities, long-term care hospitals, and skilled nursing facilities.<sup>82</sup>

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<sup>76</sup> Section 985.672(4), F.S.

<sup>77</sup> These agencies include the Guardian ad Litem, Department of Veteran's Affairs, Department of Elderly Affairs, and the Department of Agriculture and Consumer Services.

<sup>78</sup> Section 985.682(1), F.S.

<sup>79</sup> Section 985.682(2), F.S.

<sup>80</sup> *What is Medicare?* <http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html> (Last visited February 12, 2014).

<sup>81</sup> *Fee Schedules – General Information*, <http://www.cms.gov/FeeScheduleGenInfo/> (Last visited on January 23, 2014)

<sup>82</sup> *Prospective Payment System – General Information*, <http://www.cms.gov/ProspMedicareFeeSvcPmtGen/> (Last visited on February 12, 2014)

### ***The Department of Corrections and Medical Payment Caps***

In 2008, the General Appropriations Implementing Bill<sup>83</sup> capped medical payment rates that the Department of Corrections (DOC) could pay to a hospital or a health care provider (provider) providing services at a hospital. Payments to providers for services were capped at 110 percent of the Medicare allowable rate for inmate medical care when no contract existed between DOC and a hospital, or a provider providing services at a hospital. However, hospitals reporting an operating loss to the Agency for Health Care Administration (AHCA) were capped at 125 percent of the Medicare allowable rate. In 2009, s. 945.6041, F.S., codified the payment caps and made other medical service providers, defined in s. 766.105, F.S., and medical transportation services subject to the medical payment cap.<sup>84</sup>

Similarly, the 2013 General Appropriations Implementing Bill capped medical payment rates that DJJ could pay to a hospital or provider providing any health care services.<sup>85</sup>

### **Offenses Committed Against Youth under the Jurisdiction of DJJ (Sections 40 and 41)**

#### ***Sexual Misconduct by an Employee***

Section 985.701, F.S., makes it a second degree felony<sup>86</sup> for a DJJ employee<sup>87</sup> to engage in sexual misconduct<sup>88</sup> with juvenile offenders “detained or supervised by, or committed to the custody, of the department.” The statute does not define the term “juvenile offender.”

#### ***Neglect of Youth Committed to the Department of Juvenile Justice***

Section 985.02, F.S., outlines the legislative intent for the juvenile justice system and provides that the children of the state shall be provided with protection from abuse, neglect, and exploitation; as well as adequate nutrition, shelter, and clothing. While uncommon, there have been instances in which a DJJ employee neglects a juvenile offender in DJJ’s custody resulting in harm to the juvenile offender.<sup>89</sup>

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances where a DJJ employee is alleged to have neglected a youth in DJJ’s custody. As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to prosecute such employees. One statute prosecutors have attempted to use for such prosecutions is s. 827.03, F.S., relating to criminal

<sup>83</sup> Chapter 2008-153, L.O.F.

<sup>84</sup> Created by ch. 2009-63, L.O.F.

<sup>85</sup> Chapter 2013-41, L.O.F.

<sup>86</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>87</sup> Section 985.701(1)(a)1.b., F.S., defines “employee” as paid staff members, volunteers, and interns who work in a DJJ program or a program operated by a provider under a contract.

<sup>88</sup> Section 985.701(1)(a)1.a., F.S., defines “sexual misconduct” as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of DJJ or an employee of a provider under contract with DJJ.

<sup>89</sup> *DJJ supervisor thought Eric Perez was “faking” as he dies in juvie lockup, officer testifies*, [http://blogs.browardpalmbeach.com/pulp/2012/03/djj\\_eric\\_perez\\_death\\_grand\\_jury\\_report.php](http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php) (last visited on February 12, 2014); *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, <http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/> (last visited on February 12, 2014).

child neglect. However, the child neglect statute is not designed to prosecute neglect cases that arise within the unique framework of the juvenile justice environment, nor does it apply to youth in DJJ's custody who are 18 or older.<sup>90</sup>

### **Diversion Programs/Expunction of Records (Section 42)**

Section 943.0582, F.S., provides guidelines to the FDLE relating to the expunction of criminal history records of youth that have successfully completed a prearrest, postarrest, or teen court diversion program.

### **Repealed Statutes (Sections 6, 28, 29, 30, 39, 43, and 44)**

#### ***Youth Custody Officers***

Section 985.105, F.S., creates a position called "youth custody officer" (YCO) within DJJ. The YCOs are responsible for taking a youth into custody if the officer has probable cause to believe that the youth has:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.<sup>91</sup>

YCOs must meet the minimum qualifications for employment or appointment, be certified under ch. 943, F.S., and comply with the requirements for continued employment required by s. 943.135, F.S.<sup>92</sup> Additionally, s. 121.0515, F.S., designates YCOs as "special risk class" members for purposes of the Florida Retirement System.

The DJJ reports that it eliminated YCO positions in July 2010, due to budget cuts.<sup>93</sup> The duties of YCOs were either distributed among existing employees or were no longer performed by DJJ.<sup>94</sup>

#### ***Prevention Services Programs and Providers***

Section 985.605, F.S., requires DJJ to monitor all state-funded programs, grants, appropriations, or activities designed to prevent juvenile delinquency or a child from becoming eligible under the CINS program in order to inform the Governor and Legislature.<sup>95</sup> The DJJ is authorized to expend funds to prevent juvenile delinquency as long as DJJ maximizes public accountability and documents outcomes. Each entity that receives money from the state must design its programs to provide one of four specified strategies<sup>96</sup> and submit demographic information of all

<sup>90</sup> Chapter 827, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, there are instances which DJJ has custody of a person who is 18 years old or older. For example, s. 985.0301(5)(a), F.S., states DJJ must retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and may retain jurisdiction for an additional 365 days following the child's 19th birthday if the child is participating in transition-to-adulthood services.

<sup>91</sup> Section 985.105(3), F.S.

<sup>92</sup> Section 985.105(2), F.S.

<sup>93</sup> Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Criminal Justice Committee.)

<sup>94</sup> *Id.*

<sup>95</sup> Section 985.605(1), F.S.

<sup>96</sup> Section 985.605(2)(a), F.S.

its participants to DJJ for verification.<sup>97</sup> The DJJ is required to develop a system to measure the effectiveness of programs that accept state funds.

Section 985.606, F.S., requires each state agency or entity that receives or uses state appropriations to fund programs, grants, appropriations, or activities that are designed to prevent juvenile delinquency and related issues to collect data relative to the performance of such activities and provide the data to the Governor and both houses of the Legislature no later than January 31st of each year for the preceding fiscal year.

***Early Delinquency Intervention Programs***

Section 985.61, F.S., authorizes the establishment of an Early Delinquency Intervention Program (EDIP) and provides specified components that must be included in such program. The EDIP must be developed by DJJ in cooperation with specified local entities (e.g., law enforcement, judiciary, etc.) and must consist of intensive residential treatment in a secure facility for 7 days to 6 weeks (followed by additional services for 6-9 months).<sup>98</sup> The court has the authority to make the EDIP a part of a child's dispositional placement.<sup>99</sup>

The DJJ reports the funding for the EDIP was eliminated from their budget in Fiscal Year 2006-07.<sup>100</sup>

***Juvenile Maintenance Trust Fund***

Section 985.694, F.S., creates the Juvenile Care and Maintenance Trust Fund, which must be credited with any money or other property received for personal use or the benefit of juveniles in the custody of DJJ. The DJJ acts as a fiduciary of the money in the fund on behalf of juveniles who are committed to or detained in DJJ facilities or facilities operated by private vendors contracting with DJJ. The DJJ reports that the trust fund is no longer utilized and has no funding stream. The DJJ further reports that facilities have local welfare trust funds which serve the same purpose.<sup>101</sup>

***Tours of state correctional facilities***

Section 945.75, F.S., requires DOC to develop programs in which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under terms and conditions established by DOC. The statute requires counties to develop similar programs involving county jails. These tour programs are commonly referred to as "scared straight programs."<sup>102</sup> The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.<sup>103</sup>

<sup>97</sup> Section 985.605(2)(c), F.S.

<sup>98</sup> Section 985.61, F.S.

<sup>99</sup> *Id.*

<sup>100</sup> Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Criminal Justice Committee.)

<sup>101</sup> Electronic mail from Jon Menendez, dated February 10, 2014 (on file with the Senate Criminal Justice Committee).

<sup>102</sup> *Scared Straight Programs*, [www.dcjs.virginia.gov/juvenile/compliance](http://www.dcjs.virginia.gov/juvenile/compliance) (last visited on February 12, 2014); *See also Scared Straight Programs: Jail and Detention Tours*, DJJ,

[www.djj.state.fl.us/docs/research2/scared\\_straight\\_booklet\\_version](http://www.djj.state.fl.us/docs/research2/scared_straight_booklet_version) (last visited on February 12, 2014)

<sup>103</sup> *Id.*

The DJJ reports that because it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002 it receives between two million and eight million dollars in federal funding.<sup>104</sup> The DJJ reports that it could lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.<sup>105</sup>

### III. Effect of Proposed Changes:

#### DJJ / HRS

The bill removes obsolete provisions throughout ch. 985, F.S., relating to dependency proceedings. Dependency proceedings are within the jurisdiction of HRS and are addressed in ch. 39, F.S.

#### Legislative Intent (Sections 1 and 2)

The bill amends existing portions of s. 985.01, F.S., to specify that it is the purpose of ch. 985, F.S., to:

- Provide victims due process while involved in the juvenile justice system (current law only addresses due process for children and “other interested parties”);
- Provide an environment that fosters educational development (current law only refers to social, emotional, intellectual, and physical development); and
- Provide children committed to DJJ technical education, when appropriate (current law only refers to training in life skills, including career education).

The bill creates new provisions in s. 985.01, F.S., specifying that the purpose of ch. 985, F.S., is to:

- Increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children;
- Care for children in the least restrictive and most appropriate service environments; and
- Allocate resources for the most effective programs, services, and treatments to ensure that children, their families, and their community support systems are connected with these programs at the most impactful points along the juvenile justice continuum.

The bill amends existing portions of s. 985.02, F.S., to:

- Remove duplicative legislative intent language relating to detention care (similar language is found in s. 985.01, F.S.);
- Specify that the Legislature finds that secure detention is appropriate to provide punishment *for children who pose a threat to public safety* (current law specifies secure detention is appropriate to discourage further delinquent behavior);

<sup>104</sup> Department of Juvenile Justice, *2013 Agency Proposal, Juvenile Justice Reform, Jail Tours* (2013) (on file with Senate Criminal Justice Committee.)

<sup>105</sup> *Id.*

- Specify that the Legislature finds the placement of facilities close to the home communities of the children they house is intended to facilitate family involvement in the treatment process;
- Specify that the Legislature finds that residential facilities must have no more than 90 (rather than 165) beds each;
- Remove language specifying that “the Legislature finds that the detention services should exceed the primary goal of providing safe and secure custody pending adjudication and disposition;” and
- Explain what gender-specific programming should entail and why gender-specific programming is important for reducing juvenile delinquency.

The bill also adds new legislative findings to s. 985.02, F.S., relating to two specific topic areas - “trauma-informed care” and “family and community engagement.”

- The section addressing trauma-informed care provides that the DJJ should utilize trauma-informed care as an approach to treating children with histories of trauma and explains that this method of care is preferred for such children because it assists with preventing re-traumatization of the child.
- The section addressing family and community engagement provides that families and community support systems are critical to ensuring children are not delinquent; specifies that children should be served and treated in their homes and diverted from restrictive placements, when appropriate; and provides that DJJ should develop customized plans which “recognize the child’s individual strengths, reduce their risks, and prepare them for a successful transition to, and unification with, their family and community support system.”

### **Definitions (Section 3)**

The bill amends s. 985.03, F.S., to define the following terms:

- “Abscond” is defined to mean to hide, conceal, or absent oneself from the jurisdiction of the court or supervision of the department to avoid prosecution or supervision;
- “Prevention” is defined to mean programs, strategies, initiatives, and networks designed to keep children from making initial or further contact with the juvenile justice system; and
- “Trauma-informed care” is defined to mean providing services to children with a history of trauma, which recognizes the symptoms of trauma and acknowledges the role the trauma has played in the child’s life. Trauma may include, but is not limited to, community and school violence, physical or sexual abuse, neglect, medical difficulties, and domestic violence.

The bill amends the existing definitions of the following terms:

- “Child,” “juvenile,” and “youth” are amended to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years;
- “Comprehensive Assessment,” “assessment,” and “day treatment” are amended to refer to “career and technical education,” rather than “vocational” services;
- “Conditional release” is amended to include transition-to-adulthood services;

- “Intake” is amended to allow juvenile assessment center personnel (rather than just DJJ personnel) to accept and screen a report of delinquency; and
- “Temporary release” is amended to no longer apply to periods of time when the child is supervised pursuant to a conditional release program or supervised by DJJ staff.

The bill deletes definitions for the following terms, which refer to the dependency system: “child support,” “foster care,” “habitually truant,” “halfway house,” “shelter hearing,” and “staff-secure shelter.”

The bill also deletes definitions for the following terms, as they have been replaced by “prevention services:” “delinquency prevention programs” and “preventative services.”

The terms “detention care” and “restrictiveness levels” are also amended in this bill. However, both have a significant effect on the substantive areas of the juvenile justice system and thus are addressed in the appropriate substantive portions of this analysis.

#### **Jurisdiction (Section 4)**

The bill amends s. 985.0301, F.S., to authorize, rather than require, the court to transfer a detained child to a detention center in the circuit in which the child resides or will reside at the time of detention. The bill restricts such transfers to only these two circumstances, which means the receiving court will no longer be able to direct where the detained child may be placed when a case is being transferred.

The bill simplifies the statutory jurisdictional criteria. As a result, the court will retain jurisdiction over a child until the child:

- Reaches 19 years of age, generally, or if the child is in a probation program;
- Reaches 21 years of age, if the child is committed to DJJ in any type of commitment program, specifically for the purpose of allowing the child to complete the commitment program, including conditional release supervision;
- Reaches 21 years of age, if the child is a juvenile sexual offender who has been placed on community-based treatment alternative with supervision, or in a program or facility for juvenile sexual offenders, specifically for the purpose of completing the program; or
- Satisfies any restitution ordered in the case.

#### **Contempt of Court (Section 5)**

The bill requires the court to hold a hearing to determine if a child has committed direct contempt of court and affords the child specified due process rights at this hearing. The bill also clarifies that if a judge places a child into a secure facility for contempt, such facility must be a *detention* facility. In such instances, the court need only review the appropriateness of the placement upon motion by the defense attorney or state attorney (rather than every 72 hours).

### **Fingerprinting and Photographing (Section 7)**

The bill excludes a child from the fingerprint requirements if the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, F.S.

### **Intake Process (Sections 8 and 9)**

The bill amends s. 985.14, F.S., to allow both DJJ and JAC personnel to perform the intake process, which will provide a more efficient intake process in counties that operate their own JACs. The bill also:

- Clarifies that the intake assessment process consists of an initial assessment that may be followed by a full mental health, substance abuse, and/or psychosexual evaluation; and
- Requires children to be screened to determine career or technical education problems (rather than vocational problems).

The bill replaces the term “juvenile probation officer” with “department” throughout s. 985.145, F.S., which will allow DJJ to use employees other than JPOs to serve as a child’s primary case manager.

### **Prevention (Section 10)**

The bill creates s. 985.17, F.S., relating to prevention services. This section specifies that prevention decreases recidivism by addressing the needs of at-risk youth and their families, prevents further involvement in the juvenile justice system, protects public safety, and facilitates successful re-entry into the community. The bill requires DJJ to:

- Engage faith and community-based organizations to provide a full range of voluntary programs and services to prevent and reduce juvenile delinquency;<sup>106</sup>
- Establish volunteer coordinators in each circuit and encourage mentor recruitment;
- Encourage the recruitment of volunteers to serve as mentors for youth in DJJ services;
- Promote the “Invest in Children” license plate to help fund programs and services to prevent juvenile delinquency;<sup>107</sup>
- Focus prevention services on preventing initial or further involvement with the juvenile justice system by including certain services (e.g., literacy and gender-specific programs) and including targeted services to troubled, truant, ungovernable, abused, trafficked, and runaway youth;
- Ensure that prevention services address the multiple needs of youth at risk of becoming delinquent in order to decrease the prevalence of disproportionate minority representation in the juvenile justice system; and
- Expend prevention-related funds in a manner that maximizes accountability and ensures documentation of outcomes.

<sup>106</sup> The bill further provides that the voluntary programs and services include, but are not limited to, chaplaincy services, crisis intervention counseling, mentoring, and tutoring.

<sup>107</sup> The bill further requires DJJ to allocate moneys for programs and services within each county based on that county’s proportionate share of the license plate annual use fee collected by the county, which is identical to how s. 320.08058(11), F.S., specifies the money should be allocated.

The bill incorporates language into s. 985.17, F.S., that is currently found in two sections that are being repealed by the bill (ss. 985.605 and 985.606, F.S.). This language requires DJJ to expend prevention-related funds in a manner that maximizes accountability to the public and ensures the documentation of outcomes. The bill provides that as a condition of receipt of state funds, entities that receive or use state moneys to fund prevention services through contracts with DJJ or grants from any entity must:

- Design programs providing services to further one or more of the following strategies:
  - Encouraging youth to attend and succeed in school;
  - Engaging youth in productive and wholesome activities during non-school hours that build positive character, instill positive values, and enhance educational experiences;
  - Encouraging youth to avoid the use of violence; and
  - Assisting youth to acquire skills needed to find meaningful employment, including assistance in finding a suitable employer; and
- Provide the department with demographic information, dates of services, and the type of interventions received by each youth.

The bill requires DJJ to monitor the output and outcome measures for each program strategy and annually report this data in the Comprehensive Accountability Report. The bill also requires DJJ to monitor all state-funded programs that receive or use state moneys to fund the juvenile delinquency prevention services through contracts or grants for compliance with all provisions in the contracts and grants.

### **Detention Care System (Sections 11 through 17)**

The bill makes numerous substantive changes to the statutes which govern the detention care system. First, the bill amends the definition of “detention care” found in s. 985.03, F.S., to remove “home detention,” thereby limiting the definition to “secure” and “nonsecure” detention. The bill amends the definition of “nonsecure detention” to mean:

- Temporary nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive home environment under the supervision of DJJ staff pending adjudication, disposition, or placement. Forms of nonsecure detention may include, but are not limited to home detention, electronic monitoring, day reporting centers, evening reporting centers, nonsecure shelters, and may include other requirements imposed by the court.

The bill authorizes DJJ to develop evening reporting centers (centers), which are included in the definition of “nonsecure detention.” These centers serve as an alternative to placing a child in secure detention and may be collocated with a JAC. Centers must serve children and families who are awaiting a child’s court hearing, and must operate at a minimum during the afternoon and evening hours to provide a highly structured program of supervision. Centers may also provide academic tutoring, counseling, family engagement programs, and other activities.

The term “juvenile probation officer” is replaced by the term “department” throughout many of the detention-related statutes, which will allow DJJ to use employees other than JPOs to make

initial detention placement decisions. The bill specifies that a child's "illegal possession of a firearm" can be considered as a basis for ordering detention or continued detention, and requires secure detention for any child who has been taken into custody on three or more separate occasions within a 60 day period.

If a court orders detention but does not include the release date in the order, DJJ must request the court to set one on the same date the child is placed into detention care.

The bill requires detention staff to notify the appropriate law enforcement agency, school personnel, and victim when a child charged with any of the following offenses is released from secure detention or transferred to nonsecure detention:

- Murder, under s. 782.04, F.S.;
- Sexual battery, under ch. 794, F.S.;
- Stalking, under s. 784.048, F.S; or
- Domestic violence, as defined in s. 741.28, F.S.

In some respects, this expands the notification requirement by not limiting it to juvenile sex offenders. In other respects, this limits the notification requirement, because it only requires notification for sexual battery, not all of the previously-included offenses that qualify a child as a juvenile sex offender.

In instances where a detained child is transferred to a jail or other facility used to detain adults,<sup>108</sup> the bill requires physical observation and documented checks of the child every 10 minutes, rather than every 15 minutes.

The court must place in detention care all children who are adjudicated and awaiting placement in a commitment program. In such instances, the bill requires, rather than permits, a child who has been committed to a high-risk or maximum risk residential facility to be held in secure detention until placement has been accomplished.

### **Disposition (Sections 18 through 26)**

#### ***Predisposition Reports***

The bill requires the PDR to identify appropriate educational and career (rather than vocational) goals, which include:

- Successful completion of career and technical education courses (rather than vocational courses); and
- Successful completion of the child's current grade or recovery of credits or classes the child previously failed.

#### ***Probation or Postcommitment Probation (Probation)***

The bill amends s. 985.435, F.S., to add a new component that may be included as a part of the probation program. This component, called an alternative consequence component, is solely for

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<sup>108</sup> Section 985.265, F.S., sets forth instances in which a child may be detained in a jail or other facility used to detain adults.

instances when a child commits a technical violation of probation (not a substantive violation), and is intended to provide swift and appropriate consequences for any future technical violations. If the probation program includes an alternative consequence component, the judge must state in the disposition order the consequences that will apply to specific violations.

The bill amends s. 985.439, F.S., to authorize the court to place in an alternative consequence program a child who has admitted, or been found to have committed, a violation of probation that is technical in nature. If this occurs, the judge must approve specific consequences for specific future violations of the conditions of probation. Alternative consequence programs:

- Must to be established at the local level in coordination with law enforcement agencies, the Chief Judge of the circuit, the State Attorney, and the Public Defender; and
- May be operated by a law enforcement agency, DJJ, a juvenile assessment center, or another entity selected by DJJ.

### ***Commitment***

The bill replaces the term “juvenile probation officer” with the term “department” throughout many of the commitment-related statutes, which will allow DJJ to use employees other than JPOs to perform commitment-related duties.

The bill amends the definition of “restrictiveness level” in s. 985.03(46), F.S., to combine low-risk residential (level 4) and moderate-risk residential (level 6) into one group called “nonsecure residential.” This will allow DJJ to place a child whose risk is currently low into a program that caters to children with slightly higher risk levels to ensure that other needs or services the child requires may be fulfilled.

The bill also limits residential facilities to 90 beds (rather than 165).

The bill amends s. 985.441, F.S., to allow certain youth<sup>109</sup> to be committed to nonsecure residential placement if the child has:

- Previously been adjudicated or *had an adjudication withheld* for a felony offense; or
- *Previously* been adjudicated or had adjudication withheld for three or more misdemeanor offenses *within the last 18 months*.

The bill amends s. 985.275, F.S., to require DJJ to notify law enforcement and, if the offense requires victim notification under ch. 960, F.S., the victim, any time a child in the custody of DJJ:

- Escapes from a residential commitment program or from being transported to or from one; or
- Absconds from a nonresidential commitment facility.

The bill further requires that DJJ make every reasonable effort to locate the child.

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<sup>109</sup> This includes youth whose offense is a misdemeanor as well as youth who are on probation for a misdemeanor who commit a technical violation. Section 985.441(2), F.S.

The bill also amends ss. 985.481 and 985.4815, F.S., to delete an obsolete phrase “no later than November 1, 2007” as it relates to DJJ being required to notify FDLE when a juvenile sex offender gets released from a commitment program.

### ***Conditional Release and Transition-to-Adulthood Services***

The bill amends s. 985.46, F.S., to clarify that conditional release includes the provision of transition-to-adulthood services. The bill also requires a child of noncompulsory school age who is on conditional release supervision to participate in the education program *or career and technical education courses*.

The bill expands the application of transition-to-adulthood services by removing the limitation that these services only be provided to “older children.” As a result, any child who is under the supervision of DJJ may be provided transition-to-adulthood services as part of their treatment plan.

The bill also expands the activities DJJ is authorized to engage in to support participation in transition-to-adulthood services. Specifically, DJJ may:

- Utilize community re-entry teams to assist in the development of a list of age appropriate activities and responsibilities to be incorporated in the child’s case plan. Community re-entry teams may include representatives from school districts, law enforcement, workforce development services, community based service providers, and the child’s family.
- Assist the child in building a portfolio of educational and vocational accomplishments, necessary identification, and resumes and cover letters to enhance the child’s employability; and
- Collaborate with school district contacts to facilitate appropriate educational services based on the child’s identified needs

### **Internal Agency Procedures (Sections 27, 31, 32, 34, 35, 36, 37, and 38)**

#### ***Administering the Juvenile Justice Continuum***

The bill adds the terms “trauma-informed care,” family engagement resources and programs,” and “gender-specific programming” to the examples of rehabilitative treatment. The bill also authorizes DJJ to pay expenses in support of innovative programs and activities that address identified needs and the well-being of children in DJJ’s care or under its supervision.

#### ***Quality Assurance and Cost-Effectiveness***

The bill does the following by amending s. 985.632, F.S.:

- Revises legislative intent language to accurately reflect the measures DJJ uses to quantify program outcomes;
- Requires the annual report to collect and analyze available statistical data for the purpose of ongoing evaluation of all programs;
- Deletes the terms “client” and “program effectiveness” and adds the following definitions:
  - “Program,” means any facility or service for youth that is operated by DJJ or by a provider under contract with DJJ; and

- “Program group,” means a collection of programs with sufficient similarity of functions, services, and youth to permit appropriate comparison among programs within the group;
- Codifies the Comprehensive Accountability Report (CAR),<sup>110</sup> and requires DJJ to work with the Office of Economic and Demographic Research to develop a standard methodology for measuring and reporting program outputs and youth outcomes;
- Requires the standard methodology used in the CAR to include certain terminology for measuring performance, specify program outputs, and specify desired child outcomes and methods to measure child outcomes; and
- Revises components of the cost-effectiveness model by requiring:
  - The cost-effectiveness model to compare costs to expected and actual child recidivism rates, rather than client outcomes and program outputs; and
  - The DJJ to rank commitment programs based on performance measures and adherence to quality improvement standards, in addition to the cost-effectiveness model.

The bill removes the terms “quality assurance” and “minimum threshold” and replaces them with the terms “quality improvement” and “minimum standard” throughout s. 985.632, F.S.

#### ***Departmental Contracting Powers; Personnel Standards and Screening***

The bill provides that law enforcement, correctional, or correctional probation officers who are certified pursuant to s. 943.13, F.S., are not required to submit to level 2 screenings, provided they are currently employed by a law enforcement agency or correctional facility.

#### ***Juvenile Justice Training Academies***

The bill amends s. 985.66, F.S., to do the following:

- Remove references to “academies” when referring to juvenile justice training programs;
- Revise legislative intent language to specify that the purpose of establishing staff development and training programs is to “provide employees of the department, any private or public entity, or contract providers who provide services or care for youth under the responsibility of the department with the knowledge and skills to appropriately interact with youth and provide such care;”
- Require DJJ to designate the *number* of (not just the location of) training programs and courses; and
- Authorize all employees of contract providers who provide services or care for youth under the responsibility of DJJ to participate in the certifiable training program.

#### ***Juvenile Justice Circuit Advisory Boards***

The bill removes obsolete language and specifies that the chair of a board serves at the pleasure of DJJ’s Secretary.

#### ***Direct-Support Organizations***

The bill gives DJJ the authority to permit a DSO to use personnel services. Personnel services include full-time or part-time personnel, as well as payroll processing services.

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<sup>110</sup> The CAR, in its current form, has been published by DJJ since 2006. It includes all of the information required to be reported under s. 985.632, F.S., as well as additional information. See *Comprehensive Accountability Reports*, <http://www.djj.state.fl.us/research/reports/car> (last visited on February 12, 2014).

***Siting of Facilities***

The bill amends s. 985.682, F.S., to delete the requirement that DJJ conduct a detailed statewide comprehensive study related to facility needs.

***One-Time Startup Funding for Juvenile Justice Purposes***

The bill changes the term “one-time startup” to “repair and maintenance” throughout s. 985.69, F.S. This allows these funds to be utilized for the continuing repair and maintenance of DJJ facilities.

**Payment of Medical Expenses for Detained Youth (Section 33)**

The bill codifies the language contained in the implementing bill for the 2013-2014 General Appropriations Act. Specifically, the bill provides that if there is no contract between DJJ and the hospital or provider providing health care services (services) at a hospital, payments to a provider may not exceed 110 percent of the Medicare allowable rate for any services provided. DJJ may continue to make payments for services to a provider at the current contracted rates through the current term of an executed contract.<sup>111</sup> However, once that contract expires, payments may not exceed 110 percent of the Medicare allowable rate.

If a contract is executed on or after July 1, 2014, payments to providers for services may not exceed 110 percent of the Medicare allowable rate, unless the services are performed at a hospital that reports a negative operating margin for the previous fiscal year to the AHCA through hospital-audited financial data. In that instance, DJJ may pay up to 125 percent of the Medicare allowable rate.

The bill defines the term “hospital” to mean a hospital licensed under ch. 395, F.S., and a “health care provider” to have the same meaning as provided in s. 766.105, F.S.

**Offenses Committed Against Youth under the Jurisdiction of DJJ (Sections 40 and 41)*****Sexual Misconduct by an Employee***

The bill amends s. 985.701, F.S., to define “juvenile offender” as “any person of any age who is detained, or committed to the custody of, the department.” This mirrors the definition used in s. 985.702, F.S., discussed below.

***Neglect of Youth Committed to the Department of Juvenile Justice***

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to willful and malicious neglect of a juvenile offender. The bill makes it a third degree felony<sup>112</sup> for a DJJ employee to willfully and maliciously neglect a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the neglect does cause great bodily

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<sup>111</sup> The bill allows for contracts to be renewed during the 2013-2014 fiscal year.

<sup>112</sup> A third degree felony is punishable by up to five years imprisonment and a potential fine up to \$5,000. Sections 775.082, 775.083, and 775.084, F.S.

harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a second degree felony.<sup>113</sup>

The bill defines an “employee” as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with DJJ; and defines a “juvenile offender” as “any person of any age who is detained by, or committed to the custody of, the department.” “Neglect” is defined as an employee’s:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender’s physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., such determination constitutes sufficient cause under s. 110.227, F.S.,<sup>114</sup> for dismissal from employment with DJJ, and prohibits the employee from being employed in any capacity in connection with the juvenile justice system.

The bill requires employees who witness the neglect of a juvenile offender to immediately report the incident to DJJ’s incident hotline. The witness must also prepare an independent report specifically describing the nature of the incident, the location and time, and the persons involved. This report must be submitted to the witness’s supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if there is probable cause to believe that a violation occurred, notify the state attorney in the circuit in which the incident occurred.

Any person who is required to prepare a report under this section who knowingly or willfully fails to file a report, or prevents another person from filing a report commits a first degree misdemeanor.<sup>115</sup> In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor.
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

### **Diversion Programs/Expunction of Records (Section 42)**

The bill amends s. 943.0582, F.S., by adding the phrase “by the state attorney” to clarify that it is the state attorney, not law enforcement, who is the “charging” entity referred to in this section.

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<sup>113</sup> A second degree felony is punishable by up to 15 years imprisonment and a potential fine up to \$10,000. Sections 775.082k 775.083, and 775.084, F.S.

<sup>114</sup> Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

<sup>115</sup> A first degree misdemeanor is punishable by up to one year incarceration and a potential fine up to \$1,000. Section 775.082, F.S. and 775.083, F.S.

**Repealed Statutes (Sections 6, 28, 29, 30, 39, 43, and 44)*****Youth Custody Officers***

The bill repeals s. 985.105, F.S., to eliminate the YCO position, and amends s. 121.0515, F.S., to remove references to YCOs as a position that is designated as a special risk class member.

***Prevention Services Programs and Providers***

The bill repeals ss. 985.605 and 985.606, F.S. However, the policies specified within these statutes relating to design strategies for prevention programs, public accountability of such programs, documentation of program outcomes, the sharing of personal demographic information of program participants, and data collection for performance outcomes of the prevention services are moved to the newly created s. 985.17, F.S.

***Early Delinquency Intervention Programs***

The bill repeals s. 985.61, F.S., relating to these obsolete programs.

***Juvenile Maintenance Trust Fund***

The bill repeals s. 985.694, F.S., relating to this unused trust fund.

***Tours of state correctional facilities***

The bill repeals s. 945.75, F.S., relating to jail tours that violate federal law.

**Correcting Cross-References (Sections 45 and 46)**

Section 985.045, F.S., relating to court records, and s 985.721, F.S., relating to escapes from a secure detention or residential commitment facility, are amended to correct cross references.

**Effective date (Section 47)**

The bill provides an effective date of July 1, 2014.

**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:**

Families who are currently financially unable to access various services may have increased access to services, such as tutoring and counseling, as a result of the establishment of evening reporting centers.

Children who may currently be subject to placement in secure detention for technical violations of probation may not be required to go into secure detention because the bill creates an alternative consequence option to handle noncompliance with the technical conditions of probation. This could assist these children with maintaining any employment they currently possess.

Doctors and hospitals that currently provide services to children in the custody of DJJ without a contract may collect less money for the same services they currently provide if their fees are capped by 110 percent of the Medicare allowable rate.

**C. Government Sector Impact:**

The bill provides that the maximum bed number for all residential facilities shall be 90 beds, instead of the maximum bed number of 165 currently found in statute. The DJJ currently has two residential facilities over the 90 bed limit; Riverside Academy has 165 beds and Avon Park Youth Academy has 144 beds.<sup>116</sup> The DJJ reports the procurement process is already underway to replace these services.<sup>117</sup>

The bill amends s. 985.25, F.S., to require any child who has been taken into custody on three or more separate occasions within a 60-day period to be placed in secure detention care until his or her detention hearing. The DJJ reports that 1,730 youth met this criteria in the last fiscal year. The DJJ reports that the variable cost (clothing and food) per youth is less than \$10 per day per youth. This will be an estimated increased cost of \$30,000 a year. This number could vary depending on how many nights each youth stays at the detention center. The DJJ states the majority of these youth will stay only one night. The DJJ states that they will absorb these increased costs within existing resources.<sup>118</sup>

The bill allows DJJ to pay expenses in support of innovative programs and activities that address identified needs and the well-being of children in the department's care or under its supervision. These will be new expenses the department is currently not paying. The department states these new expenses will be funded within existing resources.<sup>119</sup>

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<sup>116</sup> Electronic mail from Jon Menendez, dated February 10, 2014 (on file with the Senate Criminal Justice Committee.)

<sup>117</sup> Department of Juvenile Justice, *2014 Bill Analysis for SB 700* (2014) (on file with the Senate Criminal Justice Committee.)

<sup>118</sup> *Id.*

<sup>119</sup> Electronic mail from Jon Menendez, dated February 12, 2014 (on file with the Senate Criminal Justice Committee.)

The bill allows DJJ to permit DSOs to use DJJ personnel services, which may have a fiscal impact on DJJ. However, DJJ states any new expenses will be funded within existing resources.<sup>120</sup>

The bill adds new detention criteria which could result in some children being held in secure detention that would not otherwise have been detained, or being detained for longer periods of time. This could have an indeterminate negative fiscal impact on local government expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.01, 985.02, 985.03, 985.0301, 985.037, 985.045, 985.11, 985.14, 985.145, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.27, 985.275, 985.433, 985.435, 985.439, 985.441, 985.46, 985.461, 985.481, 985.4815, 985.601, 985.632, 985.644, 985.66, 985.664, 985.672, 985.682, 985.69, 985.701, 985.721, 943.0582, and 121.0515.

This bill creates the following sections of the Florida Statutes: 985.17, 985.6441, and 985.702.

This bill repeals the following sections of the Florida Statutes: 985.105, 985.605, 985.606, 985.61, 985.694, and 945.75.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>120</sup> *Id.*

By Senator Bradley

7-00541D-14

2014700\_\_

1 A bill to be entitled  
 2 An act relating to the Department of Juvenile Justice;  
 3 amending s. 985.01, F.S.; revising the purposes of ch.  
 4 985, F.S., relating to juvenile justice; amending s.  
 5 985.02, F.S.; revising the legislative intent and  
 6 findings relating to the juvenile justice system;  
 7 amending s. 985.03, F.S.; defining and redefining  
 8 terms; amending s. 985.0301, F.S.; allowing a child  
 9 who has been detained to be transferred to the  
 10 detention center or facility in the circuit in which  
 11 the child resides or will reside at the time of  
 12 detention; deleting provisions relating to the  
 13 retention of jurisdiction by the court of a child  
 14 under certain circumstances; conforming provisions to  
 15 changes made by the act; amending s. 985.037, F.S.;  
 16 requiring the court to hold a hearing if a child is  
 17 charged with direct contempt of court and to afford  
 18 the child due process at such hearing; requiring the  
 19 court to review the placement of a child in a secure  
 20 detention facility upon motion by the defense or state  
 21 attorney; conforming provisions to changes made by the  
 22 act; repealing s. 985.105, F.S., relating to youth  
 23 custody officers; amending s. 985.11, F.S.; providing  
 24 that a child's fingerprints do not need to be  
 25 submitted to the Department of Law Enforcement under  
 26 certain circumstances; amending s. 985.14, F.S.;  
 27 authorizing juvenile assessment center personnel to  
 28 perform the intake process for children in custody of  
 29 the Department of Juvenile Justice; providing

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

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30 requirements for the intake process; amending s.  
 31 985.145, F.S.; transferring responsibilities relating  
 32 to the intake process from the juvenile probation  
 33 officer to the department; creating s. 985.17, F.S.;  
 34 providing goals for the department's prevention  
 35 services; requiring the department to engage with  
 36 certain faith-based and community-based organizations;  
 37 requiring the department to establish volunteer  
 38 coordinators; requiring the department to promote a  
 39 specified license plate; providing for the use of  
 40 funds related to prevention services; amending s.  
 41 985.24, F.S.; requiring that a determination or court  
 42 order regarding the use of detention care include any  
 43 findings that the child illegally possessed a firearm;  
 44 authorizing the department to develop evening-  
 45 reporting centers; providing requirements for such  
 46 centers; conforming provisions to changes made by the  
 47 act; amending s. 985.245, F.S.; conforming provisions  
 48 to changes made by the act; amending s. 985.25, F.S.;  
 49 transferring the responsibility for detention intake  
 50 from the juvenile probation officer to the department;  
 51 requiring that a child be placed in secure detention  
 52 care until the child's detention hearing under certain  
 53 circumstances; conforming provisions to changes made  
 54 by the act; amending s. 985.255, F.S.; requiring that  
 55 a child taken into custody and placed into secure or  
 56 nonsecure detention care be given a hearing within a  
 57 certain timeframe; authorizing the court to order  
 58 continued detention under certain circumstances;

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59 requiring that, if the initial order placing the youth  
 60 on detention care does not include a release date, a  
 61 release date be requested of the court on the same  
 62 date the youth is placed on detention care; requiring  
 63 that, if a subsequent hearing is needed to provide  
 64 additional information to the court for safety  
 65 planning, the initial order reflect the date of the  
 66 next detention review hearing, which must be within 3  
 67 calendar days after the child's initial detention  
 68 placement; conforming provisions to changes made by  
 69 the act; amending s. 985.26, F.S.; conforming  
 70 provisions to changes made by the act; amending s.  
 71 985.265, F.S.; requiring that detention staff  
 72 immediately notify law enforcement, school personnel,  
 73 and the victim, when a juvenile charged with a  
 74 specified crime is released from secure detention or  
 75 transferred to nonsecure detention; conforming  
 76 provisions to changes made by the act; amending s.  
 77 985.27, F.S.; conforming provisions to changes made by  
 78 the act; amending s. 985.275, F.S.; requiring an  
 79 authorized agent of the department to notify law  
 80 enforcement and attempt to locate a child who has  
 81 escaped from a residential commitment facility;  
 82 requiring that the victim be notified under certain  
 83 circumstances; amending s. 985.433, F.S.; revising  
 84 provisions relating to educational goals of a child in  
 85 a predisposition report; requiring the department,  
 86 rather than the juvenile probation officer, to  
 87 recommend to the court the most appropriate treatment

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88 and placement plan; amending s. 985.435, F.S.;  
 89 authorizing a probation program to include an  
 90 alternative consequence component; providing  
 91 requirements for such component; requiring that the  
 92 department provide an evaluation of the youth's risk  
 93 to reoffend; conforming provisions to changes made by  
 94 the act; amending s. 985.439, F.S.; providing that the  
 95 section applies to children on probation or  
 96 postcommitment probation, regardless of adjudication;  
 97 authorizing the department to establish programs to  
 98 provide alternative consequences for certain probation  
 99 violations; providing requirements for such programs;  
 100 conforming provisions to changes made by the act;  
 101 amending s. 985.441, F.S.; providing that the court  
 102 may commit a child who is on probation for a  
 103 misdemeanor or a certain probation violation only at a  
 104 specified restrictiveness level; authorizing the court  
 105 to commit such child to a nonsecure residential  
 106 placement in certain circumstances; conforming  
 107 provisions to changes made by the act; amending s.  
 108 985.46, F.S.; providing that conditional release  
 109 includes transition-to-adulthood services; requiring  
 110 certain students to participate in an educational or  
 111 career education program; amending s. 985.461, F.S.;  
 112 authorizing the department to provide transition-to-  
 113 adulthood services under certain circumstances;  
 114 authorizing the department to use community reentry  
 115 teams composed of certain individuals and entities for  
 116 certain purposes; removing age restrictions for youth

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117 who receive transition-to-adulthood services;  
 118 requiring the department to assist youth in developing  
 119 a portfolio of certain accomplishments and to  
 120 collaborate with school districts to facilitate  
 121 certain educational services; amending ss. 985.481 and  
 122 985.4815, F.S.; deleting obsolete provisions; amending  
 123 s. 985.601, F.S.; requiring the department to contract  
 124 for programs to provide trauma-informed care, family  
 125 engagement resources, and gender-specific programming;  
 126 authorizing the department to pay expenses in support  
 127 of certain programs; repealing s. 985.605, F.S.,  
 128 relating to prevention service programs, monitoring,  
 129 and uniform performance measures; repealing s.  
 130 985.606, F.S., relating to prevention services  
 131 providers, performance data collection, and reporting;  
 132 repealing s. 985.61, F.S., relating to early  
 133 delinquency intervention programs; amending s.  
 134 985.632, F.S.; revising legislative intent to include  
 135 that the department establish a performance  
 136 accountability system for certain providers that  
 137 contract with the department; providing requirements  
 138 for such contracts; requiring that the department's  
 139 Bureau of Research and Planning submit a report to the  
 140 Legislature; providing requirements for the report;  
 141 defining terms; requiring that the department develop,  
 142 in consultation with specified entities, a standard  
 143 methodology for measuring, evaluating, and reporting;  
 144 providing requirements for the methodology; deleting  
 145 reporting requirements related to cost data; revising

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146 the requirements of the department's cost-  
 147 effectiveness model; requiring the department to  
 148 establish a quality improvement system rather than a  
 149 quality assurance system; conforming provisions to  
 150 changes made by the act; amending s. 985.644, F.S.;  
 151 providing that specified individuals are not required  
 152 to submit to certain screenings under certain  
 153 circumstances; creating s. 985.6441, F.S.; defining  
 154 the terms "hospital" and "health care provider";  
 155 limiting the department's compensation of health care  
 156 providers; amending s. 985.66, F.S.; revising the  
 157 purpose of juvenile justice programs and courses;  
 158 revising the duties of the department for staff  
 159 development and training; providing that employees of  
 160 certain contract providers may participate in the  
 161 training program; amending s. 985.664, F.S.; requiring  
 162 the juvenile justice circuit advisory board, rather  
 163 than the secretary of the department, to appoint a new  
 164 chair to that board; providing that the chair serves  
 165 at the pleasure of the secretary; amending s. 985.672,  
 166 F.S.; redefining the term "direct-support  
 167 organization"; authorizing the department to allow the  
 168 use of personnel services of the juvenile justice  
 169 system by a direct-support organization; amending s.  
 170 985.682, F.S.; deleting provisions relating to a  
 171 statewide study; conforming provisions to changes made  
 172 by the act; amending s. 985.69, F.S.; providing for  
 173 repair and maintenance funding for juvenile justice  
 174 purposes; repealing s. 985.694, F.S., relating to the

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175 Juvenile Care and Maintenance Trust Fund; amending s.  
 176 985.701, F.S.; defining the term "juvenile offender";  
 177 removing the requirement that the juvenile be detained  
 178 by, supervised by, or committed to the custody of the  
 179 department for the purposes of charging sexual  
 180 misconduct by an employee of the department; creating  
 181 s. 985.702, F.S.; defining terms; prohibiting an  
 182 employee from willfully and maliciously neglecting a  
 183 juvenile offender; providing criminal penalties;  
 184 providing for dismissal from employment with the  
 185 department; requiring an employee to report certain  
 186 information; requiring the department's inspector  
 187 general to conduct an appropriate administrative  
 188 investigation; requiring that the inspector general  
 189 notify the state attorney under certain circumstances;  
 190 amending s. 943.0582, F.S.; requiring that the  
 191 department expunge the nonjudicial arrest record of  
 192 certain minors under certain circumstances; repealing  
 193 s. 945.75, F.S., relating to tours of state  
 194 correctional facilities for juveniles; amending s.  
 195 121.0515, F.S.; conforming provisions to changes made  
 196 by the act; amending ss. 985.045 and 985.721, F.S.;  
 197 conforming cross-references; providing an effective  
 198 date.

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

201  
 202 Section 1. Section 985.01, Florida Statutes, is amended to  
 203 read:

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204 985.01 Purposes and intent.—  
 205 (1) The purposes of this chapter are:  
 206 (a) To increase public safety by reducing juvenile  
 207 delinquency through effective prevention, intervention, and  
 208 treatment services that strengthen and reform the lives of  
 209 children.  
 210 ~~(b)(a)~~ To provide judicial and other procedures to assure  
 211 due process through which children, victims, and other  
 212 interested parties are assured fair hearings by a respectful and  
 213 respected court or other tribunal and the recognition,  
 214 protection, and enforcement of their constitutional and other  
 215 legal rights, while ensuring that public safety interests and  
 216 the authority and dignity of the courts are adequately  
 217 protected.  
 218 ~~(c)(b)~~ To provide ~~for the care, safety, and protection of~~  
 219 ~~children in~~ an environment that fosters healthy social,  
 220 emotional, intellectual, educational, and physical development;  
 221 to ensure secure and safe custody; and to promote the health and  
 222 well-being of all children under the state's care.  
 223 ~~(d)(e)~~ To ensure the protection of society, by providing  
 224 for a comprehensive standardized assessment of the child's needs  
 225 so that the most appropriate control, discipline, punishment,  
 226 and treatment can be administered consistent with the  
 227 seriousness of the act committed, the community's long-term need  
 228 for public safety, the prior record of the child, and the  
 229 specific rehabilitation needs of the child, while also  
 230 providing, whenever possible, restitution to the victim of the  
 231 offense.  
 232 ~~(e)(d)~~ To preserve and strengthen the child's family ties,

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233 whenever possible, by providing for removal of the child from  
 234 ~~the physical custody of a parent~~ parental custody only when his  
 235 or her welfare or the safety and protection of the public cannot  
 236 be adequately safeguarded without such removal; and, when the  
 237 child is removed from his or her own family, to secure custody,  
 238 care, and discipline for the child as nearly as possible  
 239 equivalent to that which should have been given by the parents,  
 240 ~~and to assure, in all cases in which a child must be permanently~~  
 241 ~~removed from parental custody, that the child be placed in an~~  
 242 ~~approved family home, adoptive home, independent living program,~~  
 243 ~~or other placement that provides the most stable and permanent~~  
 244 ~~living arrangement for the child, as determined by the court.~~

245 (f) ~~(e)~~1. To assure that the adjudication and disposition of  
 246 a child alleged or found to have committed a violation of  
 247 Florida law be exercised with appropriate discretion and in  
 248 keeping with the seriousness of the offense and the need for  
 249 treatment services, and that all findings made under this  
 250 chapter be based upon facts presented at a hearing that meets  
 251 the constitutional standards of fundamental fairness and due  
 252 process.

253 2. To assure that the sentencing and placement of a child  
 254 tried as an adult be appropriate and in keeping with the  
 255 seriousness of the offense and the child's need for  
 256 rehabilitative services, and that the proceedings and procedures  
 257 applicable to such sentencing and placement be applied within  
 258 the full framework of constitutional standards of fundamental  
 259 fairness and due process.

260 (g) ~~(f)~~ To provide children committed to the department with  
 261 training in life skills, including career and technical

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262 education, if appropriate.

263 (h) To care for children in the least restrictive and most  
 264 appropriate service environments.

265 (i) To allocate resources for the most effective programs,  
 266 services, and treatments to ensure that children, their  
 267 families, and their community support systems are connected with  
 268 these programs, services, and treatments at the most impactful  
 269 points along the juvenile justice continuum.

270 (2) It is the intent of the Legislature that this chapter  
 271 be liberally interpreted and construed in conformity with its  
 272 declared purposes.

273 Section 2. Section 985.02, Florida Statutes, is amended to  
 274 read:

275 985.02 Legislative intent for the juvenile justice system.-

276 (1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of  
 277 the Legislature that the children of this state be provided with  
 278 the following protections:

279 (a) Protection from abuse, neglect, and exploitation.

280 (b) A permanent and stable home.

281 (c) A safe and nurturing environment that which will  
 282 preserve a sense of personal dignity and integrity.

283 (d) Adequate nutrition, shelter, and clothing.

284 (e) Effective treatment to address physical, social, and  
 285 emotional needs, regardless of geographical location.

286 (f) Equal opportunity and access to quality and effective  
 287 education, which will meet the individual needs of each child,  
 288 and to recreation and other community resources to develop  
 289 individual abilities.

290 (g) Access to preventive services.

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291 ~~(h) An independent, trained advocate when intervention is~~  
 292 ~~necessary, and a skilled guardian or caretaker in a safe~~  
 293 ~~environment when alternative placement is necessary.~~

294 (h)(i) Gender-specific programming and gender-specific  
 295 program models and services that comprehensively address the  
 296 needs of a targeted gender group.

297 (2) SUBSTANCE ABUSE SERVICES.—The Legislature finds that  
 298 children in the care of the state's ~~dependency and~~ delinquency  
 299 system systems need appropriate health care services, that the  
 300 impact of substance abuse on health indicates the need for  
 301 health care services to include substance abuse services where  
 302 appropriate, and that it is in the state's best interest that  
 303 such children be provided the services they need to enable them  
 304 to become and remain independent of state care. In order to  
 305 provide these services, the state's ~~dependency and~~ delinquency  
 306 system systems must have the ability to identify and provide  
 307 appropriate intervention and treatment for children with  
 308 personal or family-related substance abuse problems. It is  
 309 therefore the purpose of the Legislature to provide authority  
 310 for the state to contract with community substance abuse  
 311 treatment providers for the development and operation of  
 312 specialized support and overlay services for the ~~dependency and~~  
 313 delinquency system systems, which will be fully implemented and  
 314 used ~~utilized~~ as resources permit.

315 (3) JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—It is the  
 316 policy of the state with respect to juvenile justice and  
 317 delinquency prevention to first protect the public from acts of  
 318 delinquency. In addition, it is the policy of the state to:

319 (a) Develop and implement effective methods of preventing

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320 and reducing acts of delinquency, with a focus on maintaining  
 321 and strengthening the family as a whole so that children may  
 322 remain in their homes or communities.

323 (b) Develop and implement effective programs to prevent  
 324 delinquency, to divert children from the traditional juvenile  
 325 justice system, to intervene at an early stage of delinquency,  
 326 and to provide critically needed alternatives to  
 327 institutionalization and deep-end commitment.

328 (c) Provide well-trained personnel, high-quality services,  
 329 and cost-effective programs within the juvenile justice system.

330 (d) Increase the capacity of local governments and public  
 331 and private agencies to conduct rehabilitative treatment  
 332 programs and to provide research, evaluation, and training  
 333 services in the field of juvenile delinquency prevention.

334 ~~The Legislature intends that detention care, in addition to~~  
 335 ~~providing secure and safe custody, will promote the health and~~  
 336 ~~well-being of the children committed thereto and provide an~~  
 337 ~~environment that fosters their social, emotional, intellectual,~~  
 338 ~~and physical development.~~

339 (4) DETENTION.—

340 (a) The Legislature finds that there is a need for a secure  
 341 placement for certain children alleged to have committed a  
 342 delinquent act. The Legislature finds that detention should be  
 343 used only when less restrictive interim placement alternatives  
 344 before ~~prior to~~ adjudication and disposition are not  
 345 appropriate. The Legislature further finds that decisions to  
 346 detain should be based in part on a prudent assessment of risk  
 347 and be limited to situations where there is clear and convincing  
 348

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349 evidence that a child presents a risk of failing to appear or  
 350 presents a substantial risk of inflicting bodily harm on others  
 351 as evidenced by recent behavior; presents a history of  
 352 committing a serious property offense prior to adjudication,  
 353 disposition, or placement; has acted in direct or indirect  
 354 contempt of court; or requests protection from imminent bodily  
 355 harm.

356 (b) The Legislature intends that a juvenile found to have  
 357 committed a delinquent act understands the consequences and the  
 358 serious nature of such behavior. Therefore, the Legislature  
 359 finds that secure detention is appropriate to provide punishment  
 360 for juveniles who pose a threat to public safety that  
 361 ~~discourages further delinquent behavior.~~ The Legislature also  
 362 finds that certain juveniles have committed a sufficient number  
 363 of criminal acts, including acts involving violence to persons,  
 364 to represent sufficient danger to the community to warrant  
 365 sentencing and placement within the adult system. It is the  
 366 intent of the Legislature to establish clear criteria in order  
 367 to identify these juveniles and remove them from the juvenile  
 368 justice system.

369 (5) SITING OF FACILITIES.—

370 (a) The Legislature finds that timely siting and  
 371 development of needed residential facilities for juvenile  
 372 offenders is critical to the public safety of the citizens of  
 373 this state and to the effective rehabilitation of juvenile  
 374 offenders.

375 (b) It is the purpose of the Legislature to guarantee that  
 376 such facilities are sited and developed within reasonable  
 377 timeframes after they are legislatively authorized and

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378 appropriated.

379 (c) The Legislature further finds that such facilities must  
 380 be located in areas of the state close to the home communities  
 381 of the children they house in order to ensure the most effective  
 382 rehabilitation efforts, ~~and the most intensive~~ postrelease  
 383 supervision, and case management. The placement of facilities  
 384 close to the home communities of the children they house is also  
 385 intended to facilitate family involvement in the treatment  
 386 process. Residential facilities may not shall have ~~no~~ more than  
 387 90 165 beds each, including campus-style programs, unless those  
 388 campus-style programs include more than one ~~level of~~  
 389 restrictiveness, provide multilevel education and treatment  
 390 program programs using different treatment protocols, and have  
 391 facilities that coexist separately in distinct locations on the  
 392 same property.

393 (d) It is the intent of the Legislature that all other  
 394 departments and agencies of the state ~~shall~~ cooperate fully with  
 395 the Department of Juvenile Justice to accomplish the siting of  
 396 facilities for juvenile offenders.

397  
 398 The supervision, counseling, and rehabilitative treatment, ~~and~~  
 399 ~~punitive~~ efforts of the juvenile justice system should avoid the  
 400 inappropriate use of correctional programs and large  
 401 institutions. ~~The Legislature finds that detention services~~  
 402 ~~should exceed the primary goal of providing safe and secure~~  
 403 ~~custody pending adjudication and disposition.~~

404 (6) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—

405 Parents, custodians, and guardians are deemed by the state to be  
 406 responsible for providing their children with sufficient

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407 support, guidance, and supervision to deter their participation  
 408 in delinquent acts. The state further recognizes that the  
 409 ability of parents, custodians, and guardians to fulfill those  
 410 responsibilities can be greatly impaired by economic, social,  
 411 behavioral, emotional, and related problems. It is therefore the  
 412 policy of the Legislature that it is the state's responsibility  
 413 to ensure that factors impeding the ability of caretakers to  
 414 fulfill their responsibilities are identified through the  
 415 delinquency intake process and that appropriate recommendations  
 416 to address those problems are considered in any judicial or  
 417 nonjudicial proceeding. Nonetheless, as it is also the intent of  
 418 the Legislature to preserve and strengthen the child's family  
 419 ties, it is the policy of the Legislature that the emotional,  
 420 legal, and financial responsibilities of the caretaker with  
 421 regard to the care, custody, and support of the child continue  
 422 while the child is in the physical or legal custody of the  
 423 department.

424 (7) GENDER-SPECIFIC PROGRAMMING.—

425 (a) The Legislature finds that the prevention, treatment,  
 426 and rehabilitation needs of children youth served by the  
 427 juvenile justice system are gender specific ~~gender-specific~~.

428 (b) Gender-specific programming refers to unique program  
 429 models and services that comprehensively address the needs of a  
 430 targeted gender group. Gender-specific services require the  
 431 adherence to the principle of equity to ensure that the  
 432 different interests of young women and men are recognized and  
 433 varying needs are met, with equality as the desired outcome.  
 434 Gender-specific programming focuses on the differences between  
 435 young females' and young males' roles and responsibilities,

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436 positions in society, access to and use of resources, and social  
 437 codes governing behavior. Gender-specific programs increase the  
 438 effectiveness of programs by making interventions more  
 439 appropriate to the specific needs of young women and men and  
 440 ensuring that these programs do not unknowingly create,  
 441 maintain, or reinforce gender roles or relations that may be  
 442 damaging.

443 (8) TRAUMA-INFORMED CARE.—The Legislature finds that the  
 444 department should use trauma-informed care as an approach to  
 445 treating children with histories of trauma. Trauma-informed care  
 446 assists service providers in recognizing the symptoms of trauma  
 447 and acknowledges the role trauma has played in the child's life.  
 448 Services for children should be based on an understanding of the  
 449 vulnerabilities and triggers of trauma survivors which  
 450 traditional service delivery approaches may exacerbate so that  
 451 these services and programs can be more supportive and avoid re-  
 452 traumatization. The department should use trauma-specific  
 453 interventions that are designed to address the consequences of  
 454 trauma in the child and to facilitate healing.

455 (9) FAMILY AND COMMUNITY ENGAGEMENT.—The Legislature finds  
 456 that families and community support systems are critical to the  
 457 success of children and to ensure that they are nondelinquent.  
 458 Therefore, if appropriate, children who can be held accountable  
 459 safely through serving and treating them in their homes and  
 460 communities should be diverted from more restrictive placements  
 461 within the juvenile justice system. The Legislature also finds  
 462 that there should be an emphasis on strengthening the family and  
 463 immersing them in their community support system. The department  
 464 should develop customized plans that acknowledge the importance

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465 of family and community support systems. The customized plans  
 466 should recognize a child's individual needs, capitalize on his  
 467 or her strengths, reduce risk to the child, and prepare the  
 468 child for a successful transition to, and unification with, his  
 469 or her family and community support system. The child's family  
 470 shall be included in the department's process of assessing the  
 471 needs, services and treatment, and community connections of the  
 472 children who are involved with the juvenile justice system or in  
 473 danger of becoming so involved.

474 Section 3. Section 985.03, Florida Statutes, is reordered  
 475 and amended to read:

476 985.03 Definitions.—As used in this chapter, the term:

477 (1) "Abscond" means to hide, conceal, or absent oneself  
 478 from the jurisdiction of the court or supervision of the  
 479 department to avoid prosecution or supervision.

480 (2)(1) "Addictions receiving facility" means a substance  
 481 abuse service provider as defined in chapter 397.

482 (3)(2) "Adjudicatory hearing" means a hearing for the court  
 483 to determine whether or not the facts support the allegations  
 484 stated in the petition, as is provided for under s. 985.35 in  
 485 delinquency cases.

486 (4)(3) "Adult" means any natural person other than a child.

487 (5)(4) "Arbitration" means a process whereby a neutral  
 488 third person or panel, called an arbitrator or an arbitration  
 489 panel, considers the facts and arguments presented by the  
 490 parties and renders a decision, which may be binding or  
 491 nonbinding.

492 (6)(5) "Authorized agent" or "designee" of the department  
 493 means a person or agency assigned or designated by the

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494 ~~department or the Department of Children and Family Services, as~~  
 495 ~~appropriate,~~ to perform duties or exercise powers under this  
 496 chapter. The term ~~and~~ includes contract providers and their  
 497 employees ~~for purposes of providing services to and managing~~  
 498 ~~cases of children in need of services and families in need of~~  
 499 ~~services.~~

500 (7)(6) "Child," or "juvenile," or "youth" means any  
 501 unmarried person younger than under the age of 18 years of age  
 502 who has not been emancipated by order of the court and who has  
 503 been found or alleged to be dependent, in need of services, or  
 504 from a family in need of services; or any married or unmarried  
 505 person who is alleged to have committed charged with a violation  
 506 of law occurring before prior to the time that person reaches  
 507 reached the age of 18 years of age.

508 (8)(7) "Child in need of services" has the same meaning as  
 509 provided in s. 984.03 means a child for whom there is no pending  
 510 investigation into an allegation or suspicion of abuse, neglect,  
 511 or abandonment; no pending referral alleging the child is  
 512 delinquent; or no current supervision by the department or the  
 513 Department of Children and Family Services for an adjudication  
 514 of dependency or delinquency. The child must also, under this  
 515 chapter, be found by the court.

516 (a) ~~To have persistently run away from the child's parents~~  
 517 ~~or legal custodians despite reasonable efforts of the child, the~~  
 518 ~~parents or legal custodians, and appropriate agencies to remedy~~  
 519 ~~the conditions contributing to the behavior. Reasonable efforts~~  
 520 ~~shall include voluntary participation by the child's parents or~~  
 521 ~~legal custodians and the child in family mediation, services,~~  
 522 ~~and treatment offered by the department or the Department of~~

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523 ~~Children and Family Services;~~

524 ~~(b) To be habitually truant from school, while subject to~~  
 525 ~~compulsory school attendance, despite reasonable efforts to~~  
 526 ~~remedy the situation under ss. 1003.26 and 1003.27 and through~~  
 527 ~~voluntary participation by the child's parents or legal~~  
 528 ~~custodians and by the child in family mediation, services, and~~  
 529 ~~treatment offered by the Department of Juvenile Justice or the~~  
 530 ~~Department of Children and Family Services; or~~

531 ~~(c) To have persistently disobeyed the reasonable and~~  
 532 ~~lawful demands of the child's parents or legal custodians, and~~  
 533 ~~to be beyond their control despite efforts by the child's~~  
 534 ~~parents or legal custodians and appropriate agencies to remedy~~  
 535 ~~the conditions contributing to the behavior. Reasonable efforts~~  
 536 ~~may include such things as good faith participation in family or~~  
 537 ~~individual counseling.~~

538 ~~(9)(9)~~ "Child who has been found to have committed a  
 539 delinquent act" means a child who, under this chapter, is found  
 540 by a court to have committed a violation of law or to be in  
 541 direct or indirect contempt of court. The term, except that this  
 542 definition does not include a child who commits an act  
 543 constituting contempt of court arising out of a dependency  
 544 proceeding or a proceeding concerning a child or family in need  
 545 of services.

546 ~~(9) "Child support" means a court-ordered obligation,~~  
 547 ~~enforced under chapter 61 and ss. 409.2551-409.2597, for~~  
 548 ~~monetary support for the care, maintenance, training, and~~  
 549 ~~education of a child.~~

550 (10) "Circuit" means any of the 20 judicial circuits as set  
 551 forth in s. 26.021.

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552 (11) "Comprehensive assessment" or "assessment" means the  
 553 gathering of information for the evaluation of a juvenile  
 554 offender's or a child's physical, psychological, educational,  
 555 career and technical educational ~~vocational~~, and social  
 556 condition and family environment as they relate to the child's  
 557 need for rehabilitative and treatment services, including  
 558 substance abuse treatment ~~services~~, mental health ~~services~~,  
 559 developmental ~~services~~, literacy ~~services~~, medical ~~services~~,  
 560 family ~~services~~, and other specialized services, as appropriate.

561 (12) "Conditional release" means the care, treatment, help,  
 562 transition-to-adulthood services, and supervision provided to a  
 563 juvenile released from a residential commitment program which is  
 564 intended to promote rehabilitation and prevent recidivism. The  
 565 purpose of conditional release is to protect the public, reduce  
 566 recidivism, increase responsible productive behavior, and  
 567 provide for a successful transition of the youth from the  
 568 department to his or her ~~the~~ family. Conditional release  
 569 includes, but is not limited to, nonresidential community-based  
 570 programs.

571 (13) "Court," ~~unless otherwise expressly stated,~~ means the  
 572 circuit court assigned to exercise jurisdiction under this  
 573 chapter, unless otherwise expressly stated.

574 (14) "Day treatment" means a nonresidential, community-  
 575 based program designed to provide therapeutic intervention to  
 576 youth served by the department or who are placed on probation or  
 577 conditional release or are committed to the minimum-risk  
 578 nonresidential level. A day-treatment ~~day-treatment~~ program may  
 579 provide educational and career and technical educational  
 580 ~~vocational~~ services and shall provide case management services;

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581 individual, group, and family counseling; training designed to  
 582 address delinquency risk factors; and monitoring of a youth's  
 583 compliance with, and facilitation of a youth's completion of,  
 584 sanctions if ordered by the court. Program types may include,  
 585 but are not limited to, career programs, marine programs,  
 586 juvenile justice alternative schools, training and  
 587 rehabilitation programs, and gender-specific programs.

588 (15) (a) "Delinquency program" means any intake, probation,  
 589 or similar program; regional detention center or facility; or  
 590 community-based program, whether owned and operated by or  
 591 contracted by the department, or institution-owned institution  
 592 owned and operated by or contracted by the department, which  
 593 provides intake, supervision, or custody and care of children  
 594 who are alleged to be or who have been found to be delinquent  
 595 under this chapter.

596 (b) "Delinquency program staff" means supervisory and  
 597 direct care staff of a delinquency program as well as support  
 598 staff who have direct contact with children in a delinquency  
 599 program.

600 ~~(c) "Delinquency prevention programs" means programs~~  
 601 ~~designed for the purpose of reducing the occurrence of~~  
 602 ~~delinquency, including criminal gang activity, and juvenile~~  
 603 ~~arrests. The term excludes arbitration, diversionary or~~  
 604 ~~mediation programs, and community service work or other~~  
 605 ~~treatment available subsequent to a child committing a~~  
 606 ~~delinquent act.~~

607 (16) "Department" means the Department of Juvenile Justice.

608 (17) "Designated facility" or "designated treatment  
 609 facility" means any facility designated by the department to

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610 provide treatment to juvenile offenders.

611 (18) "Detention care" means the temporary care of a child  
 612 in secure ~~or~~ nonsecure, ~~or home~~ detention, pending a court  
 613 adjudication or disposition or execution of a court order. There  
 614 are two ~~three~~ types of detention care, as follows:

615 (a) "Secure detention" means temporary custody of the child  
 616 while the child is under the physical restriction of a secure  
 617 detention center or facility pending adjudication, disposition,  
 618 or placement.

619 (b) "Nonsecure detention" ~~means temporary custody of the~~  
 620 ~~child while the child is in a residential home in the community~~  
 621 ~~in a physically nonrestrictive environment under the supervision~~  
 622 ~~of the Department of Juvenile Justice pending adjudication,~~  
 623 ~~disposition, or placement.~~

624 ~~(c) "Home detention" means temporary nonsecure detention~~  
 625 ~~custody of the child while the child is released to the custody~~  
 626 ~~of the parent, guardian, or custodian in a physically~~  
 627 ~~nonrestrictive environment under the supervision of the~~  
 628 ~~department staff pending adjudication, disposition, or~~  
 629 ~~placement. Forms of nonsecure detention include, but are not~~  
 630 ~~limited to, home detention, electronic monitoring, day-reporting~~  
 631 ~~centers, evening-reporting centers, and nonsecure shelters.~~  
 632 Nonsecure detention may include other requirements imposed by  
 633 the court.

634 (19) "Detention center or facility" means a facility used  
 635 pending court adjudication or disposition or execution of court  
 636 order for the temporary care of a child alleged or found to have  
 637 committed a violation of law. A detention center or facility  
 638 provides ~~may provide~~ secure ~~or nonsecure~~ custody. A facility

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639 used for the commitment of adjudicated delinquents is ~~shall~~ not  
 640 ~~be~~ considered a detention center or facility.

641 (20) "Detention hearing" means a hearing for the court to  
 642 determine if a child should be placed in temporary custody, as  
 643 provided for under part V in delinquency cases.

644 (21) "Disposition hearing" means a hearing in which the  
 645 court determines the most appropriate dispositional services in  
 646 the least restrictive available setting provided for under part  
 647 VII, in delinquency cases.

648 (22) "Family" means a collective of persons, consisting of  
 649 a child and a parent, guardian, adult custodian, or adult  
 650 relative, in which:

651 (a) The persons reside in the same house or living unit; or  
 652 (b) The parent, guardian, adult custodian, or adult  
 653 relative has a legal responsibility by blood, marriage, or court  
 654 order to support or care for the child.

655 (23) "Family in need of services" has the same meaning as  
 656 provided in s. 943.03 ~~means a family that has a child for whom~~  
 657 ~~there is no pending investigation into an allegation of abuse,~~  
 658 ~~neglect, or abandonment or no current supervision by the~~  
 659 ~~department or the Department of Children and Family Services for~~  
 660 ~~an adjudication of dependency or delinquency. The child must~~  
 661 ~~also have been referred to a law enforcement agency or the~~  
 662 ~~department for:~~

663 ~~(a) Running away from parents or legal custodians;~~  
 664 ~~(b) Persistently disobeying reasonable and lawful demands~~  
 665 ~~of parents or legal custodians, and being beyond their control;~~  
 666 ~~or~~  
 667 ~~(c) Habitual truancy from school.~~

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668 ~~(24) "Foster care" means care provided a child in a foster~~  
 669 ~~family or boarding home, group home, agency boarding home, child~~  
 670 ~~care institution, or any combination thereof.~~

671 ~~(25) "Habitually truant" means that:~~

672 ~~(a) The child has 15 unexcused absences within 90 calendar~~  
 673 ~~days with or without the knowledge or justifiable consent of the~~  
 674 ~~child's parent or legal guardian, is subject to compulsory~~  
 675 ~~school attendance under s. 1003.21(1) and (2)(a), and is not~~  
 676 ~~exempt under s. 1003.21(3), s. 1003.24, or any other exemptions~~  
 677 ~~specified by law or the rules of the State Board of Education.~~

678 ~~(b) Escalating activities to determine the cause, and to~~  
 679 ~~attempt the remediation, of the child's truant behavior under~~  
 680 ~~ss. 1003.26 and 1003.27 have been completed.~~

681

682 ~~If a child who is subject to compulsory school attendance is~~  
 683 ~~responsive to the interventions described in ss. 1003.26 and~~  
 684 ~~1003.27 and has completed the necessary requirements to pass the~~  
 685 ~~current grade as indicated in the district pupil progression~~  
 686 ~~plan, the child shall not be determined to be habitually truant~~  
 687 ~~and shall be passed. If a child within the compulsory school~~  
 688 ~~attendance age has 15 unexcused absences within 90 calendar days~~  
 689 ~~or fails to enroll in school, the state attorney may file a~~  
 690 ~~child-in-need-of-services petition. Before filing a petition,~~  
 691 ~~the child must be referred to the appropriate agency for~~  
 692 ~~evaluation. After consulting with the evaluating agency, the~~  
 693 ~~state attorney may elect to file a child-in-need-of-services~~  
 694 ~~petition.~~

695 ~~(c) A school representative, designated according to school~~  
 696 ~~board policy, and a juvenile probation officer of the department~~

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697 have jointly investigated the truancy problem or, if that was  
 698 not feasible, have performed separate investigations to identify  
 699 conditions that could be contributing to the truant behavior;  
 700 and if, after a joint staffing of the case to determine the  
 701 necessity for services, such services were determined to be  
 702 needed, the persons who performed the investigations met jointly  
 703 with the family and child to discuss any referral to appropriate  
 704 community agencies for economic services, family or individual  
 705 counseling, or other services required to remedy the conditions  
 706 that are contributing to the truant behavior.

707 (d) The failure or refusal of the parent or legal guardian  
 708 or the child to participate, or make a good faith effort to  
 709 participate, in the activities prescribed to remedy the truant  
 710 behavior, or the failure or refusal of the child to return to  
 711 school after participation in activities required by this  
 712 subsection, or the failure of the child to stop the truant  
 713 behavior after the school administration and the department have  
 714 worked with the child as described in s. 1003.27(3) shall be  
 715 handled as prescribed in s. 1003.27.

716 (26) "Halfway house" means a community-based residential  
 717 program for 10 or more committed delinquents at the moderate-  
 718 risk commitment level which is operated or contracted by the  
 719 department.

720 (24)(27) "Intake" means the initial acceptance and  
 721 screening by the department or juvenile assessment center  
 722 personnel of a complaint or a law enforcement report or probable  
 723 cause affidavit of delinquency, family in need of services, or  
 724 child in need of services to determine the recommendation to be  
 725 taken in the best interests of the child, the family, and the

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726 community. The emphasis of intake is on diversion and the least  
 727 restrictive available services and. Consequently, intake  
 728 includes ~~such~~ alternatives such as:

729 (a) The disposition of the complaint, report, or probable  
 730 cause affidavit without court or public agency action or  
 731 judicial handling, if ~~when~~ appropriate.

732 (b) The referral of the child to another public or private  
 733 agency, if ~~when~~ appropriate.

734 (c) The recommendation by the department juvenile probation  
 735 officer of judicial handling, if ~~when~~ appropriate and warranted.

736 (25)(28) "Judge" means the circuit judge exercising  
 737 jurisdiction pursuant to this chapter.

738 (26)(29) "Juvenile justice continuum" includes, but is not  
 739 limited to, delinquency prevention programs and services  
 740 designed for the purpose of preventing or reducing delinquent  
 741 acts, including criminal activity by criminal gangs, and  
 742 juvenile arrests, as well as programs and services targeted at  
 743 children who have committed delinquent acts, and children who  
 744 have previously been committed to residential treatment programs  
 745 for delinquents. The term includes children-in-need-of-services  
 746 and families-in-need-of-services programs under chapter 984;  
 747 conditional release; substance abuse and mental health programs;  
 748 educational and career programs; recreational programs;  
 749 community services programs; community service work programs;  
 750 mother-infant programs; and alternative dispute resolution  
 751 programs serving children at risk of delinquency and their  
 752 families, whether offered or delivered by state or local  
 753 governmental entities, public or private for-profit or not-for-  
 754 profit organizations, or religious or charitable organizations.

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755 (27)~~(30)~~ "Juvenile probation officer" means the authorized  
756 agent of the department who performs ~~the~~ intake, case  
757 management, or supervision functions.

758 (28)~~(31)~~ "Legal custody or guardian" means a legal status  
759 created by court order or letter of guardianship which vests in  
760 a custodian of the person or guardian, whether an agency or an  
761 individual, the right to have physical custody of the child and  
762 the right and duty to protect, train, and discipline the child  
763 and to provide him or her with food, shelter, education, and  
764 ordinary medical, dental, psychiatric, and psychological care.

765 (29)~~(32)~~ "Licensed child-caring agency" means a person,  
766 society, association, or agency licensed by the Department of  
767 Children and Families ~~Family Services~~ to care for, receive, and  
768 board children.

769 (30)~~(33)~~ "Licensed health care professional" means a  
770 physician licensed under chapter 458, an osteopathic physician  
771 licensed under chapter 459, a nurse licensed under part I of  
772 chapter 464, a physician assistant licensed under chapter 458 or  
773 chapter 459, or a dentist licensed under chapter 466.

774 (31)~~(34)~~ "Likely to injure oneself" means that, as  
775 evidenced by violent or other actively self-destructive  
776 behavior, it is more likely than not that within a 24-hour  
777 period the child will attempt to commit suicide or inflict  
778 serious bodily harm on himself or herself.

779 (32)~~(35)~~ "Likely to injure others" means that it is more  
780 likely than not that within a 24-hour period the child will  
781 inflict serious and unjustified bodily harm on another person.

782 (33)~~(36)~~ "Mediation" means a process whereby a neutral  
783 third person called a mediator acts to encourage and facilitate

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784 the resolution of a dispute between two or more parties. It is  
785 an informal and nonadversarial process with the objective of  
786 helping the disputing parties reach a mutually acceptable and  
787 voluntary agreement. In mediation, decisionmaking authority  
788 rests with the parties. The role of the mediator includes, but  
789 is not limited to, assisting the parties in identifying issues,  
790 fostering joint problem solving, and exploring settlement  
791 alternatives.

792 (34)~~(37)~~ "Mother-infant program" means a residential  
793 program designed to serve the needs of juvenile mothers or  
794 expectant juvenile mothers who are committed as delinquents,  
795 which is operated or contracted by the department. A mother-  
796 infant program facility must be licensed as a child care  
797 facility under s. 402.308 and must provide the services and  
798 support necessary to enable each juvenile mother committed to  
799 the facility to provide for the needs of her infant ~~infants~~ who,  
800 upon agreement of the mother, may accompany her in the program.

801 (35)~~(38)~~ "Necessary medical treatment" means care that  
802 ~~which~~ is necessary within a reasonable degree of medical  
803 certainty to prevent the deterioration of a child's condition or  
804 to alleviate immediate pain of a child.

805 (36)~~(39)~~ "Next of kin" means an adult relative of a child  
806 who is the child's brother, sister, grandparent, aunt, uncle, or  
807 first cousin.

808 (37)~~(40)~~ "Ordinary medical care" means medical procedures  
809 that are administered or performed on a routine basis and  
810 includes, but is include, but are not limited to, inoculations,  
811 physical examinations, remedial treatment for minor illnesses  
812 and injuries, preventive services, medication management,

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813 chronic disease detection and treatment, and other medical  
814 procedures that are administered or performed on a routine basis  
815 and ~~that~~ do not involve hospitalization, surgery, the use of  
816 general anesthesia, or the provision of psychotropic  
817 medications.

818 ~~(38)-(41)~~ "Parent" means a woman who gives birth to a child  
819 and a man whose consent to the adoption of the child would be  
820 required under s. 63.062(1). If a child has been legally  
821 adopted, the term "parent" means the adoptive mother or father  
822 of the child. The term does not include an individual whose  
823 parental relationship to a ~~the~~ child has been legally  
824 terminated, or an alleged or prospective parent, unless the  
825 parental status falls within the terms of ~~either~~ s. 39.503(1) or  
826 s. 63.062(1).

827 ~~(39)-(42)~~ "Preliminary screening" means the gathering of  
828 preliminary information to be used in determining a child's need  
829 for further evaluation or assessment or for referral for other  
830 substance abuse services through means such as psychosocial  
831 interviews, ~~urine and breathalyzer screenings,~~ and reviews of  
832 available educational, delinquency, and dependency records of  
833 the child.

834 ~~(40)~~ "Prevention" means programs, strategies, initiatives,  
835 and networks designed to keep children from making initial or  
836 further contact with the juvenile justice system.

837 ~~(43)~~ "Preventive services" means ~~social services and other~~  
838 ~~supportive and rehabilitative services provided to the parent of~~  
839 ~~the child, the legal guardian of the child, or the custodian of~~  
840 ~~the child and to the child for the purpose of averting the~~  
841 ~~removal of the child from the home or disruption of a family~~

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842 ~~which will or could result in the placement of a child in foster~~  
843 ~~care. Social services and other supportive and rehabilitative~~  
844 ~~services shall promote the child's need for a safe, continuous,~~  
845 ~~stable living environment and shall promote family autonomy and~~  
846 ~~shall strengthen family life as the first priority whenever~~  
847 ~~possible.~~

848 ~~(41)-(44)~~ "Probation" means the legal status of probation  
849 created by law and court order in cases involving a child who  
850 has been found to have committed a delinquent act. Probation is  
851 an individualized program in which the freedom of the child is  
852 limited and the child is restricted to noninstitutional quarters  
853 or restricted to the child's home in lieu of commitment to the  
854 custody of the department. Youth on probation may be assessed  
855 and classified for placement in day-treatment probation programs  
856 designed for youth who represent a minimum risk to themselves  
857 and public safety and who do not require placement and services  
858 in a residential setting.

859 ~~(42)-(45)~~ "Relative" means a grandparent, great-grandparent,  
860 sibling, first cousin, aunt, uncle, great-aunt, great-uncle,  
861 niece, or nephew, whether related by ~~the~~ whole or half blood, by  
862 affinity, or by adoption. The term does not include a  
863 stepparent.

864 ~~(43)-(46)~~ "Restrictiveness level" means the level of  
865 programming and security provided by programs that service the  
866 supervision, custody, care, and treatment needs of committed  
867 children. Sections 985.601(10) and 985.721 apply to children  
868 placed in programs at any residential commitment level. The  
869 restrictiveness levels of commitment are as follows:

870 (a) ~~Minimum-risk nonresidential.~~ Programs or program models

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871 at this commitment level work with youth who remain in the  
 872 community and participate at least 5 days per week in a day-  
 873 treatment day-treatment program. Youth assessed and classified  
 874 for programs at this commitment level represent a minimum risk  
 875 to themselves and public safety and do not require placement and  
 876 services in residential settings. Youth in this level have full  
 877 access to, and reside in, the community. Youth who have been  
 878 found to have committed delinquent acts that involve firearms,  
 879 that are sexual offenses, or that would be life felonies or  
 880 first-degree first-degree felonies if committed by an adult may  
 881 not be committed to a program at this level.

882 ~~(b) Low risk residential. Programs or program models at~~  
 883 ~~this commitment level are residential but may allow youth to~~  
 884 ~~have unsupervised access to the community. Residential~~  
 885 ~~facilities shall have no more than 165 beds each, including~~  
 886 ~~campus-style programs, unless those campus-style programs~~  
 887 ~~include more than one level of restrictiveness, provide~~  
 888 ~~multilevel education and treatment programs using different~~  
 889 ~~treatment protocols, and have facilities that coexist separately~~  
 890 ~~in distinct locations on the same property. Youth assessed and~~  
 891 ~~classified for placement in programs at this commitment level~~  
 892 ~~represent a low risk to themselves and public safety but do~~  
 893 ~~require placement and services in residential settings. Children~~  
 894 ~~who have been found to have committed delinquent acts that~~  
 895 ~~involve firearms, delinquent acts that are sexual offenses, or~~  
 896 ~~delinquent acts that would be life felonies or first degree~~  
 897 ~~felonies if committed by an adult shall not be committed to a~~  
 898 ~~program at this level.~~

899 (b)(c) Nonsecure Moderate-risk residential.—Programs or

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900 program models at this commitment level are residential but may  
 901 allow youth to have supervised access to the community.  
 902 Facilities at this commitment level are either environmentally  
 903 secure ~~or,~~ staff secure, or are hardware secure hardware-secure  
 904 with walls, fencing, or locking doors. Residential facilities at  
 905 this commitment level may shall have up to 90 no more than 165  
 906 beds each, including campus-style programs, unless those campus-  
 907 style programs include more than one ~~level of restrictiveness,~~  
 908 ~~provide multilevel education and treatment program programs~~  
 909 using different treatment protocols, and have facilities that  
 910 coexist separately in distinct locations on the same property.  
 911 Facilities at this commitment level shall provide 24-hour awake  
 912 supervision, custody, care, and treatment of residents. Youth  
 913 assessed and classified for placement in programs at this  
 914 commitment level represent a low or moderate risk to public  
 915 safety and require close supervision. The staff at a facility at  
 916 this commitment level may seclude a child who is a physical  
 917 threat to himself, ~~or~~ herself, or others. Mechanical restraint  
 918 may also be used when necessary.

919 (c)(d) High-risk residential.—Programs or program models at  
 920 this commitment level are residential and do not allow youth to  
 921 have access to the community, except that temporary release  
 922 providing community access for up to 72 continuous hours may be  
 923 approved by a court for a youth who has made successful progress  
 924 in his or her program so that in order for the youth may respond  
 925 to ~~attend~~ a family emergency or, during the final 60 days of his  
 926 or her placement, ~~to~~ visit his or her home, enroll in school or  
 927 a career and technical education vocational program, complete a  
 928 job interview, or participate in a community service project.

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929 High-risk residential facilities are hardware secure ~~hardware-~~  
 930 ~~secure~~ with perimeter fencing and locking doors. Residential  
 931 facilities at this commitment level may ~~shall~~ have up to 90 ~~no~~  
 932 ~~more than 165~~ beds each, including campus-style programs, unless  
 933 those campus-style programs include more than one ~~level of~~  
 934 ~~restrictiveness, provide multilevel education and treatment~~  
 935 program programs using different treatment protocols, and have  
 936 facilities that coexist separately in distinct locations on the  
 937 same property. Facilities at this commitment level shall provide  
 938 24-hour awake supervision, custody, care, and treatment of  
 939 residents. Youth assessed and classified for this level of  
 940 placement require close supervision in a structured residential  
 941 setting. Placement in programs at this level is prompted by a  
 942 concern for public safety which ~~that~~ outweighs placement in  
 943 programs at lower commitment levels. The staff at a facility at  
 944 this commitment level may seclude a child who is a physical  
 945 threat to himself, ~~or~~ herself, or others. Mechanical restraint  
 946 may also be used when necessary. The facility may provide for  
 947 single cell occupancy, except that youth may be housed together  
 948 during prerelease transition.

949 (d)(e) ~~(e)~~ *Maximum-risk residential.*—Programs or program models  
 950 at this commitment level include juvenile correctional  
 951 facilities and juvenile prisons. The programs at this commitment  
 952 level are long-term residential and do not allow youth to have  
 953 access to the community. Facilities at this commitment level are  
 954 maximum-custody and hardware secure, ~~hardware-secure~~ with  
 955 perimeter security fencing and locking doors. Residential  
 956 facilities at this commitment level may shall have up to 90 ~~no~~  
 957 ~~more than 165~~ beds each, including campus-style programs, unless

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958 those campus-style programs include more than one ~~level of~~  
 959 ~~restrictiveness, provide multilevel education and treatment~~  
 960 program programs using different treatment protocols, and have  
 961 facilities that coexist separately in distinct locations on the  
 962 same property. Facilities at this commitment level shall provide  
 963 24-hour awake supervision, custody, care, and treatment of  
 964 residents. The staff at a facility at this commitment level may  
 965 seclude a child who is a physical threat to himself, ~~or~~ herself,  
 966 or others. Mechanical restraint may also be used when necessary.  
 967 Facilities at this commitment level ~~The facility~~ shall provide  
 968 for single cell occupancy, except that youth may be housed  
 969 together during prerelease transition. Youth assessed and  
 970 classified for this level of placement require close supervision  
 971 in a maximum security residential setting. Placement in a  
 972 program at this level is prompted by a demonstrated need to  
 973 protect the public.

974 (44)(47) "Respite" means a placement that is available for  
 975 the care, custody, and placement of a youth charged with  
 976 domestic violence as an alternative to secure detention or for  
 977 placement of a youth when a shelter bed for a child in need of  
 978 services or a family in need of services is unavailable.

979 (45)(48) "Secure detention center or facility" means a  
 980 physically restricting facility for the temporary care of  
 981 children, pending adjudication, disposition, or placement.

982 (46)(49) "Shelter" means a place for the temporary care of  
 983 a child who is alleged to be or who has been found to be  
 984 delinquent.

985 ~~(50)~~ "Shelter hearing" means a hearing provided for under  
 986 ~~s. 984.14 in family-in-need-of-services cases or child-in-need-~~

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987 ~~of services cases.~~

988 ~~(51) "Staff secure shelter" means a facility in which a~~  
 989 ~~child is supervised 24 hours a day by staff members who are~~  
 990 ~~awake while on duty. The facility is for the temporary care and~~  
 991 ~~assessment of a child who has been found to be dependent, who~~  
 992 ~~has violated a court order and been found in contempt of court,~~  
 993 ~~or whom the Department of Children and Family Services is unable~~  
 994 ~~to properly assess or place for assistance within the continuum~~  
 995 ~~of services provided for dependent children.~~

996 ~~(47)(52)~~ "Substance abuse" means using, without medical  
 997 reason, any psychoactive or mood-altering drug, including  
 998 alcohol, in such a manner as to induce impairment resulting in  
 999 dysfunctional social behavior.

1000 ~~(48)(53)~~ "Taken into custody" means the status of a child  
 1001 immediately when temporary physical control over the child is  
 1002 attained by a person authorized by law, pending the child's  
 1003 release, detention, placement, or other disposition as  
 1004 authorized by law.

1005 ~~(49)(54)~~ "Temporary legal custody" means the relationship  
 1006 that a juvenile court creates between a child and an adult  
 1007 relative of the child, adult nonrelative approved by the court,  
 1008 or other person until a more permanent arrangement is ordered.  
 1009 Temporary legal custody confers upon the custodian the right to  
 1010 have temporary physical custody of the child and the right and  
 1011 duty to protect, train, and discipline the child and to provide  
 1012 the child with food, shelter, and education, and ordinary  
 1013 medical, dental, psychiatric, and psychological care, unless  
 1014 these rights and duties are otherwise enlarged or limited by the  
 1015 court order establishing the temporary legal custody

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1016 relationship.

1017 ~~(50)(55)~~ "Temporary release" means the terms and conditions  
 1018 under which a child is temporarily released from a residential  
 1019 commitment facility or allowed home visits. If the temporary  
 1020 release is from a nonsecure moderate risk residential facility,  
 1021 a high-risk residential facility, or a maximum-risk residential  
 1022 facility, the terms and conditions of the temporary release must  
 1023 be approved by the child, the court, and the facility. ~~The term~~  
 1024 ~~includes periods during which the child is supervised pursuant~~  
 1025 ~~to a conditional release program or a period during which the~~  
 1026 ~~child is supervised by a juvenile probation officer or other~~  
 1027 ~~nonresidential staff of the department or staff employed by an~~  
 1028 ~~entity under contract with the department.~~

1029 ~~(51)(56)~~ "Transition-to-adulthood services" means services  
 1030 that are provided for youth in the custody of the department or  
 1031 under the supervision of the department and that have the  
 1032 objective of instilling the knowledge, skills, and aptitudes  
 1033 essential to a socially integrated, self-supporting adult life.  
 1034 The services may include, but are not limited to:

1035 (a) Assessment of the youth's ability and readiness for  
 1036 adult life.

1037 (b) A plan for the youth to acquire the knowledge,  
 1038 information, and counseling necessary to make a successful  
 1039 transition to adulthood.

1040 (c) Services that have proven effective toward achieving  
 1041 the transition to adulthood.

1042 (52) "Trauma-informed care" means the provision of services  
 1043 to children with a history of trauma in a manner that recognizes  
 1044 the symptoms and acknowledges the role the trauma has played in

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1045 the child's life. Trauma may include, but is not limited to,  
 1046 community and school violence, physical or sexual abuse,  
 1047 neglect, medical difficulties, and domestic violence.

1048 ~~(53)(57)~~ "Violation of law" or "delinquent act" means a  
 1049 violation of any law of this state, the United States, or any  
 1050 other state which is a misdemeanor or a felony or a violation of  
 1051 a county or municipal ordinance which would be punishable by  
 1052 incarceration if the violation were committed by an adult.

1053 ~~(54)(58)~~ "Waiver hearing" means a hearing provided for  
 1054 under s. 985.556(4).

1055 Section 4. Subsections (4) and (5) of section 985.0301,  
 1056 Florida Statutes, are amended to read:  
 1057 985.0301 Jurisdiction.—

1058 (4)(a) Petitions alleging delinquency shall be filed in the  
 1059 county where the delinquent act or violation of law occurred,  
 1060 ~~but~~ The circuit court for that county may transfer the case to  
 1061 the circuit court of the circuit in which the child resides or  
 1062 will reside at the time of detention or placement for  
 1063 dispositional purposes. A child who has been detained may shall  
 1064 be transferred to the ~~appropriate~~ detention center or facility  
 1065 in the circuit in which the child resides or will reside at the  
 1066 time of detention or other placement directed by the receiving  
 1067 court.

1068 (b) The jurisdiction to be exercised by the court when a  
 1069 child is taken into custody before the filing of a petition  
 1070 under subsection (2) shall be exercised by the circuit court for  
 1071 the county in which the child is taken into custody, and such  
 1072 court has ~~which court shall have~~ personal jurisdiction of the  
 1073 child and the child's parent or legal guardian. If the child has

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1074 been detained, upon the filing of a petition in the appropriate  
 1075 circuit court, the court that is exercising initial personal  
 1076 jurisdiction ~~of the person~~ of the child shall, ~~if the child has~~  
 1077 ~~been detained,~~ immediately order the child to be transferred to  
 1078 the detention center or facility or other placement as ordered  
 1079 by the court having subject matter jurisdiction of the case.

1080 (5) (a) Notwithstanding s. 743.07, ss. 743.07, 985.43,  
 1081 ~~985.433, 985.435, 985.439, and 985.441,~~ and except as provided  
 1082 in paragraphs (b) and (c) ss. 985.461 and 985.465 and paragraph  
 1083 ~~(f),~~ when the jurisdiction of a ~~any~~ child who is alleged to have  
 1084 committed a delinquent act or violation of law is obtained, the  
 1085 court retains shall retain jurisdiction to dispose the case,  
 1086 unless relinquished by its order, until the child reaches 19  
 1087 years of age, with the same power over the child which the court  
 1088 had before the child became an adult. ~~For the purposes of s.~~  
 1089 ~~985.461, the court may retain jurisdiction for an additional 365~~  
 1090 ~~days following the child's 19th birthday if the child is~~  
 1091 ~~participating in transition to adulthood services. The~~  
 1092 ~~additional services do not extend involuntary court-sanctioned~~  
 1093 ~~residential commitment and therefore require voluntary~~  
 1094 ~~participation by the affected youth.~~

1095 (b) Unless relinquished by its own order, the court retains  
 1096 jurisdiction over a child on probation until the child reaches  
 1097 19 years of age ~~Notwithstanding ss. 743.07 and 985.455(3), the~~  
 1098 ~~term of any order placing a child in a probation program must be~~  
 1099 ~~until the child's 19th birthday unless he or she is released by~~  
 1100 ~~the court on the motion of an interested party or on his or her~~  
 1101 ~~own motion.~~

1102 (c) Unless relinquished by its own order, the court retains

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1103 jurisdiction over a child committed to the department until the  
 1104 child reaches 21 years of age, specifically for the purpose of  
 1105 allowing the child to complete the department's commitment  
 1106 program, including conditional release supervision.

1107 (d) The court retains jurisdiction over a juvenile sex  
 1108 offender as defined in s. 985.475 who has been placed in a  
 1109 community-based treatment alternative program with supervision  
 1110 or in a program or facility for juvenile sex offenders pursuant  
 1111 to s. 985.48 until the juvenile sex offender reaches 21 years of  
 1112 age, specifically for the purpose of completing the program.

1113 ~~(e) Notwithstanding ss. 743.07 and 985.455(3), the term of~~  
 1114 ~~the commitment must be until the child is discharged by the~~  
 1115 ~~department or until he or she reaches the age of 21 years.~~  
 1116 ~~Notwithstanding ss. 743.07, 985.435, 985.437, 985.439, 985.441,~~  
 1117 ~~985.455, and 985.513, and except as provided in this section, a~~  
 1118 ~~child may not be held under a commitment from a court under s.~~  
 1119 ~~985.439, s. 985.441(1)(a) or (b), or s. 985.455 after becoming~~  
 1120 ~~21 years of age.~~

1121 ~~(d) The court may retain jurisdiction over a child~~  
 1122 ~~committed to the department for placement in a juvenile prison~~  
 1123 ~~or in a high-risk or maximum-risk residential commitment program~~  
 1124 ~~to allow the child to participate in a juvenile conditional~~  
 1125 ~~release program pursuant to s. 985.46. The jurisdiction of the~~  
 1126 ~~court may not be retained after the child's 22nd birthday.~~  
 1127 ~~However, if the child is not successful in the conditional~~  
 1128 ~~release program, the department may use the transfer procedure~~  
 1129 ~~under s. 985.441(4).~~

1130 ~~(e) The court may retain jurisdiction over a child~~  
 1131 ~~committed to the department for placement in an intensive~~

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1132 ~~residential treatment program for 10-year-old to 13-year-old~~  
 1133 ~~offenders, in the residential commitment program in a juvenile~~  
 1134 ~~prison or in a residential sex offender program until the child~~  
 1135 ~~reaches the age of 21. If the court exercises this jurisdiction~~  
 1136 ~~retention, it shall do so solely for the purpose of the child~~  
 1137 ~~completing the intensive residential treatment program for 10-~~  
 1138 ~~year-old to 13-year-old offenders, in the residential commitment~~  
 1139 ~~program in a juvenile prison, or in a residential sex offender~~  
 1140 ~~program. Such jurisdiction retention does not apply for other~~  
 1141 ~~programs, other purposes, or new offenses.~~

1142 ~~(f) The court may retain jurisdiction over a child~~  
 1143 ~~committed to a juvenile correctional facility or a juvenile~~  
 1144 ~~prison until the child reaches the age of 21 years, specifically~~  
 1145 ~~for the purpose of allowing the child to complete such program.~~

1146 ~~(g) The court may retain jurisdiction over a juvenile~~  
 1147 ~~sexual offender who has been placed in a program or facility for~~  
 1148 ~~juvenile sexual offenders until the juvenile sexual offender~~  
 1149 ~~reaches the age of 21, specifically for the purpose of~~  
 1150 ~~completing the program.~~

1151 ~~(e)(h)~~ The court may retain jurisdiction over a child and  
 1152 the child's parent or legal guardian whom the court has ordered  
 1153 to pay restitution until the restitution order is satisfied. To  
 1154 retain jurisdiction, the court shall enter a restitution order,  
 1155 which is separate from any disposition or order of commitment,  
 1156 on or before ~~prior to~~ the date that the court's jurisdiction  
 1157 would cease under this section. The contents of the restitution  
 1158 order are ~~shall be~~ limited to the child's name and address, the  
 1159 name and address of the parent or legal guardian, the name and  
 1160 address of the payee, the case number, the date and amount of

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1161 restitution ordered, any amount of restitution paid, the amount  
 1162 of restitution due and owing, and a notation that costs,  
 1163 interest, penalties, and attorney fees may also be due and  
 1164 owing. The terms of the restitution order are subject to s.  
 1165 775.089(5).

1166 ~~(f)(i)~~ This subsection does not prevent the exercise of  
 1167 jurisdiction by any court having jurisdiction of the child if  
 1168 the child, after becoming an adult, commits a violation of law.

1169 Section 5. Subsections (2) and (4) of section 985.037,  
 1170 Florida Statutes, are amended to read:

1171 985.037 Punishment for contempt of court; alternative  
 1172 sanctions.—

1173 (2) PLACEMENT IN A SECURE DETENTION FACILITY.—A child may  
 1174 be placed in a secure detention facility for purposes of  
 1175 punishment for contempt of court if alternative sanctions are  
 1176 unavailable or inappropriate, or if the child has already been  
 1177 ordered to serve an alternative sanction but failed to comply  
 1178 with the sanction. A delinquent child who has been held in  
 1179 direct or indirect contempt may be placed in a secure detention  
 1180 facility for up to not to exceed 5 days for a first offense and  
 1181 up to not to exceed 15 days for a second or subsequent offense.

1182 (4) CONTEMPT OF COURT SANCTIONS; PROCEDURE AND DUE  
 1183 PROCESS.—

1184 (a) If a child is charged with direct contempt of court,  
 1185 including traffic court, the court may impose an authorized  
 1186 sanction immediately. The court must hold a hearing to determine  
 1187 if the child committed direct contempt. Due process must be  
 1188 afforded to the child during such hearing.

1189 (b) If a child is charged with indirect contempt of court,

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1190 the court must hold a hearing within 24 hours to determine  
 1191 whether the child committed indirect contempt of a valid court  
 1192 order. At the hearing, the following due process rights must be  
 1193 provided to the child:

- 1194 1. Right to a copy of the order to show cause alleging
- 1195 facts supporting the contempt charge.
- 1196 2. Right to an explanation of the nature and the
- 1197 consequences of the proceedings.
- 1198 3. Right to legal counsel and the right to have legal
- 1199 counsel appointed by the court if the juvenile is indigent,
- 1200 under s. 985.033.
- 1201 4. Right to confront witnesses.
- 1202 5. Right to present witnesses.
- 1203 6. Right to have a transcript or record of the proceeding.
- 1204 7. Right to appeal to an appropriate court.
- 1205

1206 The child's parent or guardian may address the court regarding  
 1207 the due process rights of the child. Upon motion by the defense  
 1208 or state attorney, the court shall review the placement of the  
 1209 child ~~every 72 hours~~ to determine whether it is appropriate for  
 1210 the child to remain in the facility.

1211 (c) The court may not order that a child be placed in a  
 1212 secure detention facility ~~as for~~ punishment for contempt unless  
 1213 the court determines that an alternative sanction is  
 1214 inappropriate or unavailable or that the child was initially  
 1215 ordered to an alternative sanction and did not comply with the  
 1216 alternative sanction. The court is encouraged to order a child  
 1217 to perform community service, up to the maximum number of hours,  
 1218 if where appropriate before ordering that the child be placed in

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1219 a secure detention facility as punishment for contempt of court.

1220 (d) In addition to any other sanction imposed under this  
 1221 section, the court may direct the Department of Highway Safety  
 1222 and Motor Vehicles to withhold issuance of, or suspend, a  
 1223 child's driver driver's license or driving privilege. The court  
 1224 may order that a child's driver driver's license or driving  
 1225 privilege be withheld or suspended for up to 1 year for a first  
 1226 offense of contempt and up to 2 years for a second or subsequent  
 1227 offense. If the child's driver driver's license or driving  
 1228 privilege is suspended or revoked for any reason at the time the  
 1229 sanction for contempt is imposed, the court shall extend the  
 1230 period of suspension or revocation by the additional period  
 1231 ordered under this paragraph. If the child's driver driver's  
 1232 license is being withheld at the time the sanction for contempt  
 1233 is imposed, the period of suspension or revocation ordered under  
 1234 this paragraph shall begin on the date on which the child is  
 1235 otherwise eligible to drive.

1236 Section 6. Section 985.105, Florida Statutes, is repealed.

1237 Section 7. Subsection (1) of section 985.11, Florida  
 1238 Statutes, is amended to read:

1239 985.11 Fingerprinting and photographing.—

1240 (1) (a) A child who is charged with or found to have  
 1241 committed an offense that would be a felony if committed by an  
 1242 adult shall be fingerprinted, and the fingerprints shall ~~must~~ be  
 1243 submitted to the Department of Law Enforcement as provided in s.  
 1244 943.051(3) (a).

1245 (b) Unless the child is issued a civil citation or  
 1246 participating in a similar diversion program pursuant to s.  
 1247 985.12, a child who is charged with or found to have committed

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1248 one of the following offenses shall be fingerprinted, and the  
 1249 fingerprints shall be submitted to the Department of Law  
 1250 Enforcement as provided in s. 943.051(3) (b):

- 1251 1. Assault~~7~~ as defined in s. 784.011.
- 1252 2. Battery~~7~~ as defined in s. 784.03.
- 1253 3. Carrying a concealed weapon~~7~~ as defined in s. 790.01(1).
- 1254 4. Unlawful use of destructive devices or bombs~~7~~ as defined  
 1255 in s. 790.1615(1).
- 1256 5. Neglect of a child~~7~~ as defined in s. 827.03(1) (e).
- 1257 6. Assault on a law enforcement officer, a firefighter, or  
 1258 other specified officers~~7~~ as defined in s. 784.07(2) (a).
- 1259 7. Open carrying of a weapon~~7~~ as defined in s. 790.053.
- 1260 8. Exposure of sexual organs~~7~~ as defined in s. 800.03.
- 1261 9. Unlawful possession of a firearm~~7~~ as defined in s.  
 1262 790.22(5).
- 1263 10. Petit theft~~7~~ as defined in s. 812.014.
- 1264 11. Cruelty to animals~~7~~ as defined in s. 828.12(1).
- 1265 12. Arson~~7~~ resulting in bodily harm to a firefighter~~7~~ as  
 1266 defined in s. 806.031(1).
- 1267 13. Unlawful possession or discharge of a weapon or firearm  
 1268 at a school-sponsored event or on school property as defined in  
 1269 s. 790.115.

1270  
 1271 A law enforcement agency may fingerprint and photograph a child  
 1272 taken into custody upon probable cause that such child has  
 1273 committed any other violation of law, as the agency deems  
 1274 appropriate. Such fingerprint records and photographs shall be  
 1275 retained by the law enforcement agency in a separate file, and  
 1276 these records and all copies thereof must be marked "Juvenile

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1277 Confidential." These records are not available for public  
 1278 disclosure and inspection under s. 119.07(1) except as provided  
 1279 in ss. 943.053 and 985.04(2), but ~~are shall be~~ available to  
 1280 other law enforcement agencies, criminal justice agencies, state  
 1281 attorneys, the courts, the child, the parents or legal  
 1282 custodians of the child, their attorneys, and any other person  
 1283 authorized by the court to have access to such records. In  
 1284 addition, such records may be submitted to the Department of Law  
 1285 Enforcement for inclusion in the state criminal history records  
 1286 and used by criminal justice agencies for criminal justice  
 1287 purposes. These records may, in the discretion of the court, be  
 1288 open to inspection by anyone upon a showing of cause. The  
 1289 fingerprint and photograph records shall be produced in the  
 1290 court whenever directed by the court. Any photograph taken  
 1291 pursuant to this section may be shown by a law enforcement  
 1292 officer to any victim or witness of a crime for the purpose of  
 1293 identifying the person who committed such crime.

1294 (c) The court ~~is shall be~~ responsible for the  
 1295 fingerprinting of a ~~any~~ child at the disposition hearing if the  
 1296 child has been adjudicated or had adjudication withheld for any  
 1297 felony in the case currently before the court.

1298 Section 8. Subsection (2) of section 985.14, Florida  
 1299 Statutes, is amended to read:

1300 985.14 Intake and case management system.—

1301 (2) The intake process shall be performed by the department  
 1302 or juvenile assessment center personnel through a case  
 1303 management system. The purpose of the intake process is to  
 1304 assess the child's needs and risks and to determine the most  
 1305 appropriate treatment plan and setting for the child's

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1306 programmatic needs and risks. The intake process consists of an  
 1307 initial assessment and may be followed by a full mental health,  
 1308 substance abuse, or psychosexual evaluation. The intake process  
 1309 shall result in choosing the most appropriate services through a  
 1310 balancing of the interests and needs of the child with those of  
 1311 the family and the ~~community public~~. The juvenile probation  
 1312 officer shall ~~make be responsible for making~~ informed decisions  
 1313 and recommendations to other agencies, the state attorney, and  
 1314 the courts so that the child and family may receive the least  
 1315 intrusive service alternative throughout the judicial process.  
 1316 The department shall establish uniform procedures through which  
 1317 ~~for~~ the juvenile probation officer may ~~to~~ provide a preliminary  
 1318 screening of the child and family for substance abuse and mental  
 1319 health services before ~~prior to~~ the filing of a petition or as  
 1320 soon as possible thereafter and before ~~prior to~~ a disposition  
 1321 hearing.

1322 Section 9. Section 985.145, Florida Statutes, is amended to  
 1323 read:

1324 985.145 Responsibilities of the department juvenile  
 1325 ~~probation officer~~ during intake; screenings and assessments.—

1326 (1) The department juvenile probation officer shall serve  
 1327 as the primary case manager for the purpose of managing,  
 1328 coordinating, and monitoring the services provided to the child.  
 1329 Each program administrator within the Department of Children and  
 1330 Families ~~Family Services~~ shall cooperate with the primary case  
 1331 manager in carrying out the duties and responsibilities  
 1332 described in this section. In addition to duties specified in  
 1333 other sections and through departmental rules, the department  
 1334 ~~assigned juvenile probation officer~~ shall be responsible for the

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1335 following:

1336 (a) *Reviewing probable cause affidavit.*—The department  
 1337 ~~juvenile probation officer~~ shall make a preliminary  
 1338 determination as to whether the report, affidavit, or complaint  
 1339 is complete, consulting with the state attorney as ~~may be~~  
 1340 necessary. A report, affidavit, or complaint alleging that a  
 1341 child has committed a delinquent act or violation of law shall  
 1342 be made to the intake office operating in the county in which  
 1343 the child is found or in which the delinquent act or violation  
 1344 of law occurred. Any person or agency having knowledge of the  
 1345 facts may make such a written report, affidavit, or complaint  
 1346 and shall furnish to the intake office facts sufficient to  
 1347 establish the jurisdiction of the court and to support a finding  
 1348 by the court that the child has committed a delinquent act or  
 1349 violation of law.

1350 (b) *Notification concerning apparent insufficiencies in*  
 1351 *probable cause affidavit.*—In any case where the department  
 1352 ~~juvenile probation officer~~ or the state attorney finds that the  
 1353 report, affidavit, or complaint is insufficient by the standards  
 1354 for a probable cause affidavit, the department juvenile  
 1355 ~~probation officer~~ or state attorney shall return the report,  
 1356 affidavit, or complaint, without delay, to the person or agency  
 1357 originating the report, affidavit, or complaint or having  
 1358 knowledge of the facts or to the appropriate law enforcement  
 1359 agency having investigative jurisdiction of the offense, and  
 1360 shall request, and the person or agency shall promptly furnish,  
 1361 additional information in order to comply with the standards for  
 1362 a probable cause affidavit.

1363 (c) *Screening.*—During the intake process, the department

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1364 ~~juvenile probation officer~~ shall screen each child or shall  
 1365 cause each child to be screened in order to determine:

1366 1. Appropriateness for release; referral to a diversionary  
 1367 program, including, but not limited to, a teen court program;  
 1368 referral for community arbitration; or referral to some other  
 1369 program or agency for the purpose of nonofficial or nonjudicial  
 1370 handling.

1371 2. The presence of medical, psychiatric, psychological,  
 1372 substance abuse, educational, or career and technical education  
 1373 ~~vocational~~ problems, or other conditions that may have caused  
 1374 the child to come to the attention of law enforcement or the  
 1375 department. The child shall also be screened to determine  
 1376 whether the child poses a danger to himself or herself or others  
 1377 in the community. The results of this screening shall be made  
 1378 available to the court and to court officers. In cases where  
 1379 such conditions are identified and a nonjudicial handling of the  
 1380 case is chosen, the department juvenile probation officer shall  
 1381 attempt to refer the child to a program or agency, together with  
 1382 all available and relevant assessment information concerning the  
 1383 child's precipitating condition.

1384 (d) *Completing risk assessment instrument.*—The department  
 1385 ~~juvenile probation officer~~ shall ensure that a risk assessment  
 1386 instrument establishing the child's eligibility for detention  
 1387 has been accurately completed and that the appropriate  
 1388 recommendation was made to the court.

1389 (e) *Rights.*—The department juvenile probation officer shall  
 1390 inquire as to whether the child understands his or her rights to  
 1391 counsel and against self-incrimination.

1392 (f) *Multidisciplinary assessment.*—The department juvenile

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1393 ~~probation officer~~ shall coordinate the multidisciplinary  
 1394 assessment when required, which includes the classification and  
 1395 placement process that determines the child's priority needs,  
 1396 risk classification, and treatment plan. ~~If~~ When sufficient  
 1397 evidence exists to warrant a comprehensive assessment and the  
 1398 child fails to voluntarily participate in the assessment  
 1399 efforts, the ~~department juvenile probation officer~~ shall inform  
 1400 the court of the need for the assessment and the refusal of the  
 1401 child to participate in such assessment. This assessment,  
 1402 classification, and placement process shall develop into the  
 1403 predisposition report.

1404 (g) *Comprehensive assessment.* ~~The juvenile probation~~  
 1405 ~~officer~~, Pursuant to uniform procedures established by the  
 1406 department and upon determining that the report, affidavit, or  
 1407 complaint is complete, the department shall:

1408 1. Perform the preliminary screening and make referrals for  
 1409 a comprehensive assessment regarding the child's need for  
 1410 substance abuse treatment services, mental health services,  
 1411 intellectual disability services, literacy services, or other  
 1412 educational or treatment services.

1413 2. If indicated by the preliminary screening, provide for a  
 1414 comprehensive assessment of the child and family for substance  
 1415 abuse problems, using community-based licensed programs with  
 1416 clinical expertise and experience in the assessment of substance  
 1417 abuse problems.

1418 3. If indicated by the preliminary screening, provide for a  
 1419 comprehensive assessment of the child and family for mental  
 1420 health problems, using community-based psychologists,  
 1421 psychiatrists, or other licensed mental health professionals who

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1422 have clinical expertise and experience in the assessment of  
 1423 mental health problems.

1424 (h) *Referrals for services.*—The ~~department juvenile~~  
 1425 ~~probation officer~~ shall make recommendations for services and  
 1426 facilitate the delivery of those services to the child,  
 1427 including any mental health services, educational services,  
 1428 family counseling services, family assistance services, and  
 1429 substance abuse services.

1430 (i) *Recommendation concerning a petition.*—Upon determining  
 1431 that the report, affidavit, or complaint complies with the  
 1432 standards of a probable cause affidavit and that the interests  
 1433 of the child and the public will be best served, the department  
 1434 ~~juvenile probation officer~~ may recommend that a delinquency  
 1435 petition not be filed. If such a recommendation is made, the  
 1436 department juvenile probation officer shall advise in writing  
 1437 the person or agency making the report, affidavit, or complaint,  
 1438 the victim, if any, and the law enforcement agency having  
 1439 investigative jurisdiction over the offense of the  
 1440 recommendation; the reasons therefor; and that the person or  
 1441 agency may submit, within 10 days after the receipt of such  
 1442 notice, the report, affidavit, or complaint to the state  
 1443 attorney for special review. The state attorney, upon receiving  
 1444 a request for special review, shall consider the facts presented  
 1445 by the report, affidavit, or complaint, and by the department  
 1446 ~~juvenile probation officer who made the recommendation that no~~  
 1447 ~~petition be filed~~, before making a final decision as to whether  
 1448 a petition or information should or should not be filed.

1449 (j) *Completing intake report.*—Subject to the interagency  
 1450 agreement authorized under this paragraph, the department ~~the~~

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1451 ~~juvenile probation officer for each case in which a child is~~  
 1452 ~~alleged to have committed a violation of law or delinquent act~~  
 1453 ~~and is not detained shall submit a written report to the state~~  
 1454 ~~attorney for each case in which a child is alleged to have~~  
 1455 ~~committed a violation of law or delinquent act and is not~~  
 1456 ~~detained. The report shall be submitted within 20 days after the~~  
 1457 ~~date the child is taken into custody and must include, including~~  
 1458 the original police report, complaint, or affidavit, or a copy  
 1459 thereof, and including a copy of the child's prior juvenile  
 1460 record, ~~within 20 days after the date the child is taken into~~  
 1461 ~~eustody~~. In cases in which the child is in detention, the intake  
 1462 office report must be submitted within 24 hours after the child  
 1463 is placed into detention. The intake office report may include a  
 1464 recommendation that a petition or information be filed or that  
 1465 no petition or information be filed and may set forth reasons  
 1466 for the recommendation. The state attorney and the department  
 1467 may, on a district-by-district basis, enter into interagency  
 1468 agreements denoting the cases that will require a recommendation  
 1469 and those for which a recommendation is unnecessary.

1470 (2) ~~Before~~ Prior to requesting that a delinquency petition  
 1471 be filed or ~~before~~ prior to filing a dependency petition, the  
 1472 ~~department juvenile probation officer~~ may request the parent or  
 1473 legal guardian of the child to attend a course of instruction in  
 1474 parenting skills, training in conflict resolution, and the  
 1475 practice of nonviolence; to accept counseling; or to receive  
 1476 other assistance from any agency in the community which notifies  
 1477 the clerk of the court of the availability of its services. If  
 1478 ~~Where~~ appropriate, the ~~department juvenile probation officer~~  
 1479 shall request both parents or guardians to receive such parental

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1480 assistance. The department juvenile probation officer may, in  
 1481 determining whether to request that a delinquency petition be  
 1482 filed, take into consideration the willingness of the parent or  
 1483 legal guardian to comply with such request. The parent or  
 1484 guardian must provide the department juvenile probation officer  
 1485 with identifying information, including the parent's or  
 1486 guardian's name, address, date of birth, social security number,  
 1487 and driver ~~driver's~~ license number or identification card number  
 1488 in order to comply with s. 985.039.

1489 (3) If ~~When~~ indicated by the comprehensive assessment, the  
 1490 department is authorized to contract within appropriated funds  
 1491 for services with a local nonprofit community mental health or  
 1492 substance abuse agency licensed or authorized under chapter 394  
 1493 or chapter 397 or other authorized nonprofit social service  
 1494 agency providing related services. The determination of mental  
 1495 health or substance abuse services shall be conducted in  
 1496 coordination with existing programs providing mental health or  
 1497 substance abuse services in conjunction with the intake office.

1498 (4) Client information resulting from the screening and  
 1499 evaluation shall be documented under rules of the department and  
 1500 shall serve to assist the department juvenile probation officer  
 1501 in providing the most appropriate services and recommendations  
 1502 in the least intrusive manner. Such client information shall be  
 1503 used in the multidisciplinary assessment and classification of  
 1504 the child, but such information, and any information obtained  
 1505 directly or indirectly through the assessment process, is  
 1506 inadmissible in court ~~before~~ prior to the disposition hearing,  
 1507 unless the child's written consent is obtained. At the  
 1508 disposition hearing, documented client information shall serve

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1509 to assist the court in making the most appropriate custody,  
1510 adjudicatory, and dispositional decision.

1511 (5) If the screening and assessment indicate that the  
1512 interests of the child and the public will be best served, the  
1513 ~~department juvenile probation officer~~, with the approval of the  
1514 state attorney, may refer the child for care, diagnostic, and  
1515 evaluation services; substance abuse treatment services; mental  
1516 health services; intellectual disability services; a  
1517 diversionary, arbitration, or mediation program; community  
1518 service work; or other programs or treatment services  
1519 voluntarily accepted by the child and the child's parents or  
1520 legal guardian. If a child volunteers to participate in any work  
1521 program under this chapter or volunteers to work in a specified  
1522 state, county, municipal, or community service organization  
1523 supervised work program or to work for the victim, the child is  
1524 considered an employee of the state for the purposes of  
1525 liability. In determining the child's average weekly wage,  
1526 unless otherwise determined by a specific funding program, all  
1527 remuneration received from the employer is considered a  
1528 gratuity, and the child is not entitled to any benefits  
1529 otherwise payable under s. 440.15 regardless of whether the  
1530 child may be receiving wages and remuneration from other  
1531 employment with another employer and regardless of the child's  
1532 future wage-earning capacity.

1533 (6) The victim, if any, and the law enforcement agency that  
1534 investigated the offense shall be notified immediately by the  
1535 state attorney of the action taken under subsection (5).

1536 Section 10. Section 985.17, Florida Statutes, is created to  
1537 read:

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1538 985.17 Prevention services.-

1539 (1) Prevention services decrease recidivism by addressing  
1540 the needs of at-risk youth and their families, preventing  
1541 further involvement in the juvenile justice system, protecting  
1542 public safety, and facilitating successful reentry into the  
1543 community. To assist in decreasing recidivism, the department's  
1544 prevention services should strengthen protective factors, reduce  
1545 risk factors, and use tested and effective approaches.

1546 (2) A primary focus of the department's prevention services  
1547 is to develop capacity for local communities to serve their  
1548 youth.

1549 (a) The department shall engage faith-based and community-  
1550 based organizations to provide a full range of voluntary  
1551 programs and services to prevent and reduce juvenile  
1552 delinquency, including, but not limited to, chaplaincy services,  
1553 crisis intervention counseling, mentoring, and tutoring.

1554 (b) The department shall establish volunteer coordinators  
1555 in each circuit and encourage the recruitment of volunteers to  
1556 serve as mentors for youth in department services.

1557 (c) The department shall promote the Invest In Children  
1558 license plate developed pursuant to s. 320.08058(11) to help  
1559 fund programs and services to prevent juvenile delinquency. The  
1560 department shall allocate moneys for programs and services  
1561 within each county based on that county's proportionate share of  
1562 the license plate annual use fee collected by the county  
1563 pursuant to s. 320.08058(11).

1564 (3) The department's prevention services for youth at risk  
1565 of becoming delinquent should focus on preventing initial or  
1566 further involvement in the juvenile justice system by including

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1567 services such as literacy services, gender-specific programming,  
 1568 and recreational and after-school services and should include  
 1569 targeted services to troubled, truant, ungovernable, abused,  
 1570 trafficked, or runaway youth. To decrease the likelihood that a  
 1571 youth will commit a delinquent act, the department may provide  
 1572 specialized services addressing the strengthening of families,  
 1573 job training, and substance abuse.

1574 (4) In an effort to decrease the prevalence of  
 1575 disproportionate minority representation in the juvenile justice  
 1576 system, the department's prevention services should address the  
 1577 multiple needs of minority youth at risk of becoming delinquent.

1578 (5) The department shall expend funds related to prevention  
 1579 services in a manner consistent with the policies expressed in  
 1580 ss. 984.02 and 985.01. The department shall expend such funds in  
 1581 a manner that maximizes accountability to the public and ensures  
 1582 the documentation of outcomes.

1583 (a) As a condition of the receipt of state funds, entities  
 1584 that receive or use state moneys to fund prevention services  
 1585 through contracts with the department or grants from any entity  
 1586 dispersed by the department shall:

1587 1. Design the programs providing such services to further  
 1588 one or more of the following strategies:

1589 a. Encouraging youth to attend and succeed in school, which  
 1590 may include special assistance and tutoring to address  
 1591 deficiencies in academic performance and collecting outcome data  
 1592 to reveal the number of days youth attended school while  
 1593 participating in the program.

1594 b. Engaging youth in productive and wholesome activities  
 1595 during nonschool hours which build positive character, instill

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1596 positive values, and enhance educational experiences.

1597 c. Encouraging youth to avoid the use of violence.

1598 d. Assisting youth in acquiring the skills needed to find  
 1599 meaningful employment, which may include assistance in finding a  
 1600 suitable employer for the youth.

1601 2. Provide the department with demographic information,  
 1602 dates of services, and the type of interventions received by  
 1603 each youth.

1604 (b) The department shall monitor output and outcome  
 1605 measures for each program strategy in paragraph (a) and include  
 1606 them in the annual Comprehensive Accountability Report published  
 1607 pursuant to s. 985.632.

1608 (c) The department shall monitor all programs that receive  
 1609 or use state moneys to fund juvenile delinquency prevention  
 1610 services through contracts or grants with the department for  
 1611 compliance with all provisions in the contracts or grants.

1612 Section 11. Section 985.24, Florida Statutes, is amended to  
 1613 read:

1614 985.24 Use of detention; prohibitions.—

1615 (1) All determinations and court orders regarding the use  
 1616 of ~~secure, nonsecure, or home~~ detention care must shall be based  
 1617 primarily upon findings that the child:

1618 (a) Presents a substantial risk of not appearing at a  
 1619 subsequent hearing;

1620 (b) Presents a substantial risk of inflicting bodily harm  
 1621 on others as evidenced by recent behavior, including the illegal  
 1622 possession of a firearm;

1623 (c) Presents a history of committing a property offense  
 1624 before ~~prior to~~ adjudication, disposition, or placement;

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1625 (d) Has committed contempt of court by:

1626 1. Intentionally disrupting the administration of the

1627 court;

1628 2. Intentionally disobeying a court order; or

1629 3. Engaging in a punishable act or speech in the court's

1630 presence which shows disrespect for the authority and dignity of

1631 the court; or

1632 (e) Requests protection from imminent bodily harm.

1633 (2) A child alleged to have committed a delinquent act or

1634 violation of law may not be placed into secure or, nonsecure, ~~or~~

1635 ~~home~~ detention care for any of the following reasons:

1636 (a) To allow a parent to avoid his or her legal

1637 responsibility.

1638 (b) To permit more convenient administrative access to the

1639 child.

1640 (c) To facilitate further interrogation or investigation.

1641 (d) Due to a lack of more appropriate facilities.

1642 (3) A child alleged to be dependent under chapter 39 may

1643 not, under any circumstances, be placed into secure detention

1644 care.

1645 (4) The department may develop nonsecure, nonresidential

1646 evening-reporting centers as an alternative to placing a child

1647 in secure detention to serve children and families while

1648 awaiting court hearings. Evening-reporting centers may be

1649 collocated with the juvenile assessment center. At a minimum,

1650 evening-reporting centers shall be operated during the afternoon

1651 and evening hours and provide a highly structured program of

1652 supervision. Evening-reporting centers may also provide academic

1653 tutoring, counseling, family engagement programs, and other

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1654 activities.

1655 ~~(5)(4)~~ The department shall continue to identify

1656 alternatives to secure detention care and shall develop such

1657 alternatives and annually submit them to the Legislature for

1658 authorization and appropriation.

1659 Section 12. Paragraph (b) of subsection (2) and subsection

1660 (4) of section 985.245, Florida Statutes, are amended to read:

1661 985.245 Risk assessment instrument.—

1662 (2)

1663 (b) The risk assessment instrument, at a minimum, shall

1664 consider ~~take into consideration, but need not be limited to,~~

1665 prior history of failure to appear, prior offenses, offenses

1666 committed pending adjudication, any unlawful possession of a

1667 firearm, theft of a motor vehicle or possession of a stolen

1668 motor vehicle, and probation status at the time the child is

1669 taken into custody. The risk assessment instrument shall also

1670 consider ~~take into consideration~~ appropriate aggravating and

1671 mitigating circumstances, ~~and~~ shall be designed to target a

1672 narrower population of children than s. 985.255, ~~and, The risk~~

1673 ~~assessment instrument shall also~~ include any information

1674 concerning the child's history of abuse and neglect. The risk

1675 assessment shall indicate whether detention care is warranted,

1676 and, if detention care is warranted, whether the child should be

1677 placed into secure or, nonsecure, ~~or home~~ detention care.

1678 (4) If ~~For~~ a child who is under the supervision of the

1679 department through probation, ~~home detention,~~ nonsecure

1680 detention, conditional release, postcommitment probation, or

1681 commitment ~~and who~~ is charged with committing a new offense, the

1682 risk assessment instrument may be completed and scored based on

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1683 the underlying charge for which the child was placed under the  
1684 supervision of the department and the new offense.

1685 Section 13. Subsection (1) of section 985.25, Florida  
1686 Statutes, is amended to read:

1687 985.25 Detention intake.—

1688 (1) The ~~department juvenile probation officer~~ shall receive  
1689 custody of a child who has been taken into custody from the law  
1690 enforcement agency or court and shall review the facts in the  
1691 law enforcement report or probable cause affidavit and make such  
1692 further inquiry as may be necessary to determine whether  
1693 detention care is appropriate required.

1694 (a) During the period of time from the taking of the child  
1695 into custody to the date of the detention hearing, the initial  
1696 decision as to the child's placement into secure detention care  
1697 ~~or, nonsecure detention care, or home detention care~~ shall be  
1698 made by the ~~department juvenile probation officer~~ under ss.  
1699 985.24 and 985.245(1).

1700 (b) The ~~department juvenile probation officer~~ shall base  
1701 ~~its the~~ decision as to whether or not to place the child into  
1702 ~~secure detention care, home detention care,~~ or nonsecure  
1703 detention care on an assessment of risk in accordance with the  
1704 risk assessment instrument and procedures developed by the  
1705 department under s. 985.245. However, a child charged with  
1706 possessing or discharging a firearm on school property in  
1707 violation of s. 790.115 shall be placed in secure detention  
1708 care. A child who has been taken into custody on three or more  
1709 separate occasions within a 60-day period shall be placed in  
1710 secure detention care until the child's detention hearing.

1711 (c) If the child's final score on the risk assessment

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1712 ~~instrument indicates that juvenile probation officer determines~~  
1713 ~~that a child who is eligible for detention~~ care is appropriate,  
1714 ~~but the department otherwise determines he or she based upon the~~  
1715 ~~results of the risk assessment instrument~~ should be released,  
1716 the ~~department juvenile probation officer~~ shall contact the  
1717 state attorney, who may authorize release.

1718 (d) If the child's final score on the risk assessment  
1719 instrument indicates that detention is not appropriate  
1720 authorized, the child may be released by the ~~department juvenile~~  
1721 ~~probation officer~~ in accordance with ss. 985.115 and 985.13.

1722

1723 ~~Under no circumstances shall~~ The ~~department, juvenile probation~~  
1724 ~~officer or~~ the state attorney, or a law enforcement officer may  
1725 not authorize the detention of any child in a jail or other  
1726 facility intended or used for the detention of adults, ~~without~~  
1727 an order of the court.

1728 Section 14. Section 985.255, Florida Statutes, is amended  
1729 to read:

1730 985.255 Detention criteria; detention hearing.—

1731 (1) Subject to s. 985.25(1), a child taken into custody and  
1732 placed into nonsecure or secure ~~home~~ detention care shall be  
1733 given a hearing within 24 hours after being taken into custody.  
1734 At the hearing, the court may order continued detention ~~or~~  
1735 ~~detained in secure detention care prior to a detention hearing~~  
1736 ~~may continue to be detained by the court~~ if:

1737 (a) The child is alleged to be an escapee from a  
1738 residential commitment program, ~~or an absconder from a~~  
1739 nonresidential commitment program, a probation program, or  
1740 conditional release supervision, ~~or is alleged to have escaped~~

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1741 while being lawfully transported to or from a residential  
1742 commitment program.

1743 (b) The child is wanted in another jurisdiction for an  
1744 offense ~~that which~~, if committed by an adult, would be a felony.

1745 (c) The child is charged with a delinquent act or violation  
1746 of law and requests in writing through legal counsel to be  
1747 detained for protection from an imminent physical threat to his  
1748 or her personal safety.

1749 (d) The child is charged with committing an offense of  
1750 domestic violence as defined in s. 741.28 and is detained as  
1751 provided in subsection (2).

1752 (e) The child is charged with possession or discharging a  
1753 firearm on school property in violation of s. 790.115 or the  
1754 illegal possession of a firearm.

1755 (f) The child is charged with a capital felony, a life  
1756 felony, a felony of the first degree, a felony of the second  
1757 degree which that does not involve a violation of chapter 893,  
1758 or a felony of the third degree which that is also a crime of  
1759 violence, including any such offense involving the use or  
1760 possession of a firearm.

1761 (g) The child is charged with a felony of the any second  
1762 degree or a felony of the third degree ~~felony~~ involving a  
1763 violation of chapter 893 or a felony of the any third degree  
1764 which felony that is not also a crime of violence, and the  
1765 child:

1766 1. Has a record of failure to appear at court hearings  
1767 after being properly notified in accordance with the Rules of  
1768 Juvenile Procedure;

1769 2. Has a record of law violations before ~~prior to~~ court

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1770 hearings;

1771 3. Has already been detained or has been released and is  
1772 awaiting final disposition of the case;

1773 4. Has a record of violent conduct resulting in physical  
1774 injury to others; or

1775 5. Is found to have been in possession of a firearm.

1776 (h) The child is alleged to have violated the conditions of  
1777 the child's probation or conditional release supervision.

1778 However, a child detained under this paragraph may be held only  
1779 in a consequence unit as provided in s. 985.439. If a  
1780 consequence unit is not available, the child shall be placed on  
1781 nonsecure home detention with electronic monitoring.

1782 (i) The child is detained on a judicial order for failure  
1783 to appear and has previously willfully failed to appear, after  
1784 proper notice; ~~r~~

1785 1. For an adjudicatory hearing on the same case regardless  
1786 of the results of the risk assessment instrument; or

1787 2. At two or more court hearings of any nature on the same  
1788 case, regardless of the results of the risk assessment  
1789 instrument.

1790  
1791 A child may be held in secure detention for up to 72 hours in  
1792 advance of the next scheduled court hearing pursuant to this  
1793 paragraph. The child's failure to keep the clerk of court and  
1794 defense counsel informed of a current and valid mailing address  
1795 where the child will receive notice to appear at court  
1796 proceedings does not provide an adequate ground for excusal of  
1797 the child's nonappearance at the hearings.

1798 ~~(j) The child is detained on a judicial order for failure~~

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1799 to appear and has previously willfully failed to appear, after  
 1800 proper notice, at two or more court hearings of any nature on  
 1801 the same case regardless of the results of the risk assessment  
 1802 instrument. A child may be held in secure detention for up to 72  
 1803 hours in advance of the next scheduled court hearing pursuant to  
 1804 this paragraph. The child's failure to keep the clerk of court  
 1805 and defense counsel informed of a current and valid mailing  
 1806 address where the child will receive notice to appear at court  
 1807 proceedings does not provide an adequate ground for excusal of  
 1808 the child's nonappearance at the hearings.

1809 (2) A child who is charged with committing an offense of  
 1810 domestic violence as defined in s. 741.28 and whose risk  
 1811 assessment indicates secure detention is not appropriate who  
 1812 does not meet detention criteria may be held in secure detention  
 1813 if the court makes specific written findings that:

1814 (a) Respite care for the child is not available.

1815 (b) It is necessary to place the child in secure detention  
 1816 in order to protect the victim from injury.

1817

1818 The child may not be held in secure detention under this  
 1819 subsection for more than 48 hours unless ordered by the court.  
 1820 After 48 hours, the court shall hold a hearing if the state  
 1821 attorney or victim requests that secure detention be continued.  
 1822 The child may continue to be held in detention care if the court  
 1823 makes a specific, written finding that respite care is  
 1824 unavailable and it ~~detention care~~ is necessary to protect the  
 1825 victim from injury. However, the child may not be held in  
 1826 detention care beyond the time limits provided ~~set forth~~ in this  
 1827 section or s. 985.26.

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1828 (3) (a) ~~A child who meets any of the criteria in subsection~~  
 1829 ~~(1) and who is ordered to be detained under that subsection~~  
 1830 ~~shall be given a hearing within 24 hours after being taken into~~  
 1831 ~~custody. The purpose of the detention hearing~~ required under  
 1832 subsection (1) is to determine the existence of probable cause  
 1833 that the child has committed the delinquent act or violation of  
 1834 law that he or she is charged with and the need for continued  
 1835 detention. Unless a child is detained under paragraph (1) (d) or  
 1836 paragraph (1) (e), the court shall use the results of the risk  
 1837 assessment performed by the department juvenile probation  
 1838 ~~officer~~ and, based on the criteria in subsection (1), shall  
 1839 determine the need for continued detention. ~~A child placed into~~  
 1840 ~~secure, nonsecure, or home detention care may continue to be so~~  
 1841 ~~detained by the court.~~

1842 (b) If the court orders a placement more restrictive than  
 1843 indicated by the results of the risk assessment instrument, the  
 1844 court shall state, in writing, clear and convincing reasons for  
 1845 such placement.

1846 (c) Except as provided in s. 790.22(8) or ~~in~~ s. 985.27,  
 1847 when a child is placed into secure or nonsecure detention care,  
 1848 or into a respite home or other placement pursuant to a court  
 1849 order following a hearing, the court order must include specific  
 1850 instructions that direct the release of the child from such  
 1851 placement by no later than 5 p.m. on the last day of the  
 1852 detention period specified in s. 985.26 or s. 985.27, whichever  
 1853 is applicable, unless the requirements of such applicable  
 1854 provision have been met or an order of continuance has been  
 1855 granted under s. 985.26(4). If the court order does not include  
 1856 a date of release, the release date must be requested of the

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1857 court on the same date the youth was placed on detention care.  
 1858 If a subsequent hearing is needed to provide additional  
 1859 information to the court for safety planning, the initial order  
 1860 placing the youth on detention care must reflect the next  
 1861 detention review hearing, which should be held within 3 calendar  
 1862 days after the child's initial detention placement.

1863 Section 15. Subsections (1) through (3) of section 985.26,  
 1864 Florida Statutes, are amended to read:

1865 985.26 Length of detention.—

1866 (1) A child may not be placed into or held in secure or,  
 1867 nonsecure, ~~or home~~ detention care for more ~~longer~~ than 24 hours  
 1868 unless the court orders such detention care, and the order  
 1869 includes specific instructions that direct the release of the  
 1870 child from such detention care, in accordance with s. 985.255.  
 1871 The order shall be a final order, reviewable by appeal under s.  
 1872 985.534 and the Florida Rules of Appellate Procedure. Appeals of  
 1873 such orders ~~shall~~ take precedence over other appeals and other  
 1874 pending matters.

1875 (2) A child may not be held in secure or, nonsecure, ~~or~~  
 1876 ~~home~~ detention care under a special detention order for more  
 1877 than 21 days unless an adjudicatory hearing for the case has  
 1878 been commenced in good faith by the court. However, upon good  
 1879 cause being shown that the nature of the charge requires  
 1880 additional time for the prosecution or defense of the case, the  
 1881 court may extend the length of detention for an additional 9  
 1882 days if the child is charged with an offense that would be, if  
 1883 committed by an adult, a capital felony, a life felony, a felony  
 1884 of the first degree, or a felony of the second degree involving  
 1885 violence against any individual.

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1886 (3) Except as provided in subsection (2), a child may not  
 1887 be held in secure or, nonsecure, ~~or home~~ detention care for more  
 1888 than 15 days following the entry of an order of adjudication.

1889 Section 16. Section 985.265, Florida Statutes, is amended  
 1890 to read:

1891 985.265 Detention transfer and release; education; adult  
 1892 jails.—

1893 (1) If a child is detained under this part, the department  
 1894 may transfer the child from nonsecure ~~or home~~ detention care to  
 1895 secure detention care only if significantly changed  
 1896 circumstances warrant such transfer.

1897 (2) If a child is on release status and not detained under  
 1898 this part, the child may be placed into secure or, nonsecure, ~~or~~  
 1899 ~~home~~ detention care only pursuant to a court hearing in which  
 1900 the original risk assessment instrument and the, ~~rescored based~~  
 1901 ~~on~~ newly discovered evidence or changed circumstances are  
 1902 introduced into evidence with a rescored risk assessment  
 1903 instrument with the results recommending detention, is  
 1904 introduced into evidence.

1905 (3) (a) If ~~When~~ a juvenile sexual offender is placed in  
 1906 detention, detention staff shall provide appropriate monitoring  
 1907 and supervision to ensure the safety of other children in the  
 1908 facility.

1909 (b) If ~~When~~ a juvenile charged with murder under s. 782.04,  
 1910 sexual battery under chapter 794, stalking under s. 784.048, or  
 1911 domestic violence as defined in s. 741.28, or an attempt to  
 1912 commit any of these offenses ~~sexual offender, under this~~  
 1913 ~~subsection,~~ is released from secure detention or transferred to  
 1914 ~~home detention or nonsecure detention,~~ detention staff shall

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1915 immediately notify the appropriate law enforcement agency, and  
 1916 school personnel, and the victim.

1917 (4) (a) While a child who is currently enrolled in school is  
 1918 in nonsecure ~~or home~~ detention care, the child shall continue to  
 1919 attend school unless otherwise ordered by the court.

1920 (b) While a child is in secure detention care, the child  
 1921 shall receive education commensurate with his or her grade level  
 1922 and educational ability.

1923 (5) The court shall order the delivery of a child to a jail  
 1924 or other facility intended or used for the detention of adults:

1925 (a) If ~~When~~ the child has been transferred or indicted for  
 1926 criminal prosecution as an adult under part X., ~~except that~~ The  
 1927 court may not order or allow a child alleged to have committed a  
 1928 misdemeanor who is being transferred for criminal prosecution  
 1929 pursuant to either s. 985.556 or s. 985.557 to be detained or  
 1930 held in a jail or other facility intended or used for the  
 1931 detention of adults; however, such child may be held temporarily  
 1932 in a detention facility; or

1933 (b) If ~~When~~ a child taken into custody in this state is  
 1934 wanted by another jurisdiction for prosecution as an adult.

1935 A The child shall be housed separately from adult inmates to  
 1936 prohibit the a child from having regular contact with  
 1937 incarcerated adults, including trustees. As used in this  
 1938 subsection, the term "regular contact" means sight and sound  
 1939 contact. Separation of children from adults may not allow ~~shall~~  
 1940 ~~permit no~~ more than haphazard or accidental contact. The  
 1941 receiving jail or other facility shall provide ~~contain~~ a  
 1942 separate section for children and shall have ~~an adequate~~ staff  
 1943

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1944 adequate to supervise and monitor the child's activities at all  
 1945 times. Supervision and monitoring of children includes physical  
 1946 observation and documented checks by jail or receiving facility  
 1947 supervisory personnel at intervals not to exceed 10 ~~15~~ minutes.  
 1948 This subsection does not prohibit placing two or more children  
 1949 in the same cell. ~~Under no circumstances shall~~ A child may not  
 1950 be placed in a ~~the same~~ cell with an adult.

1951 Section 17. Section 985.27, Florida Statutes, is amended to  
 1952 read:

1953 985.27 Postadjudication ~~Postcommitment~~ detention while  
 1954 awaiting commitment placement.-

1955 (1) The court must place all children who are adjudicated  
 1956 and awaiting placement in a commitment program in detention  
 1957 care. Children who are in ~~home detention care or~~ nonsecure  
 1958 detention care may be placed on electronic monitoring.

1959 (a) ~~A child who is awaiting placement in a low-risk~~  
 1960 ~~residential program must be removed from detention within 5~~  
 1961 ~~days, excluding Saturdays, Sundays, and legal holidays. Any~~  
 1962 ~~child held in secure detention during the 5 days must meet~~  
 1963 ~~detention admission criteria under this part. A child who is~~  
 1964 ~~placed in home detention care, nonsecure detention care, or home~~  
 1965 ~~or nonsecure detention care with electronic monitoring, while~~  
 1966 ~~awaiting placement in a minimum-risk or low-risk program, may be~~  
 1967 ~~held in secure detention care for 5 days, if the child violates~~  
 1968 ~~the conditions of the home detention care, the nonsecure~~  
 1969 ~~detention care, or the electronic monitoring agreement. For any~~  
 1970 ~~subsequent violation, the court may impose an additional 5 days~~  
 1971 ~~in secure detention care.~~

1972 ~~(b)~~ A child who is awaiting placement in a nonsecure

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1973 ~~moderate-risk~~ residential program must be removed from detention  
 1974 within 5 days, excluding Saturdays, Sundays, and legal holidays.  
 1975 ~~A~~ Any child held in secure detention during the 5 days must meet  
 1976 detention admission criteria under this part. The department may  
 1977 seek an order from the court authorizing continued detention for  
 1978 a specific period of time necessary for the appropriate  
 1979 residential placement of the child. However, such continued  
 1980 detention in secure detention care may not exceed 15 days after  
 1981 entry of the commitment order, excluding Saturdays, Sundays, and  
 1982 legal holidays, and except as otherwise provided in this  
 1983 section. A child who is placed in ~~home detention care~~, nonsecure  
 1984 detention care, or ~~home or~~ nonsecure detention care with  
 1985 electronic monitoring, while awaiting placement in a nonsecure  
 1986 residential moderate-risk program, may be held in secure  
 1987 detention care for 5 days, if the child violates the conditions  
 1988 of ~~the home detention care~~, the nonsecure detention care, or the  
 1989 electronic monitoring agreement. For any subsequent violation,  
 1990 the court may impose an additional 5 days in secure detention  
 1991 care.

1992 ~~(b)(e)~~ If the child is committed to a high-risk residential  
 1993 program, the child must be held in secure detention care until  
 1994 placement or commitment is accomplished.

1995 ~~(c)(d)~~ If the child is committed to a maximum-risk  
 1996 residential program, the child must be held in secure detention  
 1997 care until placement or commitment is accomplished.

1998 (2) Regardless of detention status, a child being  
 1999 transported by the department to a residential commitment  
 2000 facility of the department may be placed in secure detention for  
 2001 up to 24 hours overnight, ~~not to exceed a 24-hour period~~, for

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2002 the specific purpose of ensuring the safe delivery of the child  
 2003 to his or her residential commitment program, court,  
 2004 appointment, transfer, or release.

2005 Section 18. Subsection (1) of section 985.275, Florida  
 2006 Statutes, is amended to read:

2007 985.275 Detention of escapee or absconder on authority of  
 2008 the department.—

2009 (1) If an authorized agent of the department has reasonable  
 2010 grounds to believe that a ~~any~~ delinquent child committed to the  
 2011 department has escaped from a residential commitment facility or  
 2012 in the course of lawful transportation to or from such facility  
 2013 from being lawfully transported thereto or therefrom, or has  
 2014 absconded from a nonresidential commitment facility, the agent  
 2015 shall notify law enforcement and, if the offense qualifies under  
 2016 chapter 960, notify the victim, and make every reasonable effort  
 2017 to locate the delinquent child. The child may be returned ~~take~~  
 2018 ~~the child into active custody and may deliver the child to the~~  
 2019 facility or, if it is closer, to a detention center for return  
 2020 to the facility. However, a child may not be held in detention  
 2021 more longer than 24 hours, excluding Saturdays, Sundays, and  
 2022 legal holidays, unless a special order so directing is made by  
 2023 the judge after a detention hearing resulting in a finding that  
 2024 detention is required based on the criteria in s. 985.255. The  
 2025 order must ~~shall~~ state the reasons for such finding. The reasons  
 2026 are ~~shall be~~ reviewable by appeal or in habeas corpus  
 2027 proceedings in the district court of appeal.

2028 Section 19. Paragraph (b) of subsection (4), paragraph (h)  
 2029 of subsection (6), and paragraph (a) of subsection (7) of  
 2030 section 985.433, Florida Statutes, are amended to read:

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2031 985.433 Disposition hearings in delinquency cases.—When a  
 2032 child has been found to have committed a delinquent act, the  
 2033 following procedures shall be applicable to the disposition of  
 2034 the case:

2035 (4) Before the court determines and announces the  
 2036 disposition to be imposed, it shall:

2037 (b) Discuss with the child his or her compliance with any  
 2038 predisposition ~~home-release~~ plan or other plan imposed since the  
 2039 date of the offense.

2040 (6) The first determination to be made by the court is a  
 2041 determination of the suitability or nonsuitability for  
 2042 adjudication and commitment of the child to the department. This  
 2043 determination shall include consideration of the recommendations  
 2044 of the department, which may include a predisposition report.  
 2045 The predisposition report shall include, whether as part of the  
 2046 child's multidisciplinary assessment, classification, and  
 2047 placement process components or separately, evaluation of the  
 2048 following criteria:

2049 (h) The child's educational status, including, but not  
 2050 limited to, the child's strengths, abilities, and unmet and  
 2051 special educational needs. The report must ~~shall~~ identify  
 2052 appropriate educational and career ~~vocational~~ goals for the  
 2053 child. Examples of appropriate goals include:

2054 1. Attainment of a high school diploma or its equivalent.  
 2055 2. Successful completion of literacy course(s).  
 2056 3. Successful completion of career and technical  
 2057 educational ~~vocational~~ course(s).  
 2058 4. Successful attendance and completion of the child's  
 2059 current grade, or recovery of credits of classes the child

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2060 previously failed, if enrolled in school.  
 2061 5. Enrollment in an apprenticeship or a similar program.  
 2062

2063 It is the intent of the Legislature that the criteria set forth  
 2064 in this subsection are general guidelines to be followed at the  
 2065 discretion of the court and not mandatory requirements of  
 2066 procedure. It is not the intent of the Legislature to provide  
 2067 for the appeal of the disposition made under this section.

2068 (7) If the court determines that the child should be  
 2069 adjudicated as having committed a delinquent act and should be  
 2070 committed to the department, such determination shall be in  
 2071 writing or on the record of the hearing. The determination shall  
 2072 include a specific finding of the reasons for the decision to  
 2073 adjudicate and to commit the child to the department, including  
 2074 any determination that the child was a member of a criminal  
 2075 gang.

2076 (a) The department ~~juvenile probation officer~~ shall  
 2077 recommend to the court the most appropriate placement and  
 2078 treatment plan, specifically identifying the restrictiveness  
 2079 level most appropriate for the child if commitment is  
 2080 recommended. If the court has determined that the child was a  
 2081 member of a criminal gang, that determination shall be given  
 2082 great weight in identifying the most appropriate restrictiveness  
 2083 level for the child. The court shall consider the department's  
 2084 recommendation in making its commitment decision.

2085 Section 20. Present subsections (4) through (6) of section  
 2086 985.435, Florida Statutes, are redesignated as subsections (5)  
 2087 through (7), respectively, a new subsection (4) is added to that  
 2088 section, and subsection (3) and present subsection (4) of that

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2089 section are amended, to read:

2090 985.435 Probation and postcommitment probation; community  
2091 service.-

2092 (3) A probation program must also include a rehabilitative  
2093 program component such as a requirement of participation in  
2094 substance abuse treatment or in a school or career and technical  
2095 ~~other~~ educational program. The nonconsent of the child to  
2096 treatment in a substance abuse treatment program does not  
2097 preclude in no way precludes the court from ordering such  
2098 treatment. Upon the recommendation of the department at the time  
2099 of disposition, or subsequent to disposition pursuant to the  
2100 filing of a petition alleging a violation of the child's  
2101 conditions of postcommitment probation, the court may order the  
2102 child to submit to random testing for the purpose of detecting  
2103 and monitoring the use of alcohol or controlled substances.

2104 (4) A probation program may also include an alternative  
2105 consequence component to address instances in which a child is  
2106 noncompliant with technical conditions of his or her probation,  
2107 but has not committed any new violations of law. The alternative  
2108 consequence component shall be designed to provide swift and  
2109 appropriate consequences to any noncompliance with technical  
2110 conditions of probation. If the probation program includes this  
2111 component, specific consequences that apply to noncompliance  
2112 with specific technical conditions of probation must be detailed  
2113 in the disposition order.

2114 (5)(4) An evaluation of the youth's risk to reoffend A  
2115 classification scale for levels of supervision shall be provided  
2116 by the department, taking into account the child's needs and  
2117 risks relative to probation supervision requirements to

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2118 reasonably ensure the public safety. Probation programs for  
2119 children shall be supervised by the department or by any other  
2120 person or agency specifically authorized by the court. These  
2121 programs must include, but are not limited to, structured or  
2122 restricted activities as described in this section and s.  
2123 985.439, and shall be designed to encourage the child toward  
2124 acceptable and functional social behavior.

2125 Section 21. Paragraph (a) of subsection (1) and subsection  
2126 (4) of section 985.439, Florida Statutes, are amended to read:  
2127 985.439 Violation of probation or postcommitment  
2128 probation.-

2129 (1) (a) This section is applicable when the court has  
2130 jurisdiction over a child on probation or postcommitment  
2131 probation, regardless of adjudication ~~an adjudicated delinquent~~  
2132 ~~child~~.

2133 (4) Upon the child's admission, or if the court finds after  
2134 a hearing that the child has violated the conditions of  
2135 probation or postcommitment probation, the court shall enter an  
2136 order revoking, modifying, or continuing probation or  
2137 postcommitment probation. In each such case, the court shall  
2138 enter a new disposition order and, in addition to the sanctions  
2139 set forth in this section, may impose any sanction the court  
2140 could have imposed at the original disposition hearing. If the  
2141 child is found to have violated the conditions of probation or  
2142 postcommitment probation, the court may:

2143 (a) Place the child in a consequence unit in that judicial  
2144 circuit, if available, for up to 5 days for a first violation  
2145 and up to 15 days for a second or subsequent violation.

2146 (b) Place the child on nonsecure ~~home~~ detention with

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2147 electronic monitoring. However, this sanction may be used only  
2148 if a residential consequence unit is not available.

2149 (c) Modify or continue the child's probation program or  
2150 postcommitment probation program.

2151 (d) Revoke probation or postcommitment probation and commit  
2152 the child to the department.

2153 (e) If the violation of probation is technical in nature  
2154 and not a new violation of law, place the child in an  
2155 alternative consequence program designed to provide swift and  
2156 appropriate consequences for any further violations of  
2157 probation.

2158 1. Alternative consequence programs shall be established at  
2159 the local level in coordination with law enforcement agencies,  
2160 the chief judge of the circuit, the state attorney, and the  
2161 public defender.

2162 2. Alternative consequence programs may be operated by an  
2163 entity such as a law enforcement agency, the department, a  
2164 juvenile assessment center, a county or municipality, or another  
2165 entity selected by the department.

2166 3. Upon placing a child in an alternative consequence  
2167 program, the court must approve specific consequences for  
2168 specific violations of the conditions of probation.

2169 Section 22. Subsection (2) of section 985.441, Florida  
2170 Statutes, is amended to read:

2171 985.441 Commitment.—

2172 (2) Notwithstanding subsection (1), the court having  
2173 jurisdiction over an adjudicated delinquent child whose  
2174 underlying offense is ~~was~~ a misdemeanor, or a child who is  
2175 currently on probation for a misdemeanor, may not commit the

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2176 child for any misdemeanor offense or any probation violation  
2177 that is technical in nature and not a new violation of law at a  
2178 restrictiveness level other than minimum-risk nonresidential  
2179 ~~unless the probation violation is a new violation of law~~  
2180 ~~constituting a felony.~~ However, the court may commit such child  
2181 to a nonsecure ~~low-risk or moderate-risk~~ residential placement  
2182 if:

2183 (a) The child has previously been adjudicated or had  
2184 adjudication withheld for a felony offense;

2185 (b) The child has previously been adjudicated or had  
2186 adjudication withheld for three or more misdemeanor offenses  
2187 within the preceding 18 months;

2188 (c) The child is before the court for disposition for a  
2189 violation of s. 800.03, s. 806.031, or s. 828.12; or

2190 (d) The court finds by a preponderance of the evidence that  
2191 the protection of the public requires such placement or that the  
2192 particular needs of the child would be best served by such  
2193 placement. Such finding must be in writing.

2194 Section 23. Paragraph (a) of subsection (1) and subsection  
2195 (5) of section 985.46, Florida Statutes, are amended to read:  
2196 985.46 Conditional release.—

2197 (1) The Legislature finds that:

2198 (a) Conditional release is the care, treatment, help,  
2199 provision of transition-to-adulthood services, and supervision  
2200 provided to juveniles released from residential commitment  
2201 programs to promote rehabilitation and prevent recidivism.

2202 (5) Participation in the educational program by students of  
2203 compulsory school attendance age pursuant to s. 1003.21(1) and  
2204 (2) (a) is mandatory for juvenile justice youth on conditional

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2205 release or postcommitment probation status. A student of  
 2206 noncompulsory school-attendance age who has not received a high  
 2207 school diploma or its equivalent must participate in an the  
 2208 educational or career and technical educational program. A youth  
 2209 who has received a high school diploma or its equivalent and is  
 2210 not employed must participate in workforce development or other  
 2211 career or technical education or attend a community college or a  
 2212 university while in the program, subject to available funding.

2213 Section 24. Subsections (1) through (5) of section 985.461,  
 2214 Florida Statutes, are amended to read:

2215 985.461 Transition to adulthood.—

2216 (1) The Legislature finds that ~~elder~~ youth are faced with  
 2217 the need to learn how to support themselves within legal means  
 2218 and overcome the stigma of being delinquent. In most cases,  
 2219 parents expedite this transition. It is the intent of the  
 2220 Legislature that the department provide ~~elder~~ youth in its  
 2221 custody or under its supervision with opportunities for  
 2222 participating in transition-to-adulthood services while in the  
 2223 department's commitment programs or in probation or conditional  
 2224 release programs in the community. These services should be  
 2225 reasonable and appropriate for the youths' respective ages or  
 2226 special needs and provide activities that build life skills and  
 2227 increase the ability to live independently and become self-  
 2228 sufficient.

2229 (2) Youth served by the department who are in the custody  
 2230 of the Department of Children and Families ~~Family Services~~ and  
 2231 who entered juvenile justice placement from a foster care  
 2232 placement, if otherwise eligible, may receive independent living  
 2233 transition services pursuant to s. 409.1451. Court-ordered

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2234 commitment or probation with the department is not a barrier to  
 2235 eligibility for the array of services available to a youth who  
 2236 is in the dependency foster care system only.

2237 (3) For a dependent child in the foster care system,  
 2238 adjudication for delinquency does not, by itself, disqualify  
 2239 such child for eligibility in the Department of Children and  
 2240 Families' Family Services' independent living program.

2241 (4) As part of the child's treatment plan, the department  
 2242 may provide transition-to-adulthood services to children  
 2243 released from residential commitment. To support participation  
 2244 in transition-to-adulthood services and subject to  
 2245 appropriation, the department may:

2246 (a) Assess the child's skills and abilities to live  
 2247 independently and become self-sufficient. The specific services  
 2248 ~~to be~~ provided shall be determined using an assessment of his or  
 2249 her readiness for adult life.

2250 (b) Use community reentry teams to assist in the  
 2251 development of ~~Develop~~ a list of age-appropriate activities and  
 2252 responsibilities to be incorporated in the child's written case  
 2253 plan for any youth ~~17 years of age or older~~ who is under the  
 2254 custody or supervision of the department. Community reentry  
 2255 teams may include representation from school districts, law  
 2256 enforcement, workforce development services, community-based  
 2257 service providers, and the youth's family. Activities may  
 2258 include, but are not limited to, life skills training, including  
 2259 training to develop banking and budgeting skills, interviewing  
 2260 and career planning skills, parenting skills, personal health  
 2261 management, and time management or organizational skills;  
 2262 educational support; employment training; and counseling.

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2263 (c) Provide information related to social security  
2264 insurance benefits and public assistance.

2265 (d) Request parental or guardian permission for the youth  
2266 to participate in transition-to-adulthood services. Upon such  
2267 consent, age-appropriate activities shall be incorporated into  
2268 the youth's written case plan. This plan may include specific  
2269 goals and objectives and shall be reviewed and updated at least  
2270 quarterly. If the parent or guardian is cooperative, the plan  
2271 may not interfere with the parent's or guardian's rights to  
2272 nurture and train his or her child in ways that are otherwise in  
2273 compliance with the law and court order.

2274 (e) Contract for transition-to-adulthood services that  
2275 include residential services and assistance and allow the child  
2276 to live independently of the daily care and supervision of an  
2277 adult in a setting that is not licensed under s. 409.175. A  
2278 child under the care or supervision of the department ~~who has~~  
2279 ~~reached 17 years of age but is not yet 19 years of age~~ is  
2280 eligible for such services if he or she does not pose a danger  
2281 to the public and is able to demonstrate minimally sufficient  
2282 skills and aptitude for living under decreased adult  
2283 supervision, as determined by the department, using established  
2284 procedures and assessments.

2285 (f) Assist the youth in building a portfolio of educational  
2286 and vocational accomplishments, necessary identification,  
2287 resumes, and cover letters in an effort to enhance the youth's  
2288 employability.

2289 (g) Collaborate with school district contacts to facilitate  
2290 appropriate educational services based on the youth's identified  
2291 needs.

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2292 (5) For a child ~~who is 17 years of age or older,~~ under the  
2293 department's care or supervision, and without benefit of parents  
2294 or legal guardians capable of assisting the child in the  
2295 transition to adult life, the department may provide an  
2296 assessment to determine the child's skills and abilities to live  
2297 independently and become self-sufficient. Based on the  
2298 assessment and within existing resources, services and training  
2299 may be provided in order to develop the necessary skills and  
2300 abilities ~~before the child's 18th birthday.~~

2301 Section 25. Paragraph (b) of subsection (3) of section  
2302 985.481, Florida Statutes, is amended to read:

2303 985.481 Sexual offenders adjudicated delinquent;  
2304 notification upon release.-

2305 (3)

2306 (b) ~~No later than November 1, 2007,~~ The department shall  
2307 ~~must~~ make the information described in subparagraph (a)1.  
2308 available electronically to the Department of Law Enforcement in  
2309 its database and in a format that is compatible with the  
2310 requirements of the Florida Crime Information Center.

2311 Section 26. Subsection (5) of section 985.4815, Florida  
2312 Statutes, is amended to read:

2313 985.4815 Notification to Department of Law Enforcement of  
2314 information on juvenile sexual offenders.-

2315 (5) In addition to notification and transmittal  
2316 requirements imposed by any other ~~provision of law,~~ the  
2317 department shall compile information on any sexual offender and  
2318 provide the information to the Department of Law Enforcement. ~~No~~  
2319 ~~later than November 1, 2007,~~ The department shall ~~must~~ make the  
2320 information available electronically to the Department of Law

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2321 Enforcement in its database in a format that is compatible with  
2322 the requirements of the Florida Crime Information Center.

2323 Section 27. Paragraph (a) of subsection (3) and paragraph  
2324 (a) of subsection (9) of section 985.601, Florida Statutes, are  
2325 amended to read:

2326 985.601 Administering the juvenile justice continuum.—

2327 (3) (a) The department shall develop or contract for  
2328 diversified and innovative programs to provide rehabilitative  
2329 treatment, including early intervention and prevention,  
2330 diversion, comprehensive intake, case management, diagnostic and  
2331 classification assessments, trauma-informed care, individual and  
2332 family counseling, family engagement resources and programs,  
2333 gender-specific programming, shelter care, diversified detention  
2334 care emphasizing alternatives to secure detention, diversified  
2335 probation, halfway houses, foster homes, community-based  
2336 substance abuse treatment services, community-based mental  
2337 health treatment services, community-based residential and  
2338 nonresidential programs, mother-infant programs, and  
2339 environmental programs. The department may pay expenses in  
2340 support of innovative programs and activities that address the  
2341 identified needs and well-being of children in the department's  
2342 care or under its supervision. Each program shall place  
2343 particular emphasis on reintegration and conditional release for  
2344 all children in the program.

2345 (9) (a) The department shall operate a statewide, regionally  
2346 administered system of detention services for children, in  
2347 accordance with a comprehensive plan for the regional  
2348 administration of all detention services in the state. The plan  
2349 must provide for the maintenance of adequate availability of

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2350 detention services for all counties. The plan must cover all the  
2351 department's operating circuits, with each operating circuit  
2352 having access to a secure facility and nonsecure and home  
2353 detention programs, ~~and~~ The plan may be altered or modified by  
2354 the department ~~of Juvenile Justice~~ as necessary.

2355 Section 28. Section 985.605, Florida Statutes, is repealed.

2356 Section 29. Section 985.606, Florida Statutes, is repealed.

2357 Section 30. Section 985.61, Florida Statutes, is repealed.

2358 Section 31. Section 985.632, Florida Statutes, is reordered  
2359 and amended to read:

2360 985.632 Quality improvement assurance and cost-  
2361 effectiveness.—

2362 (2) (+) PERFORMANCE ACCOUNTABILITY.—It is the intent of the  
2363 Legislature that the department establish a performance  
2364 accountability system for each provider who contracts with the  
2365 department for the delivery of services to children. The  
2366 contract must include both output measures, such as the number  
2367 of children served, and outcome measures, such as program  
2368 completion and postcompletion recidivism. Each contractor shall  
2369 report performance results to the department annually. The  
2370 department's Bureau of Research and Planning shall summarize  
2371 performance results from all contracts and report the  
2372 information annually to the President of the Senate and the  
2373 Speaker of the House of Representatives in the Comprehensive  
2374 Accountability Report. The report must:

2375 (a) Ensure that information be provided to decisionmakers  
2376 in a timely manner so that resources are allocated to programs  
2377 that of the department which achieve desired performance levels.

2378 (b) Provide information about the cost of such programs and

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2379 their differential effectiveness so that the quality of such  
 2380 programs can be compared and improvements made continually.

2381 (c) Provide information to aid in developing related policy  
 2382 issues and concerns.

2383 (d) Provide information to the public about the  
 2384 effectiveness of such programs in meeting established goals and  
 2385 objectives.

2386 (e) Provide a basis for a system of accountability so that  
 2387 each child client is afforded the best programs to meet his or  
 2388 her needs.

2389 (f) Improve service delivery to children through the use of  
 2390 technical assistance clients.

2391 (g) Modify or eliminate activities or programs that are not  
 2392 effective.

2393 (h) Collect and analyze available statistical data for the  
 2394 purpose of ongoing evaluation of all programs.

2395 (1) ~~(2)~~ DEFINITIONS.—As used in this section, the term:

2396 (a) “Program” means any facility, service, or program for  
 2397 children which is operated by the department or by a provider  
 2398 under contract with the department.

2399 ~~(a) “Client” means any person who is being provided~~  
 2400 ~~treatment or services by the department or by a provider under~~  
 2401 ~~contract with the department.~~

2402 (b) “Program component” means an aggregation of generally  
 2403 related objectives which, because of their special character,  
 2404 related workload, and interrelated output, can logically be  
 2405 considered an entity for purposes of organization, management,  
 2406 accounting, reporting, and budgeting.

2407 (c) “Program group” means a collection of programs with

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2408 sufficient similarity of functions, services, and children to  
 2409 permit appropriate comparison among programs within the group.

2410 ~~(e) “Program effectiveness” means the ability of the~~  
 2411 ~~program to achieve desired client outcomes, goals, and~~  
 2412 ~~objectives.~~

2413 (3) COMPREHENSIVE ACCOUNTABILITY REPORT.—The department, in  
 2414 consultation with the Office of Economic and Demographic  
 2415 Research, the Office of Program Policy Analysis and Government  
 2416 Accountability, and contract service providers, shall develop  
 2417 and use a standard methodology for annually measuring,  
 2418 evaluating, and reporting program outputs and child outcomes for  
 2419 each program and program group. The standard methodology must:

2420 (a) Include common terminology and operational definitions  
 2421 for measuring the performance of system and program  
 2422 administration, program outputs, and program outcomes.

2423 (b) Specify program outputs for each program and for each  
 2424 program group within the juvenile justice continuum.

2425 (c) Specify desired child outcomes and methods by which  
 2426 child outcomes may be measured for each program and program  
 2427 group.

2428 ~~(3) The department shall annually collect and report cost~~  
 2429 ~~data for every program operated or contracted by the department.~~  
 2430 ~~The cost data shall conform to a format approved by the~~  
 2431 ~~department and the Legislature. Uniform cost data shall be~~  
 2432 ~~reported and collected for state-operated and contracted~~  
 2433 ~~programs so that comparisons can be made among programs. The~~  
 2434 ~~department shall ensure that there is accurate cost accounting~~  
 2435 ~~for state-operated services including market equivalent rent and~~  
 2436 ~~other shared cost. The cost of the educational program provided~~

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2437 to a residential facility shall be reported and included in the  
 2438 cost of a program. The department shall submit an annual cost  
 2439 report to the President of the Senate, the Speaker of the House  
 2440 of Representatives, the Minority Leader of each house of the  
 2441 Legislature, the appropriate substantive and fiscal committees  
 2442 of each house of the Legislature, and the Governor, no later  
 2443 than December 1 of each year. Cost-benefit analysis for  
 2444 educational programs will be developed and implemented in  
 2445 collaboration with and in cooperation with the Department of  
 2446 Education, local providers, and local school districts. Cost  
 2447 data for the report shall include data collected by the  
 2448 Department of Education for the purposes of preparing the annual  
 2449 report required by s. 1003.52(19).

2450 (4)(a) COST-EFFECTIVENESS MODEL.—The department, in  
 2451 consultation with the Office of Economic and Demographic  
 2452 Research and contract service providers, shall develop a cost-  
 2453 effectiveness model and apply the model to each commitment  
 2454 program. ~~Program recidivism rates shall be a component of the~~  
 2455 ~~model.~~

2456 (a) The cost-effectiveness model ~~must shall~~ compare program  
 2457 costs to expected and actual child recidivism rates ~~client~~  
 2458 ~~outcomes and program outputs~~. It is the intent of the  
 2459 Legislature that continual development efforts take place to  
 2460 improve the validity and reliability of the cost-effectiveness  
 2461 model.

2462 (b) The department shall rank commitment programs based on  
 2463 the cost-effectiveness model, performance measures, and  
 2464 adherence to quality improvement standards and shall ~~submit a~~  
 2465 report this data in the annual Comprehensive Accountability

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2466 Report to the appropriate substantive and fiscal committees of  
 2467 each house of the Legislature by December 31 of each year.

2468 (c) Based on reports of the department on child client  
 2469 outcomes and program outputs and on the department's most recent  
 2470 cost-effectiveness rankings, the department may terminate a  
 2471 program operated by the department or a provider if the program  
 2472 has failed to achieve a minimum standard threshold of program  
 2473 effectiveness. This paragraph does not preclude the department  
 2474 from terminating a contract as provided under this section or as  
 2475 otherwise provided by law or contract, and does not limit the  
 2476 department's authority to enter into or terminate a contract.

2477 (d) In collaboration with the Office of Economic and  
 2478 Demographic Research, and contract service providers, the  
 2479 department shall develop a work plan to refine the cost-  
 2480 effectiveness model so that the model is consistent with the  
 2481 performance-based program budgeting measures approved by the  
 2482 Legislature to the extent the department deems appropriate. The  
 2483 department shall notify the Office of Program Policy Analysis  
 2484 and Government Accountability of any meetings to refine the  
 2485 model.

2486 (e) Contingent upon specific appropriation, the department,  
 2487 in consultation with the Office of Economic and Demographic  
 2488 Research, and contract service providers, shall:

2489 1. Construct a profile of each commitment program that uses  
 2490 the results of the quality improvement assurance report required  
 2491 by this section, the cost-effectiveness report required in this  
 2492 subsection, and other reports available to the department.

2493 2. Target, for a more comprehensive evaluation, any  
 2494 commitment program that has achieved consistently high, low, or

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2495 disparate ratings in the reports required under subparagraph 1.  
 2496 and target, for technical assistance, any commitment program  
 2497 that has achieved low or disparate ratings in the reports  
 2498 required under subparagraph 1.

2499 3. Identify the essential factors that contribute to the  
 2500 high, low, or disparate program ratings.

2501 4. Use the results of these evaluations in developing or  
 2502 refining juvenile justice programs or program models, child  
 2503 client outcomes and program outputs, provider contracts, quality  
 2504 improvement assurance standards, and the cost-effectiveness  
 2505 model.

2506 (5) QUALITY IMPROVEMENT; MINIMUM STANDARDS.—The department  
 2507 shall:

2508 (a) Establish a comprehensive quality improvement assurance  
 2509 system for each program operated by the department or operated  
 2510 by a provider under contract with the department. Each contract  
 2511 entered into by the department must provide for quality  
 2512 improvement assurance.

2513 (b) Provide operational definitions of and criteria for  
 2514 quality improvement assurance for each specific program  
 2515 component.

2516 (c) Establish quality improvement assurance goals and  
 2517 objectives for each specific program component.

2518 (d) Establish the information and specific data elements  
 2519 required for the quality improvement assurance program.

2520 (e) Develop a quality improvement assurance manual of  
 2521 specific, standardized terminology and procedures to be followed  
 2522 by each program.

2523 (f) Evaluate each program operated by the department or a

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2524 provider under a contract with the department annually and  
 2525 establish minimum standards thresholds for each program  
 2526 component. If a provider fails to meet the established minimum  
 2527 standards thresholds, ~~such failure shall cause~~ the department  
 2528 shall ~~to~~ cancel the provider's contract unless the provider  
 2529 complies ~~achieves compliance~~ with minimum standards thresholds  
 2530 within 6 months or unless there are documented extenuating  
 2531 circumstances. In addition, the department may not contract with  
 2532 the same provider for the canceled service for ~~a period of~~ 12  
 2533 months. If a department-operated program fails to meet the  
 2534 established minimum standards thresholds, the department must  
 2535 take necessary and sufficient steps to ensure, and document  
 2536 program changes to achieve, compliance with the established  
 2537 minimum standards thresholds. If the department-operated program  
 2538 fails to achieve compliance with the established minimum  
 2539 standards thresholds within 6 months and ~~if~~ there are no  
 2540 documented extenuating circumstances, the department shall ~~must~~  
 2541 notify the Executive Office of the Governor and the Legislature  
 2542 of the corrective action taken. Appropriate corrective action  
 2543 may include, but is not limited to:

2544 1. Contracting out for the services provided in the  
 2545 program;

2546 2. Initiating appropriate disciplinary action against all  
 2547 employees whose conduct or performance is deemed to have  
 2548 materially contributed to the program's failure to meet  
 2549 established minimum thresholds;

2550 3. Redesigning the program; or

2551 4. Realigning the program.

2552 (6) COMPREHENSIVE ACCOUNTABILITY REPORT; SUBMITTAL.—No

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2553 later than February 1 of each year, the department shall submit  
 2554 the Comprehensive Accountability ~~an annual~~ Report to the  
 2555 Governor, the President of the Senate, the Speaker of the House  
 2556 of Representatives, the Minority Leader of each house of the  
 2557 Legislature, and the appropriate substantive and fiscal  
 2558 committees of each house of the Legislature, ~~and the Governor,~~  
 2559 ~~no later than February 1 of each year.~~ The Comprehensive  
 2560 Accountability ~~annual~~ Report must contain, at a minimum, for  
 2561 each specific program component: a comprehensive description of  
 2562 the population served by the program; a specific description of  
 2563 the services provided by the program; cost; a comparison of  
 2564 expenditures to federal and state funding; immediate and long-  
 2565 range concerns; and recommendations to maintain, expand,  
 2566 improve, modify, or eliminate each program component so that  
 2567 changes in services lead to enhancement in program quality. The  
 2568 department shall ensure the reliability and validity of the  
 2569 information contained in the report.

2570 (7) (6) ONGOING EVALUATION. The department shall collect and  
 2571 analyze available statistical data for the purpose of ongoing  
 2572 evaluation of all programs. The department shall provide the  
 2573 Legislature with necessary information and reports to enable the  
 2574 Legislature to make informed decisions regarding the  
 2575 effectiveness of, and any needed changes in, services, programs,  
 2576 policies, and laws.

2577 Section 32. Paragraph (a) of subsection (1) and paragraph  
 2578 (b) of subsection (3) of section 985.644, Florida Statutes, are  
 2579 amended to read:

2580 985.644 Departmental contracting powers; personnel  
 2581 standards and screening.—

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2582 (1) The department may contract with the Federal  
 2583 Government, other state departments and agencies, county and  
 2584 municipal governments and agencies, public and private agencies,  
 2585 and private individuals and corporations in carrying out the  
 2586 purposes of, and the responsibilities established in, this  
 2587 chapter.

2588 (a) Each contract entered into by the department for  
 2589 services delivered on an appointment or intermittent basis by a  
 2590 provider that does not have regular custodial responsibility for  
 2591 children, and each contract with a school for ~~before or~~  
 2592 ~~aftercare~~ services, must ensure that all owners, operators, and  
 2593 personnel who have direct contact with children are subject to  
 2594 level 2 background screening pursuant to chapter 435.

2595 (3)

2596 (b) Certified ~~Except for~~ law enforcement, correctional, and  
 2597 correctional probation officers, pursuant to s. 943.13, are not  
 2598 required to submit to level 2 screenings while employed by a law  
 2599 enforcement agency or correctional facility. ~~to whom s.~~  
 2600 ~~943.13(5) applies.~~ The department shall electronically submit to  
 2601 the Department of Law Enforcement:

2602 1. Fingerprint information obtained during the employment  
 2603 screening required by subparagraph (a)1.

2604 2. Fingerprint information for all persons employed by the  
 2605 department, or by a provider under contract with the department,  
 2606 in delinquency facilities, services, or programs if such  
 2607 fingerprint information has not ~~previously~~ previously  
 2608 electronically submitted pursuant to this section ~~to the~~  
 2609 ~~Department of Law Enforcement under this paragraph.~~

2610 Section 33. Section 985.6441, Florida Statutes, is created

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2611 to read:

2612 985.6441 Health care services.-2613 (1) As used in this section, the term:2614 (a) "Hospital" means a hospital licensed under chapter 395.2615 (b) "Health care provider" has the same meaning as provided  
2616 in s. 766.105.2617 (2) The following reimbursement limitations apply to the  
2618 compensation of health care providers by the department:2619 (a) If there is no contract between the department and a  
2620 hospital or a health care provider providing services at a  
2621 hospital, payments to such hospital or such health care provider  
2622 may not exceed 110 percent of the Medicare allowable rate for  
2623 any health care service provided.2624 (b) If a contract has been executed between the department  
2625 and a hospital or a health care provider providing services at a  
2626 hospital, the department may continue to make payments for  
2627 health care services at the currently contracted rates through  
2628 the current term of the contract; however, payments may not  
2629 exceed 110 percent of the Medicare allowable rate after the  
2630 current term of the contract expires or after the contract is  
2631 renewed during the 2013-2014 fiscal year.2632 (c) Payments may not exceed 110 percent of the Medicare  
2633 allowable rate under a contract executed on or after July 1,  
2634 2014, between the department and a hospital or a health care  
2635 provider providing services at a hospital.2636 (d) Notwithstanding paragraphs (a)-(c), the department may  
2637 pay up to 125 percent of the Medicare allowable rate for health  
2638 care services at a hospital that demonstrates or has  
2639 demonstrated through hospital-audited financial data a negative

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2640 operating margin for the previous fiscal year to the Agency for  
2641 Health Care Administration.2642 (e) The department may execute a contract for health care  
2643 services at a hospital for rates other than rates based on a  
2644 percentage of the Medicare allowable rate.2645 Section 34. Section 985.66, Florida Statutes, is amended to  
2646 read:2647 985.66 Juvenile justice training ~~academies~~; staff  
2648 development and training; Juvenile Justice Training Trust Fund.-2649 (1) LEGISLATIVE PURPOSE.-In order to enable the state to  
2650 provide a systematic approach to staff development and training  
2651 for judges, state attorneys, public defenders, law enforcement  
2652 officers, school district personnel, and juvenile justice  
2653 program staff which meets ~~that will meet~~ the needs of such  
2654 persons in the ~~their~~ discharge of their duties while at the same  
2655 time meeting the requirements for the American Correction  
2656 Association accreditation by the Commission on Accreditation for  
2657 Corrections, it is the purpose of the Legislature to require the  
2658 department to establish, maintain, and oversee the operation of  
2659 juvenile justice training programs and courses ~~academies~~ in the  
2660 state. The purpose of the Legislature in establishing staff  
2661 development and training programs is to provide employees of the  
2662 department or any private or public entity or contract providers  
2663 who provide services or care for youth under the responsibility  
2664 of the department with the knowledge and skills to appropriately  
2665 interact with youth and provide such care ~~foster better staff~~  
2666 ~~morale and reduce mistreatment and aggressive and abusive~~  
2667 ~~behavior in delinquency programs~~; to positively impact the  
2668 recidivism of children in the juvenile justice system; and to

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2669 afford greater protection of the public through an improved  
 2670 level of services delivered by a professionally trained juvenile  
 2671 justice program staff to children who are alleged to be or who  
 2672 have been found to be delinquent.

2673 (2) STAFF DEVELOPMENT AND TRAINING.—The department shall:

2674 (a) Designate the number and location of the training  
 2675 programs and courses ~~academies~~; assess, design, develop,  
 2676 implement, evaluate, maintain, and update the curriculum to be  
 2677 used in the training of juvenile justice ~~program~~ staff;  
 2678 establish timeframes for participation in and completion of  
 2679 training by juvenile justice ~~program~~ staff; develop, implement,  
 2680 score, analyze, maintain, and update job-related examinations;  
 2681 develop, implement, analyze, and update the types and  
 2682 frequencies of evaluations of the training programs, courses,  
 2683 and instructors ~~academies~~; and manage approve, modify, or  
 2684 disapprove the budget and contracts for all the training  
 2685 deliverables ~~academies,~~ and the ~~contractor to be selected to~~  
 2686 ~~organize and operate the training academies and to provide the~~  
 2687 ~~training curriculum.~~

2688 (b) Establish uniform minimum job-related preservice and  
 2689 inservice training courses and examinations for juvenile justice  
 2690 ~~program~~ staff.

2691 (c) Consult and cooperate with the state or any political  
 2692 subdivision; any private entity or contractor; and with private  
 2693 and public universities, colleges, community colleges, and other  
 2694 educational institutions concerning the development of juvenile  
 2695 justice training and programs or courses of instruction,  
 2696 including, but not limited to, education and training in the  
 2697 areas of juvenile justice.

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2698 (d) Enter into contracts and agreements with other  
 2699 agencies, organizations, associations, corporations,  
 2700 individuals, or federal agencies as necessary in the execution  
 2701 of the powers of the department or the performance of its  
 2702 duties.

2703 (3) JUVENILE JUSTICE TRAINING PROGRAM.—The department shall  
 2704 establish a certifiable program for juvenile justice training  
 2705 pursuant to this section, and all department program staff, ~~and~~  
 2706 Providers who deliver direct care services pursuant to contract  
 2707 with the department shall ~~be required to~~ participate in and  
 2708 successfully complete the department-approved program of  
 2709 training pertinent to their areas of responsibility. Judges,  
 2710 state attorneys, ~~and~~ public defenders, law enforcement officers,  
 2711 ~~and~~ school district personnel, and employees of contract  
 2712 providers who provide services or care for youth under the  
 2713 responsibility of the department may participate in such a  
 2714 training program. For the juvenile justice ~~program~~ staff, the  
 2715 ~~department shall,~~ based on a job-task analysis:

2716 (a) The department shall design, implement, maintain,  
 2717 evaluate, and revise a basic training program, including a  
 2718 competency-based examination, for the purpose of providing  
 2719 minimum employment training qualifications for all juvenile  
 2720 justice personnel. All program staff of the department and  
 2721 providers who deliver direct-care services who are hired after  
 2722 October 1, 1999, shall, at a ~~must meet the following~~ minimum  
 2723 ~~requirements:~~

- 2724 1. Be at least 19 years of age.
- 2725 2. Be a high school graduate or its equivalent, as
- 2726 determined by the department.

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2727 3. Not have been convicted of any felony or a misdemeanor  
 2728 involving perjury or a false statement, or have received a  
 2729 dishonorable discharge from any of the Armed Forces of the  
 2730 United States. A ~~Any~~ person who, after September 30, 1999,  
 2731 pleads guilty or nolo contendere to or is found guilty of any  
 2732 felony or a misdemeanor involving perjury or false statement is  
 2733 not eligible for employment, notwithstanding suspension of  
 2734 sentence or withholding of adjudication. Notwithstanding this  
 2735 subparagraph, a ~~any~~ person who pled nolo contendere to a  
 2736 misdemeanor involving a false statement before October 1, 1999,  
 2737 and ~~who~~ has had such record of that plea sealed or expunged is  
 2738 not ineligible for employment for that reason.

2739 4. Abide by all the provisions of s. 985.644(1) regarding  
 2740 fingerprinting, and background investigations, and other  
 2741 screening requirements ~~for personnel~~.

2742 5. Execute and submit to the department an affidavit-of-  
 2743 application form, approved ~~adopted~~ by the department, attesting  
 2744 to his or her compliance with subparagraphs 1.-4. The affidavit  
 2745 must be executed under oath and constitutes an official  
 2746 statement under s. 837.06. The affidavit must include a  
 2747 conspicuous statement language that the intentional false  
 2748 execution of the affidavit constitutes a misdemeanor of the  
 2749 second degree. The employing agency shall retain the affidavit.

2750 (b) The department shall design, implement, maintain,  
 2751 evaluate, and revise an advanced training program, including a  
 2752 competency-based examination for each training course, which is  
 2753 intended to enhance knowledge, skills, and abilities related to  
 2754 job performance.

2755 (c) The department shall design, implement, maintain,

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2756 evaluate, and revise a career development training program,  
 2757 including a competency-based examination for each training  
 2758 course. Career development courses are intended to prepare  
 2759 personnel for promotion.

2760 (d) The department is encouraged to design, implement,  
 2761 maintain, evaluate, and revise juvenile justice training  
 2762 courses, or to enter into contracts for such training courses,  
 2763 that are intended to provide for the safety and well-being of  
 2764 both citizens and juvenile offenders.

2765 (4) JUVENILE JUSTICE TRAINING TRUST FUND.—

2766 (a) There is created within the State Treasury a Juvenile  
 2767 Justice Training Trust Fund to be used by the department for the  
 2768 purpose of funding the development and updating of a job-task  
 2769 analysis of juvenile justice personnel; the development,  
 2770 implementation, and updating of job-related training courses and  
 2771 examinations; and the cost of juvenile justice training courses.

2772 (b) One dollar from every noncriminal traffic infraction  
 2773 collected pursuant to ss. 318.14(10) (b) and 318.18 shall be  
 2774 deposited into the Juvenile Justice Training Trust Fund.

2775 (c) In addition to the funds generated by paragraph (b),  
 2776 the trust fund may receive funds from any other public or  
 2777 private source.

2778 (d) Funds that are not expended by the end of the budget  
 2779 cycle or through a supplemental budget approved by the  
 2780 department shall revert to the trust fund.

2781 ~~(5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.—~~

2782 ~~The number, location, and establishment of juvenile justice~~  
 2783 ~~training academies shall be determined by the department.~~

2784 (5)(6) SCHOLARSHIPS AND STIPENDS.—The department shall

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2785 establish criteria to award scholarships or stipends to  
 2786 qualified juvenile justice personnel who are residents of the  
 2787 state ~~and who~~ want to pursue a bachelor's or associate in arts  
 2788 degree in juvenile justice or a related field. The department  
 2789 shall administer ~~handle the administration of~~ the scholarship or  
 2790 stipend. The Department of Education shall manage ~~handle~~ the  
 2791 notes issued for the payment of the scholarships or stipends.  
 2792 All scholarship and stipend awards shall be paid from the  
 2793 Juvenile Justice Training Trust Fund upon vouchers approved by  
 2794 the Department of Education and properly certified by the Chief  
 2795 Financial Officer. Before ~~Prior to~~ the award of a scholarship or  
 2796 stipend, the juvenile justice employee must agree in writing to  
 2797 practice her or his profession in juvenile justice or a related  
 2798 field for 1 month for each month of grant or to repay the full  
 2799 amount of the scholarship or stipend together with interest at  
 2800 the rate of 5 percent per annum over a period of up to not to  
 2801 ~~exceed~~ 10 years. Repayment is ~~shall be made~~ payable to the state  
 2802 for deposit into the Juvenile Justice Training Trust Fund.

2803 (6)(7) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK  
 2804 MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of  
 2805 Risk Management of the Department of Financial Services is  
 2806 authorized to insure a private agency, individual, or  
 2807 corporation operating a state-owned training school under a  
 2808 contract to carry out the purposes and responsibilities of any  
 2809 program of the department. The coverage authorized under this  
 2810 subsection is subject to herein shall be under the same general  
 2811 terms and conditions as the coverage afforded the department ~~is~~  
 2812 ~~insured for its responsibilities~~ under chapter 284.

2813 Section 35. Subsection (5) of section 985.664, Florida

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2814 Statutes, is amended to read:

2815 985.664 Juvenile justice circuit advisory boards.—

2816 (5) ~~(a) To form the initial juvenile justice circuit~~  
 2817 ~~advisory board, the Secretary of Juvenile Justice, in~~  
 2818 ~~consultation with the juvenile justice county councils in~~  
 2819 ~~existence on October 1, 2013, shall appoint the chair of the~~  
 2820 ~~board, who must meet the board membership requirements in~~  
 2821 ~~subsection (4). Within 45 days after being appointed, the chair~~  
 2822 ~~shall appoint the remaining members to the juvenile justice~~  
 2823 ~~circuit advisory board and submit the appointments to the~~  
 2824 ~~department for approval.~~

2825 ~~(b) Thereafter,~~ When a vacancy in the office of the chair  
 2826 occurs, ~~the Secretary of Juvenile Justice, in consultation with~~  
 2827 the juvenile justice circuit advisory board, shall appoint a new  
 2828 chair, who must meet the board membership requirements in  
 2829 subsection (4). The chair shall appoint members to vacant seats  
 2830 within 45 days after the vacancy and submit the appointments to  
 2831 the department for approval. The chair serves at the pleasure of  
 2832 the Secretary of Juvenile Justice.

2833 Section 36. Subsections (1) and (4) of section 985.672,  
 2834 Florida Statutes, are amended to read:

2835 985.672 Direct-support organization; definition; use of  
 2836 property; board of directors; audit.—

2837 (1) DEFINITION.—As used in this section, the term "direct-  
 2838 support organization" means an organization whose sole purpose  
 2839 is to support the juvenile justice system and which is:

2840 (a) A corporation not-for-profit incorporated under chapter  
 2841 617 and ~~which is~~ approved by the Department of State;

2842 (b) Organized and operated to conduct programs and

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2843 activities; to raise funds; to request and receive grants,  
 2844 gifts, and bequests of moneys; to acquire, receive, hold,  
 2845 invest, and administer, in its own name, securities, funds,  
 2846 objects of value, or other ~~property~~, real or personal property;  
 2847 and to make expenditures to or for the direct or indirect  
 2848 benefit of the Department of Juvenile Justice or the juvenile  
 2849 justice system operated by a county commission or a circuit  
 2850 board;

2851 (c) Determined by the Department of Juvenile Justice to be  
 2852 consistent with the goals of the juvenile justice system, in the  
 2853 best interest of the state, and in accordance with the adopted  
 2854 goals and mission of the Department of Juvenile Justice.

2855 Expenditures of the organization shall be expressly used for the  
 2856 prevention and amelioration of ~~to prevent and ameliorate~~  
 2857 juvenile delinquency. Such funds ~~The expenditures of the direct-~~  
 2858 ~~support organization~~ may not be used for the purpose of lobbying  
 2859 as defined in s. 11.045.

2861 (4) USE OF PROPERTY.—The department may allow permit,  
 2862 without charge, appropriate use of fixed property, and  
 2863 facilities, and personnel services of the juvenile justice  
 2864 system by the direct-support organization, subject to the  
 2865 provisions of this section. For the purposes of this subsection,  
 2866 the term "personnel services" includes full-time or part-time  
 2867 personnel as well as payroll processing services.

2868 (a) The department may prescribe any condition with which  
 2869 the direct-support organization must comply in order to use  
 2870 fixed property or facilities of the juvenile justice system.

2871 (b) The department may not permit the use of any fixed

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2872 property or facilities of the juvenile justice system by the  
 2873 direct-support organization if it does not provide equal  
 2874 membership and employment opportunities to all persons  
 2875 regardless of race, color, religion, sex, age, or national  
 2876 origin.

2877 (c) The department shall adopt rules prescribing the  
 2878 procedures by which the direct-support organization is governed  
 2879 and any conditions with which a direct-support organization must  
 2880 comply to use property or facilities of the department.

2881 Section 37. Section 985.682, Florida Statutes, is amended  
 2882 to read:

2883 985.682 Siting of facilities; ~~study; criteria.~~—

2884 ~~(1) The department is directed to conduct or contract for a~~  
 2885 ~~statewide comprehensive study to determine current and future~~  
 2886 ~~needs for all types of facilities for children committed to the~~  
 2887 ~~custody, care, or supervision of the department under this~~  
 2888 ~~chapter.~~

2889 ~~(2) The study shall assess, rank, and designate appropriate~~  
 2890 ~~sites, and shall be reflective of the different purposes and~~  
 2891 ~~uses for all facilities, based upon the following criteria:~~

2892 ~~(a) Current and future estimates of children originating~~  
 2893 ~~from each county;~~

2894 ~~(b) Current and future estimates of types of delinquent~~  
 2895 ~~acts committed in each county;~~

2896 ~~(c) Geographic location of existing facilities;~~

2897 ~~(d) Availability of personnel within the local labor~~  
 2898 ~~market;~~

2899 ~~(e) Current capacity of facilities in the area;~~

2900 ~~(f) Total usable and developable acreage of various sites~~

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2901 ~~based upon the use and purpose of the facility;~~  
 2902 ~~(g) Accessibility of each site to existing utility,~~  
 2903 ~~transportation, law enforcement, health care, fire protection,~~  
 2904 ~~refuse collection, water, and sewage disposal services;~~  
 2905 ~~(h) Susceptibility of each site to flooding hazards or~~  
 2906 ~~other adverse natural environmental consequences;~~  
 2907 ~~(i) Site location in relation to desirable and undesirable~~  
 2908 ~~proximity to other public facilities, including schools;~~  
 2909 ~~(j) Patterns of residential growth and projected population~~  
 2910 ~~growth; and~~  
 2911 ~~(k) Such other criteria as the department, in conjunction~~  
 2912 ~~with local governments, deems appropriate.~~  
 2913 ~~(3) The department shall recommend certification of the~~  
 2914 ~~study by the Governor and Cabinet within 2 months after its~~  
 2915 ~~receipt.~~  
 2916 ~~(4) Upon certification of the study by the Governor and~~  
 2917 ~~Cabinet, the department shall notify those counties designated~~  
 2918 ~~as being in need of a facility.~~  
 2919 (1)(5) When the department or a contracted provider  
 2920 proposes a site for a juvenile justice facility, the department  
 2921 or provider shall request that the local government having  
 2922 jurisdiction over such proposed site determine whether ~~or not~~  
 2923 the proposed site is appropriate for public use under local  
 2924 government comprehensive plans, local land use ordinances, local  
 2925 zoning ordinances or regulations, and other local ordinances in  
 2926 effect at the time of such request. If no such determination is  
 2927 made within 90 days after the request, it is ~~shall be~~ presumed  
 2928 that the proposed site is in compliance with such plans,  
 2929 ordinances, or regulations.

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2930 (2)(6) If the local government determines within 90 days  
 2931 after the request that construction of a facility on the  
 2932 proposed site does not comply with any such plan, ordinance, or  
 2933 regulation, the department may request a modification of such  
 2934 plan, ordinance, or regulation without having an ownership  
 2935 interest in such property. For the purposes of this section,  
 2936 modification includes, but is not limited to, a variance,  
 2937 rezoning, special exception, or any other action of the local  
 2938 government having jurisdiction over the proposed site which  
 2939 would authorize siting of a facility.  
 2940 (3)(7) Upon receipt of a request for modification from the  
 2941 department, the local government may recommend and hold a public  
 2942 hearing on the request for modification in the same manner as  
 2943 for a rezoning as provided under the appropriate special or  
 2944 local law or ordinance, except that such proceeding shall be  
 2945 recorded by tape or by a certified court reporter and made  
 2946 available for transcription at the expense of any interested  
 2947 party.  
 2948 (4)(8) ~~If when~~ the department requests such a modification  
 2949 and it is denied by the local government, the local government  
 2950 or the department shall initiate the dispute resolution process  
 2951 established under s. 186.509 to reconcile differences on the  
 2952 siting of correctional facilities between the department, local  
 2953 governments, and private citizens. If the regional planning  
 2954 council has not established a dispute resolution process  
 2955 pursuant to s. 186.509, the department shall establish, by rule,  
 2956 procedures for dispute resolution. The dispute resolution  
 2957 process must ~~shall~~ require the parties to commence meetings to  
 2958 reconcile their differences. If the parties fail to resolve

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2959 their differences within 30 days after the denial, ~~they the~~  
 2960 ~~parties~~ shall engage in voluntary mediation or a similar  
 2961 process. If the parties fail to resolve their differences by  
 2962 mediation within 60 days after the denial, or if no action is  
 2963 taken on the department's request within 90 days after the  
 2964 request, the department must appeal the decision of the local  
 2965 government on the requested modification of local plans,  
 2966 ordinances, or regulations to the Governor and Cabinet. A ~~Any~~  
 2967 dispute resolution process initiated under this section must  
 2968 conform to the time limitations set forth in this subsection  
 2969 ~~herein~~. However, upon agreement of all parties, the time limits  
 2970 may be extended, but ~~in no event may~~ the dispute resolution  
 2971 process may not extend beyond ~~over~~ 180 days.

2972 (5)(9) The Governor and Cabinet shall consider the  
 2973 following when determining whether to grant the appeal from the  
 2974 decision of the local government on the requested modification:

2975 (a) The record of the proceedings before the local  
 2976 government.

2977 (b) Reports and studies by any other agency relating to  
 2978 matters within the jurisdiction of such agency which may be  
 2979 potentially affected by the proposed site.

2980 ~~(c) The statewide study, as established in subsection (1),~~  
 2981 ~~other~~ Existing studies; reports and information maintained by  
 2982 the department as the Governor and Cabinet may request  
 2983 addressing the feasibility and availability of alternative sites  
 2984 in the general area; and the need for a facility in the area  
 2985 based on the average number of petitions, commitments, and  
 2986 transfers into the criminal court from the county to state  
 2987 facilities for the 3 most recent 3 calendar years.

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2988 (6)(10) The Governor and Cabinet, upon determining that the  
 2989 local government has not recommended ~~a~~ ~~ne~~ feasible alternative  
 2990 site and that the interests of the state in providing facilities  
 2991 outweigh the concerns of the local government, shall authorize  
 2992 construction and operation of a facility on the proposed site  
 2993 notwithstanding any local plan, ordinance, or regulation.

2994 (7)(11) The Governor and Cabinet may adopt rules ~~of~~  
 2995 ~~procedure~~ to govern these proceedings in accordance with ~~the~~  
 2996 ~~provisions of~~ s. 120.54.

2997 (8)(12) Actions taken by the department or the Governor and  
 2998 Cabinet pursuant to this section are not ~~shall not be~~ subject to  
 2999 ~~the provisions of~~ ss. 120.56, 120.569, and 120.57. The decision  
 3000 by the Governor and Cabinet is ~~shall be~~ subject to judicial  
 3001 review pursuant to s. 120.68 in the District Court of Appeal,  
 3002 First District.

3003 (9)(13) All other departments and agencies of the state  
 3004 shall cooperate fully with the department to accomplish the  
 3005 siting of facilities for juvenile offenders.

3006 (10)(14) It is the intent of the Legislature to expedite  
 3007 the siting of, acquisition of land for, and construction by the  
 3008 Department of Juvenile Justice of state juvenile justice  
 3009 facilities operated by the department or a private vendor under  
 3010 contract with the department. Other agencies shall cooperate  
 3011 with the department and expeditiously fulfill their  
 3012 responsibilities to avoid unnecessary delay in the siting of,  
 3013 acquisition of land for, and construction of state juvenile  
 3014 justice facilities. This section and all other laws of the state  
 3015 shall be construed to accomplish this intent. This section takes  
 3016 ~~shall take~~ precedence over any other law ~~to the contrary~~.

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3017 ~~(11)-(15)~~ (a) The department shall acquire land and erect  
 3018 juvenile justice facilities necessary to accommodate children  
 3019 committed to the custody, care, or supervision of the  
 3020 department, and shall make additional alterations to facilities  
 3021 to accommodate any increase in the number of children. The  
 3022 department shall establish adequate accommodations for staff of  
 3023 the department who are required to reside continuously within  
 3024 the facilities.

3025 (b) Notwithstanding s. 255.25(1) and contingent upon  
 3026 available funds, the department may enter into lease-purchase  
 3027 agreements to provide juvenile justice facilities for housing  
 3028 committed youths, ~~contingent upon available funds~~. The  
 3029 facilities provided through such agreements must meet the  
 3030 program plan and specifications of the department. The  
 3031 department may enter into such lease agreements with private  
 3032 corporations and other governmental entities. However, with the  
 3033 exception of contracts entered into with other governmental  
 3034 entities, and notwithstanding s. 255.25(3) (a), a lease agreement  
 3035 may not be entered into except upon advertisement for the  
 3036 receipt of competitive bids and award to the lowest and best  
 3037 bidder ~~except if contracting with other governmental entities~~.

3038 (c) A lease-purchase agreement that is for a term extending  
 3039 beyond the end of a fiscal year is subject to ~~the provisions of~~  
 3040 s. 216.311.

3041 ~~(12)-(16)~~ (a) Notwithstanding s. 253.025 or s. 287.057, if  
 3042 ~~when~~ the department finds it necessary for timely site  
 3043 acquisition, it may contract, without using the competitive  
 3044 selection procedure, with an appraiser whose name is on the list  
 3045 of approved appraisers maintained by the Division of State Lands

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3046 of the Department of Environmental Protection under s.  
 3047 253.025(6) (b). If ~~when~~ the department directly contracts for  
 3048 appraisal services, it must contract with an approved appraiser  
 3049 who is not employed by the same appraisal firm for review  
 3050 services.

3051 (b) Notwithstanding s. 253.025(6), the department may  
 3052 negotiate and enter into an option contract before an appraisal  
 3053 is obtained. The option contract must state that the final  
 3054 purchase price may not exceed the maximum value allowed by law.  
 3055 The consideration for such an option contract may not exceed 10  
 3056 percent of the estimate obtained by the department or 10 percent  
 3057 of the value of the parcel, whichever amount is greater.

3058 (c) This subsection applies only to a purchase or  
 3059 acquisition of land for juvenile justice facilities. This  
 3060 subsection does not modify the authority of the Board of  
 3061 Trustees of the Internal Improvement Trust Fund or the Division  
 3062 of State Lands of the Department of Environmental Protection to  
 3063 approve any contract for purchase of state lands as provided by  
 3064 law or to require policies and procedures to obtain clear legal  
 3065 title to parcels purchased for state purposes.

3066 ~~(13)-(17)~~ The department may sell, to the best possible  
 3067 advantage, any detached parcels of land belonging to the bodies  
 3068 of land purchased for the state juvenile justice facilities. The  
 3069 department may purchase any parcel of land contiguous with the  
 3070 lands purchased for state juvenile justice facilities.

3071 ~~(14)-(18)~~ The department may begin preliminary site  
 3072 preparation and obtain the appropriate permits for the  
 3073 construction of a juvenile justice facility after approval of  
 3074 the lease-purchase agreement or option contract by the Board of

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3075 Trustees of the Internal Improvement Trust Fund ~~of the lease~~  
 3076 ~~purchase agreement or option contract if, in the department~~  
 3077 ~~determines that department's discretion,~~ commencing construction  
 3078 is in the best interests of the state.

3079 ~~(15)(19) If insofar as the provisions of~~ this section is  
 3080 ~~are~~ inconsistent with the provisions of any other general,  
 3081 special, or local law, ~~general, special, or local,~~ the  
 3082 ~~provisions of~~ this section is ~~are~~ controlling. Additionally, the  
 3083 criteria and procedures established under set forth in this  
 3084 section supersede and are in lieu of any review and approval  
 3085 required by s. 380.06.

3086 Section 38. Section 985.69, Florida Statutes, is amended to  
 3087 read:

3088 985.69 Repair and maintenance ~~One-time startup~~ funding for  
 3089 juvenile justice purposes.—Funds from juvenile justice  
 3090 appropriations may be used ~~utilized as one-time startup funding~~  
 3091 for juvenile justice purposes that include, but are not limited  
 3092 to, remodeling or renovation of existing facilities,  
 3093 construction costs, leasing costs, purchase of equipment and  
 3094 furniture, site development, and other necessary and reasonable  
 3095 costs associated with the repair and maintenance startup of  
 3096 facilities or programs.

3097 Section 39. Section 985.694, Florida Statutes, is repealed.

3098 Section 40. Paragraph (a) of subsection (1) of section  
 3099 985.701, Florida Statutes, is reordered and amended to read:

3100 985.701 Sexual misconduct prohibited; reporting required;  
 3101 penalties.—

3102 (1)(a)1. As used in this section subsection, the term:

3103 ~~c.a.~~ "Sexual misconduct" means fondling the genital area,

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3104 groin, inner thighs, buttocks, or breasts of a person; the oral,  
 3105 anal, or vaginal penetration by or union with the sexual organ  
 3106 of another; or the anal or vaginal penetration of another by any  
 3107 other object. The term does not include an act done for a bona  
 3108 fide medical purpose or an internal search conducted in the  
 3109 lawful performance of duty by an employee of the department or  
 3110 an employee of a provider under contract with the department.

3111 ~~a.b.~~ "Employee" means a includes paid staff ~~member members,~~  
 3112 a volunteer volunteers, or an intern and interns who ~~works work~~  
 3113 in a department program or a program operated by a provider  
 3114 under a contract.

3115 b. "Juvenile offender" means a person of any age who is  
 3116 detained or supervised by, or committed to the custody of, the  
 3117 department.

3118 2. An employee who engages in sexual misconduct with a  
 3119 juvenile offender ~~detained or supervised by, or committed to the~~  
 3120 ~~custody of, the department~~ commits a felony of the second  
 3121 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 3122 775.084. An employee may be found guilty of violating this  
 3123 subsection without having committed the crime of sexual battery.

3124 3. The consent of the juvenile offender to any act of  
 3125 sexual misconduct is not a defense to prosecution under this  
 3126 subsection.

3127 4. This subsection does not apply to an employee of the  
 3128 department, ~~or an employee~~ of a provider under contract with the  
 3129 department, who:

3130 a. Is legally married to a juvenile offender who is  
 3131 detained or supervised by, or committed to the custody of, the  
 3132 department.

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3133 b. Has no reason to believe that the person with whom the  
3134 employee engaged in sexual misconduct is a juvenile offender  
3135 ~~detained or supervised by, or committed to the custody of, the~~  
3136 ~~department.~~

3137 Section 41. Section 985.702, Florida Statutes, is created  
3138 to read:

3139 985.702 Willful and malicious neglect of a juvenile  
3140 offender prohibited; reporting required; penalties.-

3141 (1) As used in this section, the term:

3142 (a) "Employee" means a paid staff member, volunteer, or  
3143 intern who works in a department program or a program operated  
3144 by a provider under a contract with the department.

3145 (b) "Juvenile offender" means a person of any age who is  
3146 detained by, or committed to the custody of, the department.

3147 (c) "Neglect" means:

3148 1. An employee's failure or omission to provide a juvenile  
3149 offender with the proper level of care, supervision, and  
3150 services necessary to maintain the juvenile offender's physical  
3151 and mental health, including, but not limited to, adequate food,  
3152 nutrition, clothing, shelter, supervision, medicine, and medical  
3153 services; or

3154 2. An employee's failure to make a reasonable effort to  
3155 protect a juvenile offender from abuse, neglect, or exploitation  
3156 by another person.

3157 (2) (a) An employee who willfully and maliciously neglects a  
3158 juvenile offender without causing great bodily harm, permanent  
3159 disability, or permanent disfigurement to a juvenile offender,  
3160 commits a felony of the third degree, punishable as provided in  
3161 s. 775.082, s. 775.083, or s. 775.084.

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3162 (b) An employee who willfully and maliciously neglects a  
3163 juvenile offender and in so doing causes great bodily harm,  
3164 permanent disability, or permanent disfigurement to a juvenile  
3165 offender, commits a felony of the second degree, punishable as  
3166 provided in s. 775.082, s. 775.083, or s. 775.084.

3167 (c) Notwithstanding prosecution, any violation of paragraph  
3168 (a) or paragraph (b), as determined by the Public Employees  
3169 Relations Commission, constitutes sufficient cause under s.  
3170 110.227 for dismissal from employment with the department, and a  
3171 person who commits such violation may not again be employed in  
3172 any capacity in connection with the juvenile justice system.

3173 (3) An employee who witnesses the neglect of a juvenile  
3174 offender shall immediately report the incident to the  
3175 department's incident hotline and prepare, date, and sign an  
3176 independent report that specifically describes the nature of the  
3177 incident, the location and time of the incident, and the persons  
3178 involved. The employee shall deliver the report to the  
3179 employee's supervisor or program director, who must provide  
3180 copies to the department's inspector general and the circuit  
3181 juvenile justice manager. The inspector general shall  
3182 immediately conduct an appropriate administrative investigation,  
3183 and, if there is probable cause to believe that a violation of  
3184 subsection (2) has occurred, the inspector general shall notify  
3185 the state attorney in the circuit in which the incident  
3186 occurred.

3187 (4) (a) A person who is required to prepare a report under  
3188 this section and who knowingly or willfully fails to do so, or  
3189 who knowingly or willfully prevents another person from doing  
3190 so, commits a misdemeanor of the first degree, punishable as

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3191 provided in s. 775.082 or s. 775.083.

3192 (b) A person who knowingly or willfully submits inaccurate,  
 3193 incomplete, or untruthful information with respect to a report  
 3194 required under this section commits a misdemeanor of the first  
 3195 degree, punishable as provided in s. 775.082 or s. 775.083.

3196 (c) A person who knowingly or willfully coerces or  
 3197 threatens any other person with the intent to alter testimony or  
 3198 a written report regarding the neglect of a juvenile offender  
 3199 commits a felony of the third degree, punishable as provided in  
 3200 s. 775.082, s. 775.083, or s. 775.084.

3201 Section 42. Paragraphs (c) and (f) of subsection (3) of  
 3202 section 943.0582, Florida Statutes, are amended to read:

3203 943.0582 Prearrest, postarrest, or teen court diversion  
 3204 program expunction.—

3205 (3) The department shall expunge the nonjudicial arrest  
 3206 record of a minor who has successfully completed a prearrest or  
 3207 postarrest diversion program if that minor:

3208 (c) Submits to the department, with the application, an  
 3209 official written statement from the state attorney for the  
 3210 county in which the arrest occurred certifying that he or she  
 3211 has successfully completed that county's prearrest or postarrest  
 3212 diversion program, that his or her participation in the program  
 3213 was based on an arrest for a nonviolent misdemeanor, and that he  
 3214 or she has not otherwise been charged by the state attorney with  
 3215 or found to have committed any criminal offense or comparable  
 3216 ordinance violation.

3217 (f) Has never, prior to filing the application for  
 3218 expunction, been charged by the state attorney with or been  
 3219 found to have committed any criminal offense or comparable

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3220 ordinance violation.

3221 Section 43. Section 945.75, Florida Statutes, is repealed.

3222 Section 44. Paragraphs (e) through (i) of subsection (2),  
 3223 paragraphs (g) and (k) of subsection (3), paragraph (b) of  
 3224 subsection (5), paragraph (d) of subsection (8), and paragraph  
 3225 (c) of subsection (10) of section 121.0515, Florida Statutes,  
 3226 are amended to read:

3227 121.0515 Special Risk Class.—

3228 (2) MEMBERSHIP.—

3229 ~~(e) Effective July 1, 2001, "special risk member" includes~~  
 3230 ~~any member who is employed as a youth custody officer by the~~  
 3231 ~~Department of Juvenile Justice and meets the special criteria~~  
 3232 ~~set forth in paragraph (3)(g).~~

3233 (e)(f) Effective October 1, 2005, through June 30, 2008,  
 3234 the member must be employed by a law enforcement agency or  
 3235 medical examiner's office in a forensic discipline and meet the  
 3236 special criteria set forth in paragraph (3)(g) ~~(3)(h)~~.

3237 (f)(g) Effective July 1, 2008, the member must be employed  
 3238 by the Department of Law Enforcement in the crime laboratory or  
 3239 by the Division of State Fire Marshal in the forensic laboratory  
 3240 and meet the special criteria set forth in paragraph (3)(h)  
 3241 ~~(3)(i)~~.

3242 (g)(h) Effective July 1, 2008, the member must be employed  
 3243 by a local government law enforcement agency or medical  
 3244 examiner's office and meet the special criteria set forth in  
 3245 paragraph (3)(i) ~~(3)(j)~~.

3246 (h)(i) Effective August 1, 2008, "special risk member"  
 3247 includes any member who meets the special criteria for continued  
 3248 membership set forth in paragraph (3)(j) ~~(3)(k)~~.

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3249 (3) CRITERIA.—A member, to be designated as a special risk  
3250 member, must meet the following criteria:

3251 ~~(g) Effective July 1, 2001, the member must be employed as~~  
3252 ~~a youth custody officer and be certified, or required to be~~  
3253 ~~certified, in compliance with s. 943.1395. In addition, the~~  
3254 ~~member's primary duties and responsibilities must be the~~  
3255 ~~supervised custody, surveillance, control, investigation,~~  
3256 ~~apprehension, arrest, and counseling of assigned juveniles~~  
3257 ~~within the community;~~

3258 (j)(k) The member must have already qualified for and be  
3259 actively participating in special risk membership under  
3260 paragraph (a), paragraph (b), or paragraph (c), must have  
3261 suffered a qualifying injury as defined in this paragraph, must  
3262 not be receiving disability retirement benefits as provided in  
3263 s. 121.091(4), and must satisfy the requirements of this  
3264 paragraph.

3265 1. The ability to qualify for the class of membership  
3266 defined in paragraph (2)(h) ~~(2)(i)~~ occurs when two licensed  
3267 medical physicians, one of whom is a primary treating physician  
3268 of the member, certify the existence of the physical injury and  
3269 medical condition that constitute a qualifying injury as defined  
3270 in this paragraph and that the member has reached maximum  
3271 medical improvement after August 1, 2008. The certifications  
3272 from the licensed medical physicians must include, at a minimum,  
3273 that the injury to the special risk member has resulted in a  
3274 physical loss, or loss of use, of at least two of the following:  
3275 left arm, right arm, left leg, or right leg; and:

3276 a. That this physical loss or loss of use is total and  
3277 permanent, except if the loss of use is due to a physical injury

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3278 to the member's brain, in which event the loss of use is  
3279 permanent with at least 75 percent loss of motor function with  
3280 respect to each arm or leg affected.

3281 b. That this physical loss or loss of use renders the  
3282 member physically unable to perform the essential job functions  
3283 of his or her special risk position.

3284 c. That, notwithstanding this physical loss or loss of use,  
3285 the individual can perform the essential job functions required  
3286 by the member's new position, as provided in subparagraph 3.

3287 d. That use of artificial limbs is not possible or does not  
3288 alter the member's ability to perform the essential job  
3289 functions of the member's position.

3290 e. That the physical loss or loss of use is a direct result  
3291 of a physical injury and not a result of any mental,  
3292 psychological, or emotional injury.

3293 2. For the purposes of this paragraph, "qualifying injury"  
3294 means an injury sustained in the line of duty, as certified by  
3295 the member's employing agency, by a special risk member that  
3296 does not result in total and permanent disability as defined in  
3297 s. 121.091(4)(b). An injury is a qualifying injury if the injury  
3298 is a physical injury to the member's physical body resulting in  
3299 a physical loss, or loss of use, of at least two of the  
3300 following: left arm, right arm, left leg, or right leg.  
3301 Notwithstanding any other provision of this section, an injury  
3302 that would otherwise qualify as a qualifying injury is not  
3303 considered a qualifying injury if and when the member ceases  
3304 employment with the employer for whom he or she was providing  
3305 special risk services on the date the injury occurred.

3306 3. The new position, as described in sub-subparagraph 1.c.,

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3307 that is required for qualification as a special risk member  
 3308 under this paragraph is not required to be a position with  
 3309 essential job functions that entitle an individual to special  
 3310 risk membership. Whether a new position as described in sub-  
 3311 subparagraph 1.c. exists and is available to the special risk  
 3312 member is a decision to be made solely by the employer in  
 3313 accordance with its hiring practices and applicable law.

3314 4. This paragraph does not grant or create additional  
 3315 rights for any individual to continued employment or to be hired  
 3316 or rehired by his or her employer that are not already provided  
 3317 within the Florida Statutes, the State Constitution, the  
 3318 Americans with Disabilities Act, if applicable, or any other  
 3319 applicable state or federal law.

3320 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

3321 (b) Any member who is a special risk member on July 1,  
 3322 2008, and who became eligible to participate under paragraph  
 3323 (3) (g) ~~(3) (h)~~ but fails to meet the criteria for Special Risk  
 3324 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or  
 3325 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk  
 3326 designation removed and thereafter shall be a Regular Class  
 3327 member and earn only Regular Class membership credit. The  
 3328 department may review the special risk designation of members to  
 3329 determine whether or not those members continue to meet the  
 3330 criteria for Special Risk Class membership.

3331 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

3332 (d) Notwithstanding any other provision of this subsection,  
 3333 this subsection does not apply to any special risk member who  
 3334 qualifies for continued membership pursuant to paragraph (3) (j)  
 3335 ~~(3) (k)~~.

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3336 (10) CREDIT FOR UPGRADED SERVICE.—

3337 (c) Any member of the Special Risk Class who has earned  
 3338 creditable service through June 30, 2008, in another membership  
 3339 class of the Florida Retirement System in a position with the  
 3340 Department of Law Enforcement or the Division of State Fire  
 3341 Marshal and became covered by the Special Risk Class as  
 3342 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government  
 3343 law enforcement agency or medical examiner's office and became  
 3344 covered by the Special Risk Class as described in paragraph  
 3345 (3) (i) ~~(3) (j)~~, which service is within the purview of the  
 3346 Special Risk Class, and is employed in such position on or after  
 3347 July 1, 2008, may purchase additional retirement credit to  
 3348 upgrade such service to Special Risk Class service, to the  
 3349 extent of the percentages of the member's average final  
 3350 compensation provided in s. 121.091(1)(a)2. The cost for such  
 3351 credit must be an amount representing the actuarial accrued  
 3352 liability for the difference in accrual value during the  
 3353 affected period of service. The cost shall be calculated using  
 3354 the discount rate and other relevant actuarial assumptions that  
 3355 were used to value the Florida Retirement System Pension Plan  
 3356 liabilities in the most recent actuarial valuation. The division  
 3357 shall ensure that the transfer sum is prepared using a formula  
 3358 and methodology certified by an enrolled actuary. The cost must  
 3359 be paid immediately upon notification by the division. The local  
 3360 government employer may purchase the upgraded service credit on  
 3361 behalf of the member if the member has been employed by that  
 3362 employer for at least 3 years.

3363 Section 45. Subsection (5) of section 985.045, Florida  
 3364 Statutes, is amended to read:

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3365 985.045 Court records.-

3366 (5) This chapter does not prohibit a circuit court from  
3367 providing a restitution order containing the information  
3368 prescribed in s. 985.0301(5)(e) ~~s. 985.0301(5)(h)~~ to a  
3369 collection court or a private collection agency for the sole  
3370 purpose of collecting unpaid restitution ordered in a case in  
3371 which the circuit court has retained jurisdiction over the child  
3372 and the child's parent or legal guardian. The collection court  
3373 or private collection agency shall maintain the confidential  
3374 status of the information to the extent such confidentiality is  
3375 provided by law.

3376 Section 46. Section 985.721, Florida Statutes, is amended  
3377 to read:

3378 985.721 Escapes from secure detention or residential  
3379 commitment facility.-An escape from:

3380 (1) Any secure detention facility maintained for the  
3381 temporary detention of children, pending adjudication,  
3382 disposition, or placement;

3383 (2) Any residential commitment facility described in s.  
3384 985.03(41) ~~s. 985.03(46)~~, maintained for the custody, treatment,  
3385 punishment, or rehabilitation of children found to have  
3386 committed delinquent acts or violations of law; or

3387 (3) Lawful transportation to or from any such secure  
3388 detention facility or residential commitment facility,

3389

3390 constitutes escape within the intent and meaning of s. 944.40  
3391 and is a felony of the third degree, punishable as provided in  
3392 s. 775.082, s. 775.083, or s. 775.084.

3393 Section 47. This act shall take effect July 1, 2014.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Evers, Chair  
Committee on Criminal Justice

**Subject:** Committee Agenda Request

**Date:** January 29, 2014

---

I respectfully request that **700**, relating to Department of Juvenile Justice, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley".

---

Senator Rob Bradley  
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/14

Meeting Date

Topic Juvenile Justice

Bill Number 700  
*(if applicable)*

Name Lisa Hurlbey

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 100 S. Monroe St.

Phone 850.922.4300

Tallahassee, FL 32301  
City State Zip

E-mail lhurlbey@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.

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

February 17, 2014

*Meeting Date*

Topic Chapter 985

Bill Number 700

*(if applicable)*

Name Honorable Robert Dillinger

Amendment Barcode \_\_\_\_\_

*(if applicable)*

Job Title Public Defender, 6th Judicial Circuit

Address 14250 49th Street North

Phone 727.464.6516

*Street*

Clearwater

Florida

33762

*City*

*State*

*Zip*

E-mail bdilling@co.pinellas.fl.us

Speaking:  For  Against  Information

Representing Florida Public Defender Association, 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  
**APPEARANCE RECORD**

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

2/17/2014

Meeting Date

Topic Juvenile Justice (985)

Name Cathy Craig-Myers

Job Title Executive Director

Bill Number SB 700

(if applicable)

Amendment Barcode \_\_\_\_\_

(if applicable)

Address 3333 W. Pensacola Street Suite 240

Street

Tallahassee

City

FL 32304

State

Zip

Phone 850 671 3442

E-mail cathy@fjja.org

Speaking:  For  Against  Information

Representing Florida Juvenile Justice Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/14

Meeting Date

Topic Juv Justice Code Rewrite

Bill Number SB 700  
*(if applicable)*

Name Bob McClure

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title President / CEO, The James Madison Institute

Address 100 N. Duval St

Phone 850 380-3131

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Speaking:  For  Against  Information

Representing The James Madison Institute & other coalition members

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-14

Meeting Date

Topic DJJ

Bill Number 700  
*(if applicable)*

Name THAD LOWREY

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 7722 WASHINGTON ST.  
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Speaking:  For  Against  Information

Representing OPERATION PAR

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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Tobey - SB 700 Handout Sen. Gibson

2/17/14

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# Juvenile Justice: How prosecutors in Florida gained incredible power over the fate of juveniles

By Meredith Rutland Mon, Feb 3, 2014 @ 9:56 pm | updated Tue, Feb 4, 2014 @ 9:50 am



Bob Self  
 State Attorney Angela Corey

The headlines screamed across the world, branding Florida as a state of baby-faced murderers:

"Sun 'N' Guns: Florida crime surge rocks Canadians"

"Fear of Florida the latest phobia: State officials are as worried as the tourists"

"State of terror: Florida killing spoils Disney World dream for a million holiday Brits"

That was 1993. Nine tourists visiting the Sunshine State had died violently in the span of a year, several at the hands of gun-wielding teenagers.

*Celtic Woman*  
 Fri, Feb 28 - 8:00 PM  
 Jacksonville's Times-Union Center  
 artistseriesjax.org

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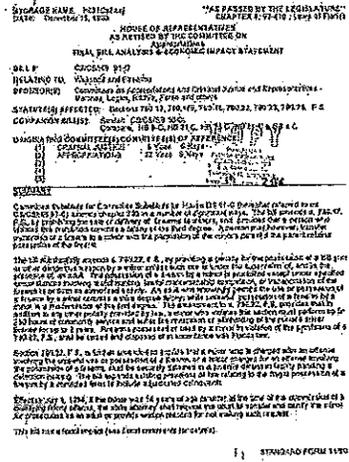


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NEWS

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 1:08pm

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Final bill analysis & economic impact statement relating to weapons and firearms. Click on the document to enlarge it for reading.

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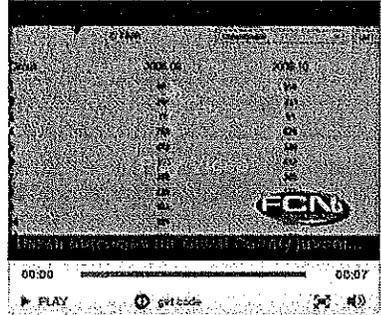
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**THE STORIES**

- How prosecutors in Florida gained incredible power over the fate of juveniles
- Angela Corey's office threatens Jacksonville area juveniles with adult charges, Matt Shirk and private attorneys say

**FCN VIDEO REPORT**



Before 1994, judges would hold a special hearing, much like a small trial, where both sides would argue their case to decide which court would be best for each contested case.

After this law was changed, state attorneys could send children directly to adult court without that hearing and without a juvenile judge's go-ahead.

Florida's multibillion-dollar tourist industry was near panic. The Florida legislature called an emergency session.

"Law enforcement, whether it was city police or sheriff's offices, were screaming to have something done," said former Florida Rep. Buzz Ritchie "They would pick up a teenager, a child if you will, for doing something that was obviously a felony, but they're back on the street the next morning."

What they did was give state attorneys incredible power over the fate of juveniles in the judicial system.

**SEE ALSO: Angela Corey's office threatens Jacksonville area juveniles with adult charges, Matt Shirk and private attorneys say**

The Times-Union reported Sunday that Public Defender Matt Shirk and private lawyers say State Attorney Angela Corey, whose circuit includes Jacksonville, has used that power to unfairly threaten juveniles with being sent to adult court if they don't accept record-staining direct commitments to juvenile-incarceration facilities.

Corey's office said juvenile cases are handled no differently than adult cases, according to a statement released Friday.

Shirk said state law needs to be changed to provide checks and balances.

**CONFRONTING TEENAGE CRIME**

Direct commitments — the power given to prosecutors in 1994 — are usually plea deals. When juveniles agree to plea deals, they are often incarcerated without the chance to hear the evidence against them, examine police work or interview witnesses. Also, the Florida Department of Juvenile Justice (DJJ) typically is not given the chance to evaluate the juvenile's background and needs.

Shirk's office estimates that more than 800 juveniles in the past five years were first threatened with adult charges before accepting pleas. The Times-Union's analysis also found a disproportionate number of low-risk youth from the Jacksonville area are being incarcerated, compared to other Florida judicial circuits.

Body found in Northwest St. Johns County retention pond believed to be missing woman  
12:53pm

Older Americans are early winners under health law  
11:33am

Ethiopian Airlines co-pilot hijacks plane to Geneva, seeks asylum  
10:29am

NY fashion designer found dead in Hudson river  
8:48am

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Former state Rep. Elvin Martinez, one of the Democrat sponsors of the bill that gave state attorneys power over direct filing, said lawmakers were forced to act to get juvenile crime under control.

Ritchie, another Democrat co-sponsor of that bill, said juveniles would come in for committing felonies, would get released from juvenile court and, like "a revolving door," would be back in court days later for another felony.

"We were seeing patterns of behavior from certain juveniles," said Ritchie, now president of the Gulf Coast Community Bank in Pensacola. "There was some evidence that certain judges would not incarcerate. Certain judges would just turn loose."

"Some of the prosecutors weren't acting serious enough, in my opinion," said Martinez, who is also a retired criminal judge.

But the true driving force was the public perception that crime was out of control in Florida, especially crimes committed by kids.

#### NO VOTES AGAINST

In 1993, German tourists Jorg and Sonya Schell had just gotten to their motel after a dinner out in Homestead when a group of teenagers tried to rob them, the Miami Herald reported. Two 16-year-olds and a 17-year-old came up to them, and one grabbed Sonya Schell's purse. She screamed. As her husband rushed toward her, one of the teens shot him fatally in the neck. One teen was sentenced to life in prison, one to 25 years and another to 20 years, the Herald reported.

That fall, British tourist Gary Colley was sleeping in his car at a rest stop on Interstate 10 near Monticello, the Ocala Star-Banner reported. Several youth told him to get out of the car, and Colley threw the vehicle in reverse. Someone shot Colley in the neck through the window, killing him. One of the attackers, who was 16 at the time of the shooting, was sentenced to life in prison, and other teens were given shorter prison sentences, the Miami Herald and St. Petersburg Times reported.

State lawmakers passed the bill unanimously, along with various others reforming Florida's juvenile justice system.

#### A "BABY STEP" MAY BE FIRST

Sending children to adult court is a practice that's been around for about a century, but it stuck as a legal practice in the 1960s. Questions about which crimes merited adult court were settled when the U.S. Supreme Court decided children as young as 16 could be sent to adult court if they'd committed a felony.

The typical process at that time included a special hearing, called a judicial waiver. Prosecutors would ask the judge for the hearing, both sides would convene and present their cases and the judge would decide whether juvenile or adult court was best.

The Florida legislation then allowed state attorneys to bypass that hearing by sending the juvenile's case directly to adult court — the process called direct file — starting July 1, 1994.

That law change also let prosecutors send children as young as 14 to adult court if they met a certain criminal threshold, which included committing felonies with guns.

Florida isn't the only state that allows prosecutors, rather than judges, to make the decision to charge a juvenile as an adult.

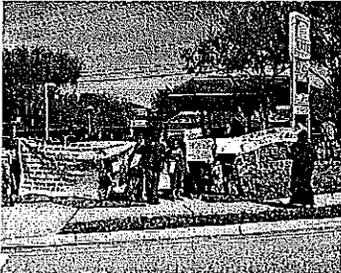
Fifteen states give prosecutors that authority, according to the most recent tally from the U.S. Department of Justice. Of those, 11 states allow a juvenile filed in adult court ask a judge to review that decision, a process called a reverse waiver.

Asking for a reverse waiver isn't an option in Florida.

Marie Osborne, the head of the juvenile division in Miami-Dade's Public Defender's Office, said juveniles would be better served with a judicial waiver, where the juvenile judge would make the decision on whether to charge a juvenile as an adult.

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Under that structure the state would make arguments for adult court and the defense would make arguments for juvenile sanctions.

"Now that's due process," Osborne said.

Osborne said the juvenile system's caseloads are significantly slimmer than decades ago, providing more time for judges to make the decisions. And now there's more research and evidence on how juveniles' brains work.

Rob Mason, the head of the juvenile division for the Public Defender's Office in Jacksonville, agreed with Osborne because juvenile judges are more familiar with juvenile services and research. But he also said the defense community may have to live with a "baby step" in the form of the reverse waiver.

"We're hoping for reverse waiver just because we're trying to get something going that helps us," Mason said.

#### "MOST POWERFUL OFFICE HOLDERS"

Lawmakers said they knew the power they were handing state attorneys. That power isn't a problem as long as it is used properly, they said.

"The prosecutors are the most powerful office holders known to man," Martinez said. "That's why it's so important you have a state attorney who is not ambitious and just follows the law."

Ritchie said the legislation certainly strengthened state attorneys, and he said he felt they would use this power wisely.

"We strengthened them measurably," Ritchie said. "We did intend for them to have that discretion."

When told by a reporter about how Corey's office is accused of leveraging the threat of direct filing against juveniles, Ritchie said he wasn't familiar with how Corey runs her office, but couldn't imagine Corey's office would be using the threat of direct filing unless prosecutors feel juvenile court won't give these children the help they need.

"You might have a good percentage of prosecutors that have lost confidence that the juvenile justice system is going to do anything," he said.

Having the ability to send a child directly to adult court was — and still is — a valuable resource, said Bill Cervone, state attorney for the Gainesville area.

Sending a child to adult court takes consideration, he said, but sometimes it's the best option for the child. If a teen has a drug problem, sometimes they can get better care from an adult program than a juvenile one. Sending a toughened youth to a juvenile facility where he would be a bad influence on younger, less hardened kids is also a bad idea.

Cervone, who has worked for the state attorney's office since 1973, said "the basic criteria that motivates [his office] to put a child into adult court really did not change" after state attorneys' power was expanded.

"Certainly, in those cases that we deemed appropriate, it made the process much simpler," he said. "I think it is an appropriate use of discretion for us to have so long as you have some guidance, which the legislation has given us."

When asked about Corey's specific practices, Cervone said it wouldn't be appropriate for him to comment on the operations of another state attorney.

#### A CHANGE BY LAW OR BALLOT

After state law changed in 1994, state attorneys across Florida each had their own way of using the new sovereignty. Some stuck to their old standards and only sent children to adult court when there were no other options, said Frank Orlando, former juvenile and circuit court judge. Some pushed forward with their new power, much like the way Angela Corey's office currently handles cases.

"Some state attorneys have an automatic list. You do this; you go to adult court," said Orlando, who is now the director of the Center for the Study of Youth Policy at Nova

Southeastern University in the Fort Lauderdale area. "Any child who was involved with those crimes, no matter what his crime or her crime was, they were just direct filed automatically."

Changing this power would take nothing less than a change in state law, something current lawmakers say is unlikely. Rather, they said, it's important that the public voices their opinion by voting for state attorneys whom they trust to use all powers — including direct filing — appropriately.

Shirk, the Jacksonville-area public defender, said the laws on charging juveniles as adults should to be changed to allow for review of these cases, the Times-Union reported Sunday.

"You change the law, then you don't have those problems. You don't have those threats," he said.

Corey said during a November debate on juvenile issues that the state's laws do not need changing.

"What you have to do is appreciate the laws that our legislators have given us where in Florida we have the ability to put a juvenile into adult court and still give them juvenile sanctions if it's appropriate," she said. "It's a good law; it's worked for all these years and there's no reason to change it."

Florida Sen. Audrey Gibson, a Democrat who represents parts of Jacksonville, said she isn't surprised to hear complaints that Corey uses coercive tactics to get juveniles to accept plea deals.

"She has always said if there was a gun involved, there would be no mercy, period," Gibson said. "That doesn't mean people should be threatened."

She said she's displeased with Corey's methods but said a law change is unlikely.

"Even though I wasn't in the Legislature when (it) changed the law, I am more than certain that that could not have been the intent of the legislation and it certainly is not proper due process at all," she said. "I think the state attorney can do better than that. I think they can do better by a young person than that."

Florida Sen. John Thrasher, a Republican whose district includes St. Johns County, said giving state attorneys the ability to control direct filing gives them an essential tool to do their jobs.

"It's worked for 20 years. I think it's always been used in a consistent manner with the law," he said. "They should have that right. I think it's appropriate for their job."

Thrasher voted in 1993 to change state law to give state attorneys authority over direct filing. He noted he was part of a Republican minority, and the bill was supported heavily by the Democratic majority.

Thrasher said it would be inappropriate to comment on the actions of an elected official outside of his district.

"If people feel like they're not doing their job or they're doing it inappropriately," Thrasher said, "then they certainly have the right and they should make that known at the ballot box."

Meredith Rutland: (904) 359-4161; Topher Sanders: (904) 359-4169



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11 COMMENTS

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SPB 7044

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Public Assistance Fraud

DATE: February 13, 2014

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

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Cannon		<b>Submitted as Committee Bill</b>

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**I. Summary:**

SPB 7044 amends s. 414.39(5), F.S., to set an upper limit on the value of public assistance fraud that is punishable as a third degree felony and by creating new felony crimes, a first degree and a second degree felony, based upon graduated increasing dollar values.

Subsection 414.39(11), F.S., is created to provide for a reward program that will pay persons for providing information that relates to criminal public assistance fraud and that leads to the recovery of a fine, penalty, or forfeiture of property.

The bill creates restrictions related to the Temporary Cash Assistance program administered by the Department of Children and Families (DCF). Specifically, the bill limits the use of temporary cash assistance out of state to thirty consecutive days. The bill also requires that a protective payee<sup>1</sup> be designated to receive temporary cash assistance on behalf of an eligible child where a parent or caretaker relative has become ineligible due to fraud.

The bill becomes effective on October 1, 2014.

**II. Present Situation:**

**Public Assistance Fraud**

“Public assistance” refers to benefits paid on the basis of the temporary cash assistance, food assistance, Medicaid, or optional state supplementation program.<sup>2</sup> Section 414.39, F.S., establishes the following crimes involving public assistance fraud, which are investigated by the Division of Public Assistance Fraud within the Department of Financial Services (DFS).<sup>3</sup>

Section 414.39(1), F.S., provides that a person commits a crime if they:

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<sup>1</sup> Section 414.065(2)(b), F.S.

<sup>2</sup> Section 414.0252(10), F.S.

<sup>3</sup> Section 414.411, F.S.

- Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive public assistance under any state or federally funded assistance program;
- Fail to disclose a change in circumstances in order to obtain or continue to receive any such public assistance to which he or she is not entitled or in an amount larger than that to which he or she is entitled; or
- Aid and abet another person in the commission of any such act.

Section 414.39(2), F.S., provides that a person commits a crime if they:

- Use, transfer, acquire, traffic, alter, forge, or possess;
- Attempt to use, transfer, acquire, traffic, alter, forge, or possess; or
- Aid and abet another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of, a food assistance identification card, an authorization, including, but not limited to, an electronic authorization, for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

Section 414.39(3), F.S., specifies that any person having duties in the administration of a state or federally funded public assistance program or in the distribution of public assistance, or authorizations or identifications to obtain public assistance, under a state or federally funded public assistance program commits a crime if they:

- Fraudulently misappropriate, attempt to misappropriate, or aid and abet in the misappropriation of, food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or if they knowingly fail to disclose any such fraudulent activity; or
- Knowingly misappropriate, attempt to misappropriate, or aid or abet in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization.

Section 414.39(4), F.S., provides that a person commits a crime if they:

- Knowingly file, attempt to file, or aid and abet in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or if they knowingly bill the recipient of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;
- Knowingly fail to credit the state or its agent for payments received from social security, insurance, or other sources; or

- In any way knowingly receive, attempt to receive, or aid and abet in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein.

Section 414.39(5), F.S., establishes criminal penalties that apply to all of the above-described offenses. The criminal penalties are based on the value of the public assistance involved in the offense. Currently, s. 414.39(5), F.S., provides:

- (a) If the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a first degree misdemeanor;<sup>4</sup> or
- (b) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more in any 12 consecutive months, such person commits a third degree felony.<sup>5</sup>

### **Temporary Cash Assistance**

“Temporary Cash Assistance” (TCA) is defined as cash assistance provided under the state program certified under Title IV-A of the Social Security Act, as amended.<sup>6</sup> The DCF administers Florida’s TCA Program, which provides cash assistance to families with children under the age of 18 or under age 19 if full time high school students, that meet specified technical, income, and asset requirements.<sup>7</sup>

Section 414.095, F.S., establishes the technical, income, and asset requirements that must be met before becoming eligible to receive TCA benefits,<sup>8</sup> sets forth criteria for determining how much TCA a person is entitled to, and establishes how TCA may be calculated and paid. The statute also contains a multitude of prohibitions and restrictions. For example:

- A family without a minor child living in the home is not eligible to receive TCA. However, a pregnant woman is eligible for TCA in the ninth month of pregnancy if all eligibility requirements are otherwise satisfied;
- An individual is ineligible to receive TCA during any period when the individual is fleeing to avoid prosecution, custody, or confinement after committing a crime, attempting to commit a crime that is a felony under the laws of the place from which the individual flees or a high misdemeanor in the State of New Jersey, or violating a condition of probation or parole imposed under federal or state law; and
- The parent or other caretaker relative must report to the department by the end of the 5-day period that begins on the date it becomes clear to the parent or caretaker relative that a minor child will be absent from the home for 30 or more consecutive days. A parent or caretaker relative who fails to report this information to the department shall be disqualified from

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> Section 414.0252(12), F.S.

<sup>7</sup> <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/temporary-cash-assistance-tca> (last visited on January 29, 2014).

<sup>8</sup> DCF determines if the families meet such requirements. Section 414.095(1), F.S.

receiving TCA for 30 days for the first occurrence, 60 days for the second occurrence, and 90 days for the third or subsequent occurrence.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more *but less than \$20,000* in any 12 consecutive months.

The bill creates s. 414.39(5)(c) and (d), F.S., which:

- (c) Makes it a second degree felony<sup>10</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of *\$20,000 or more, but less than \$100,000* in any 12 consecutive months.
- (d) Makes it a first degree felony<sup>11</sup> if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of *\$100,000 or more* in any 12 consecutive months.

The bill requires the DCF or the director of DCF's Office of Public Benefits Integrity, to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws, unless the person declines the reward. The information and report must:

- Be made to DCF, DFS, or the Florida Department of Law Enforcement;
- Relate to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person; and
- Lead to the recovery of a fine, penalty, or forfeiture of property.

The reward requirement is subject to availability of funds and may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward must be paid from the state share of the recovery in the Federal Grants Trust Fund from moneys collected pursuant to s. 414.41, F.S.<sup>12</sup> The bill specifies that a person who receives a reward is not eligible to receive funds pursuant to the Florida False Claims Act for Medicaid fraud for which the reward was received.<sup>13</sup>

The bill amends s. 414.095(14), F.S., to add two additional prohibitions and restrictions. The first limits the out-of-state use of TCA benefits to 30 consecutive days and requires termination of the

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<sup>9</sup> Section 414.095(14), F.S.

<sup>10</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>11</sup> 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.

<sup>12</sup> Section 414.41, F.S., requires DCF to take all necessary steps to recover overpayment whenever it becomes apparent that any person or provider has received any public assistance to which she or he is not entitled, through either simple mistake or fraud on the part of DCF or on the part of the recipient or participant.

<sup>13</sup> Under Florida's False Claims Act (ss. 68.081-68.092, F.S.), people who blow the whistle on Medicaid Fraud are entitled to share in any funds recovered by the state. <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited on January 29, 2014). See s. 68.085(3), F.S.

TCA benefits if used out-of-state for more than 30 days. The bill directs DCF to adopt rules providing for the determination of temporary absence and a recipient's intent to return to the state.

The second requires a parent or caretaker relative who has been disqualified due to fraud to have a protective payee designated to receive the TCA benefits for an eligible child. The requirements for designation of a protective payee are the same as provided in s. 414.065(2)(b), F.S.<sup>14</sup> The bill specifies that an individual disqualified for fraud cannot be designated as a protective payee and in a two-parent household, if only one parent is disqualified, the other parent may be designated as the payee of the benefit.

The bill becomes effective October 1, 2014.

#### **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.

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<sup>14</sup> Section 414.065, F.S., requires all TCA applicants to register for work and engage in work activities in accordance with s. 445.024, F.S. Those who do not comply with the work requirements are subject to penalties. Upon the second or third occurrence of noncompliance, TCA for a child or children in a family who are under age 16 may be continued. However, any payments must be made through a protective payee. Protective payees must be designated by DCF and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and to utilize the assistance in the best interest of the child or children.

C. Government Sector Impact:

***Prison Beds***

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because the bill creates new first and second degree felony offenses relating to public assistance fraud.

***Department of Children and Families***<sup>15</sup>

DCF reports that:

- Additional revenues may be received due to the bill’s reward provisions, but that an anticipated amount is not available at this time.
- Reducing annual TCA expenditures by terminating the benefits received by recipients no longer residing in the state of Florida may result in an estimated annual savings of \$1.8 million (based on repeated out of state use and averages).
- Funding for rewards will be taken from moneys collected pursuant to s. 414.41, F.S., in the Federal Grants Trust Fund, which is a significant source of funding for DCF’s Public Benefit Integrity (PBI) program. Reduction of these funds may cause the need for additional funding sources for the PBI operation.
- Additional staff would be needed to receive and investigate the tips and complaints received through the reward program. The Florida Office of the Attorney General experienced a 286% increase in calls relating to Medicaid Fraud when it initiated a reward program in the first year. DCF’s PBI currently receives an average of 26,400 online and telephonic fraud reports annually and projects an additional 7 staff are needed to process the increase in complaint volume, investigative leads, and oversee the administration of the program.

Current call/ complaint volume	26,400
Additional anticipated volume (286% increase)	75,504
Minutes to log and process each complaint	8
Hours of additional workload	10,067
Contract staff to handle workload (10,067 / 2000 hrs per yr)	5.03
Current hourly cost for Financial Specialist (contractor)	\$16.10
Expected additional cost (\$16.10 * 2000 hrs * 5)	\$161,000

Additional DCF Staffing Need  
 1 FTE: Rewards Program Manager (OMC I – SES)  
 1 OPS ACCESS Integrity Investigator (ESS II)

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<sup>15</sup> The following fiscal information was provided by the Department of Children and Families on January 14, 2014, in the Department’s Bill Analysis of identical House Bill 515. A copy of the Analysis is on file with the Senate Criminal Justice Committee.

Salaries and Benefits	\$48,003
Other Personnel Services	\$35,601
Nonrecurring Expenses (furniture for FTE, Equipment for OPS & Contract staff	\$9,473
Recurring Expenses (Rent, Supplies, telephone, postage)	\$9,761
Technology (Software Programming)	\$85,000
Contracted Services (6 Financial Specialists)	\$161,000
DMS-Human Resources Services Surcharge	\$344
<b>Total</b>	<b>\$349,182</b>

Estimates are based on what a similar increase to that of the AG reward program was when established and that the actual impact may deviate from this amount.

- Notification to TCA recipients regarding out of state use will annually cost an estimated \$3,500.

### *Department of Financial Services<sup>16</sup>*

DFS reports that:

- A possible fiscal impact through increased numbers of violations reported that generate a repayment to the state. The state retains between 20% and 35% of recoveries.
- Implementation of the cash reward process provided by this bill will generate a significant increase in the number of complaints received. Given current Division staffing and the lack of sufficient administrative support positions, additional personnel resources are needed along with dedicated telephone lines. The increased number of calls reporting possible fraud cannot be absorbed by existing resources without a significantly-negative impact on the performance of the division.
- Since 2008 the Division has been cut down to 63 staff members, over 50% reduction. Therefore, the Division has limited resources to absorb any additional workload.
- DFS estimates the need for additional funding of:
  - \$122,874 for five administrative support positions (five @ \$19,199/yr = \$95,995 + \$26,878/yr in benefit costs @ 28% of salary).
  - \$17.3K for office space is available in Miami, Pensacola, Tallahassee, at the Division Headquarters.
    - The fifth support position would require additional space (80sqft @average of \$18sqft/month x 12 months/year = \$17,280).
  - A non-recurring \$9.0K for office furniture and computer equipment for 5 OPS employees (5 @ \$1.8K).

<sup>16</sup> The following fiscal information was provided by the Department of Financial Services on February 3, 2014, in the Department's Bill Analysis of identical House Bill 515. A copy of the Analysis is on file with the Senate Criminal Justice Committee.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 414.095 and 414.39.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

FOR CONSIDERATION By the Committee on Criminal Justice

591-01664-14

20147044\_\_

1 A bill to be entitled  
 2 An act relating to public assistance fraud; amending  
 3 s. 414.39, F.S.; providing enhanced criminal penalties  
 4 if the value of public assistance or identification  
 5 wrongfully received, retained, misappropriated,  
 6 sought, or used is of an aggregate value exceeding  
 7 specified amounts; providing for a reward for a report  
 8 of original information relating to a violation of the  
 9 state's public assistance fraud laws if the  
 10 information and report meet specified requirements;  
 11 amending s. 414.095, F.S.; limiting to a specified  
 12 period the use of temporary cash assistance benefits  
 13 out of state; requiring rulemaking; requiring that a  
 14 parent or caretaker relative who has been disqualified  
 15 due to fraud have a protective payee designated to  
 16 receive temporary cash assistance benefits for  
 17 eligible children; providing requirements for  
 18 protective payees; providing an effective date.  
 19  
 20 Be It Enacted by the Legislature of the State of Florida:  
 21  
 22 Section 1. Subsections (1) through (5) of section 414.39,  
 23 Florida Statutes, are amended, and subsection (11) is added to  
 24 that section, to read:  
 25 414.39 Fraud.—  
 26 (1) Any person who knowingly:  
 27 (a) Fails, by false statement, misrepresentation,  
 28 impersonation, or other fraudulent means, to disclose a material  
 29 fact used in making a determination as to such person's

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

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20147044\_\_

30 qualification to receive public assistance under any state or  
 31 federally funded assistance program;  
 32 (b) Fails to disclose a change in circumstances in order to  
 33 obtain or continue to receive any such public assistance to  
 34 which he or she is not entitled or in an amount larger than that  
 35 to which he or she is entitled; or  
 36 (c) Aids and abets another person in the commission of any  
 37 such act,  
 38  
 39 commits ~~is guilty of~~ a crime and shall be punished as provided  
 40 in subsection (5).  
 41 (2) Any person who knowingly:  
 42 (a) Uses, transfers, acquires, traffics, alters, forges, or  
 43 possesses; ~~or~~  
 44 (b) Attempts to use, transfer, acquire, traffic, alter,  
 45 forge, or possess; ~~or~~ or  
 46 (c) Aids and abets another person in the use, transfer,  
 47 acquisition, traffic, alteration, forgery, or possession of,  
 48  
 49 a food assistance identification card, an authorization,  
 50 including, but not limited to, an electronic authorization, for  
 51 the expenditure of food assistance benefits, a certificate of  
 52 eligibility for medical services, or a Medicaid identification  
 53 card in any manner not authorized by law commits a crime and  
 54 shall be punished as provided in subsection (5).  
 55 (3) Any person having duties in the administration of a  
 56 state or federally funded public assistance program or in the  
 57 distribution of public assistance, or authorizations or  
 58 identifications to obtain public assistance, under a state or

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

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federally funded public assistance program and who:

(a) Fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of, food assistance, an authorization for food assistance, a food assistance identification card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or public assistance from any other state or federally funded program with which he or she has been entrusted or of which he or she has gained possession by virtue of his or her position, or who knowingly fails to disclose any such fraudulent activity; or

(b) Knowingly misappropriates, attempts to misappropriate, or aids or abets in the misappropriation of, funds given in exchange for food assistance program benefits or for any form of food assistance benefits authorization,

~~commits is guilty of~~ a crime and shall be punished as provided in subsection (5).

(4) Any person who:

(a) Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of public assistance under any state or federally funded public assistance program for services that were not rendered; knowingly files a false claim or a claim for nonauthorized items or services under such a program; or knowingly bills the recipient of public assistance under such a program, or his or her family, for an amount in excess of that provided for by law or regulation;

(b) Knowingly fails to credit the state or its agent for payments received from social security, insurance, or other sources; or

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20147044\_\_

(c) In any way knowingly receives, attempts to receive, or aids and abets in the receipt of, unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance as provided herein,

~~commits is guilty of~~ a crime and shall be punished as provided in subsection (5).

(5) (a) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is less than an aggregate value of \$200 in any 12 consecutive months, such person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$200 or more, but less than \$20,000 in any 12 consecutive months, such person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months, such person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of \$100,000 or more in any 12 consecutive months, such person commits a felony of the first

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117 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 118 775.084.

119 (e)(e) As used in this subsection, the value of a food  
 120 assistance authorization benefit is the cash or exchange value  
 121 unlawfully obtained by the fraudulent act committed in violation  
 122 of this section.

123 (f)(d) As used in this section, "fraud" includes the  
 124 introduction of fraudulent records into a computer system, the  
 125 unauthorized use of computer facilities, the intentional or  
 126 deliberate alteration or destruction of computerized information  
 127 or files, and the stealing of financial instruments, data, and  
 128 other assets.

129 (11) (a) Subject to availability of funds, the department or  
 130 the director of the Office of Public Benefits Integrity shall,  
 131 unless the person declines the reward, pay a reward to a person  
 132 who furnishes and reports original information relating to a  
 133 violation of the state's public assistance fraud laws if the  
 134 information and report:

135 1. Are made to the department, the Department of Financial  
 136 Services, or the Department of Law Enforcement.

137 2. Relate to criminal fraud upon public assistance program  
 138 funds or a criminal violation of public assistance fraud laws by  
 139 another person.

140 3. Lead to the recovery of a fine, penalty, or forfeiture  
 141 of property.

142 (b) The reward may not exceed 10 percent of the amount  
 143 recovered or \$500,000, whichever is less, in a single case.

144 (c) The reward shall be paid from the state share of the  
 145 recovery in the Federal Grants Trust Fund from moneys collected

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146 pursuant to s. 414.41.

147 (d) A person who receives a reward pursuant to this  
 148 subsection is not eligible to receive funds pursuant to the  
 149 Florida False Claims Act for Medicaid fraud for which the reward  
 150 was received.

151 Section 2. Paragraphs (k) and (l) are added to subsection  
 152 (14) of section 414.095, Florida Statutes, to read:

153 414.095 Determining eligibility for temporary cash  
 154 assistance.—

155 (14) PROHIBITIONS AND RESTRICTIONS.—

156 (k) Use of temporary cash assistance benefits out of state  
 157 is limited to 30 consecutive days. The temporary cash assistance  
 158 benefits of a recipient using his or her benefits out-of-state  
 159 for more than 30 days shall be terminated. The department shall  
 160 adopt rules providing for the determination of temporary absence  
 161 and a recipient's intent to return to the state.

162 (l) A parent or caretaker relative who has been  
 163 disqualified due to fraud must have a protective payee  
 164 designated to receive temporary cash assistance benefits for an  
 165 eligible child. The requirements for designation of a protective  
 166 payee shall be the same as the requirements for designation of a  
 167 protective payee for work sanctions in s. 414.065(2) (b). An  
 168 individual disqualified for fraud cannot be designated as a  
 169 protective payee. In a two-parent household, if only one parent  
 170 is disqualified, the other parent may be designated as the payee  
 171 of the benefit.

172 Section 3. This act shall take effect October 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

FEB 17 2014

Meeting Date

Topic PUBLIC ASSISTANCE FRAUD

Bill Number SPB 7044  
*(if applicable)*

Name ANDREW McCLENAHAN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title DIRECTOR PUBLIC BENEFITS INTEGRITY

Address 1317 Winwood Blvd

Phone 407-1111

Street

Tallahassee

City

FL

State

32399

Zip

E-mail andrew-mcclehanan@def.state.fl.us

Speaking:  For  Against  Information

Representing DU

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.**

# CourtSmart Tag Report

Room: LL 37  
Caption: Criminal Justice Committee

Case:  
Judge:

Type:

Started: 2/17/2014 4:03:20 PM

Ends: 2/17/2014 5:59:59 PM

Length: 01:56:40

4:03:22 PM Meeting called to order  
4:03:56 PM Quorum present  
4:04:46 PM Senator Margolis CS/SB 94  
4:06:08 PM Jury Composition-12 person jury for a felony case instead of 6 persons  
4:10:41 PM Alisa Smith, Associate Professor for the bill  
4:17:04 PM Buddy Jacobs-General Counsel Florida Prosecuting Attorneys Assoc. - Against the bill  
4:18:03 PM Senator Smith with a question. What is the difference between a capital case and a life case. Capital could be subject to the death penalty.  
4:18:30 PM Senator Smith continues with several questions.  
4:19:59 PM Senator Simmons with questions. The vast majority of states require 12 member juries in all cases.  
4:21:05 PM Can staff tell us if they know out of multiple jurisdictions as to whether they require unanimous verdict.  
4:22:58 PM Senator Smith-Can you tell me on behalf of the Florida State Attorneys Association what is the one reason why not to go to a  
4:25:14 PM 12 person jury.  
4:25:51 PM Senator Smith continues with questions  
4:26:47 PM Senator Evers to Connie. Does the bill say it has to be unanimous? Bill does not say that but that is how the courts work.  
4:28:03 PM Senator Evers continues a line of questioning.  
4:28:37 PM Bob Dillinger, Public Defender, 6th Judicial Circuit, speaking in favor of the bill.  
4:30:31 PM Group dynamics are very different in six person juries than 12 person juries.  
4:32:22 PM Senator Smith with debate on the bill.  
4:32:51 PM Senator Evers in debate.  
4:34:13 PM Senator Margolis to close. 47 states have 12 person juries.  
4:34:38 PM CS/SB 94-Favorable  
4:35:38 PM Senator Bradley-SB 700-Department of Juvenile Justice.  
4:36:21 PM Secretary of Juvenile Justice-Wansley Walters explains the bill.  
4:38:14 PM No amendments  
4:40:41 PM Senator Evers with a question-failure to do right  
4:41:38 PM Thad Lowery wave in support  
4:44:05 PM Bob McClure-James Madison Institute  
4:46:34 PM Cathy Craig-Myers waves in support  
4:46:46 PM Robert Dillinger-wave in support  
4:47:22 PM Debate-Senator Gibson-Supports the bill and appreciates the rewrite including section on councils.  
4:50:52 PM Senator Bradley to close.  
4:53:31 PM Please call the roll on SB 700. By your vote SB 700 passes  
4:54:51 PM SB 408 Infectious Disease by Senator Braynon-Free clean and unused needles in Miami-Dade County as a pilot  
4:57:47 PM All requesters wave in support  
4:58:36 PM Debate-None Call the roll. By your vote SB 408 passes  
4:59:47 PM Senator Brandes-Chris Spencer SB 364 Computer Crimes  
5:00:51 PM One amendment barcode 269740-technical correction  
5:01:21 PM Becki Edmonston waves in support  
5:03:00 PM Senator Smith with a question to staff regarding knowledge  
5:04:52 PM Senator Simmons-making in a crime to engage in spying on a person  
5:06:22 PM Senator Altman with a question  
5:08:52 PM Senator Bradley-point well taken by Senator Altman  
5:09:25 PM Senator Smith with a question  
5:10:19 PM Senator Gibson with a question-definition of audio or video surveillance in the bill? No  
5:10:57 PM Dale Calhoun waves in support  
5:11:11 PM Mike Bjorklund waves in support  
5:11:47 PM Debate - Senator Simmons there needs to be further work done on lines 175-180

5:12:43 PM Senator Altman wants more work done on the bill  
5:13:04 PM Senator Bradley's committee will hear the bill next.  
5:13:55 PM CS? Yes by Senator Bradley, call the roll SB 364 passes  
5:15:37 PM SB 366 public records exemption-no questions, no amendments, no speakers, call the roll on SB 366-passes  
5:16:53 PM CS/SB 590 by Senator Richter-Money Services-one amendment-technical-no objection to amendment  
5:18:02 PM Jo Morris waves in support  
5:18:20 PM Jim Daughton waves in support  
5:18:32 PM JC Canabal waves in support  
5:18:56 PM Senator Evers with a question  
5:20:08 PM CS? yes Senator Simmons moves for a CS. Call roll, CS/CS/590 passes  
5:21:14 PM CS/SB 188, Senator Hukill-Education Data Privacy  
5:22:29 PM Walter Hamilton-International Biometrics and Identification Association-against the bill  
5:30:32 PM Walter Hamilton-International Biometrics and Identification Association-against the bill  
5:30:37 PM Senator Altman with a question  
5:33:16 PM Senator Gibson with a question  
5:37:05 PM Senator Bradley with questions  
5:39:03 PM Senator Bradley with a series of questions  
5:40:12 PM Senator Altman with questions  
5:41:22 PM Linda Kearschner waves in support of the original bill. She is from the Florida Parent Teacher Association  
5:43:28 PM Pinellas County School System speaker-needs appearance card  
5:43:54 PM Senator Gibson-how much was the biometrics system  
5:44:27 PM Tanya Cooper waves in support of the bill as is today. Senator Evers with questions  
5:45:18 PM Senator Gibson-will the funds that the schools expended be replaced by DOE? Not sure  
5:45:49 PM Senator Gibson-will the funds that the schools expended be replaced by DOE? Not sure  
5:45:50 PM Ashley Spicola waves in support  
5:46:15 PM Barbara Dalesondro works for Pinellas County School Board  
5:48:24 PM Lynn Geist-Pinellas County Schools food system  
5:51:37 PM No debate on bill. Senator Hukill to close. Roll on CS/SB 188-favorable  
5:52:40 PM Senator Simmons Sexually explicit Images SB 532  
5:53:20 PM Creates definition of a crime due to technology-revenge porn  
5:53:44 PM amendment barcode 459030-penalty be reduced to misdemeanor-adopted  
5:54:17 PM Kari Rayburn Silver-Florida Sheriff's Association wants a felony not a misdemeanor.  
5:54:50 PM Senator Gibson with debate. Move to over 19 as opposed to 16.  
5:55:38 PM Moves for a CS. Wave close, CS/SB 532-passes  
5:56:18 PM SB 432 by Senator Ring-Lewd and Lascivious Behavior-legislative asst. presenting. no amendments-no questions  
5:57:10 PM no speakers, no debate, wave close, SB 434-passes  
5:58:16 PM SPB 7044 Public asst. fraud-no amendments, no questions, waves close, SPB 7044-passes



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR CHARLES S. DEAN, SR.**  
5th District

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

February 14, 2014

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

Dear Chairman Evers,

The purpose of this letter is to seek your permission to be excused from the scheduled Criminal Justice Committee meeting on February 17<sup>th</sup>, 2014. Due to unforeseen personal conflicts which cannot be moved, I will not be able to attend.

Should you have any questions concerning this matter, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

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](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore